UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

IN RE: JANE DOE,

Petitioner.

VICTIM'S REPLY TO GOVERNMENT'S RESPONSE TO EMERGENCY PETITION FOR ENFORCEMENT OF CRIME VICTIM'S RIGHTS ACT, 18 U.S.C. § 3771 AND OBJECTION TO GOVERNMENT'S MOTION FOR SEALING OF PLEADINGS

COMES NOW the Petitioner, JANE DOE, by and through her undersigned attorney, pursuant to the Crime Victim's Rights Act, 18 U.S.C. Section 3771 ("CVRA"), and files this Reply to the Government's Response to her Emergency Petition for Enforcement and Objection to the Sealing of the Pleadings in this matter as follows:

INTRODUCTION

Four days ago (July 7th), Petitioner filed in this Court a motion seeking enforcement of (among other rights) her right to "confer" with the prosecution before a plea arrangement is reached disposing of the criminal charges involving her – a right promised to her in the Crime Victims' Rights Act (CVRA). *See* 18 U.S.C. § 3771(d)(5) (victims of crime have the "reasonable right to confer with the attorney for the Government in the case"). Two days later (July 9th), the Government sent her a notice that, in light of defendant, Jeffrey Epstein's entry of guilty pleas to various state charges and 18-month jail sentence, the Government had agreed to defer all federal prosecution – including any federal prosecution for the federal crimes committed against her. This deferred prosecution agreement was reached without conferral with Petitioner – or, indeed, with the many other young victims of the defendant's crimes. And the agreement remarkably

allowed the defendant – a billionaire with extraordinary political connections -- to escape all federal prosecution for dozens of serious federal sex offenses against minors.

On July 9th, the Government also filed with this Court a response to the Petitioner's petition for enforcement of her CVRA rights. In its response, the Government argues that it did not need to confer with Petitioner because there was no formal "court proceeding" pending at the time the Government negotiated this non-prosecution agreement. This position ignores the plain language of the CVRA – which extends the right to confer to any "case," not any "court proceeding" – and flies in the face of the Fifth Circuit's recent decision that is squarely on point – *In re Dean*, 527 F.3d 391 (5th Cir. 2008). Perhaps in recognition of the weakness of its position, the Government goes on to argue that it used its "best efforts" to comply the CVRA. But the Government never conferred with Petitioner about the agreement – so the Government's efforts fall well short of affording Petitioner her right to confer. Finally, the Government claims that it disclosed some of its activities to Petitioner in this case (identified as "C.W." in the Government's papers). But neither Petitioner nor undersigned counsel were ever notified of the proposed non-prosecution agreement. To the contrary, undersigned counsel was advised that a federal indictment was in the works. For all these reasons, the Government's response lacks merit. The Court should therefore declare the proposed non-prosecution agreement an illegal one, since it was reached in violation of the CVRA, and order the Government to confer with Petitioner and the other victims in this matter before reaching any disposition in this case.

The Government also apparently proposes to keep its activities in this case secret, by filing documents under seal. It bears emphasizing that none of the pleadings in this matter discloses, either directly or indirectly, the identity of a minor victim. In light of this fact, the Government

bears a heavy burden in deviating from the ordinary rules, a burden it has not carried. There is no sound basis for keeping the pleadings in this matter sealed. Moreover, the matter is one of exceptional public interest – involving what appears to Petitioner to be a "sweetheart" non-prosecution agreement for multiple sex crimes against children committed by a well connected billionaire. Accordingly, the papers in this case should be lodged in the Court's public file.

I. THE GOVERNMENT HAS VIOLATED PETITIONER'S RIGHT TO "CONFER" BEFORE REACHING THE NON-PROSECUTION AGREEMENT.

The Crime Victims' Rights Act promises Petitioner that she will have "[t]he reasonable right to confer with the attorney for the Government *in the case*." 18 U.S.C. § 3771(d)(5) (emphasis added). To justify its failure to confer here, the Government's lead argument in its response is that there was no "court proceeding" in this case that triggered Petitioner's right to confer. Gov't Response at 1-2. The Government's position flouts the plain language of the CVRA. The CVRA guarantees to Petitioner the right to confer with prosecutors "in the case" – not in a "court proceeding." Indeed, the fact that (as the Government notes) the drafters of the CVRA used the term "court proceeding" elsewhere in the statute makes it obvious that they intended to give victims a right to confer that extended beyond simple court proceedings -- that is, the right to confer about "the case."

Obviously there was "a case" going on in this matter for some time. Indeed, the Government sent notice to Petitioner more than a year ago that "your *case* is under investigation." *See* Letter from A. Marie Villafaña to C.W. at 2 (June 7, 2007) (attached to Government's Response) (emphasis added). The notice went on to tell Petitioner that "as a victim and/or witness of a federal offense, you have a number of rights." *Id.* at 1. Of course, she would not have had those rights if she was not covered by the CVRA. Interestingly, the letter also advised

Petitioner that "if you believe that the rights set forth above [e.g., the right to confer and other CVRA rights] are being violated, you have the right to petition the Court for relief." *Id.* at 1.

If there were any doubt that the drafters of the CVRA intended for its rights to extend to pre-indictment situations, they disappear in light of the CVRA's instruction that a crime victim who seeks to assert rights in pre-indictment situations should proceed in the court where the crime was committed: "The rights described in subsection (a) [of the CVRA] shall be asserted in the district in which a defendant is being prosecuted for the crime or, *if no prosecution is underway*, in the district court in the district in which the crime occurred." 18 U.S.C. § 3771(d)(3) (emphasis added). Petitioner noted the importance of this language in her opening Petition, *see* Emergency Victim's 5, but the Government chose not to discuss it in its reply.

In a case remarkably similar to this one, the Fifth Circuit has recently held that victims have a right to confer with federal prosecutors even before any charges are filed. In *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008), a wealthy corporate defendant reached a generous plea deal with the Government – a deal that the Government concluded and filed for approval with the district court without conferring with the victims. When challenged on a mandamus petition by the victims, the Fifth Circuit held:

> The district court acknowledged that "[t]here are clearly rights under the CVRA that apply before any prosecution is underway." *BP Prods.*, 2008 WL 501321 at *11, 2008 U.S. Dist. LEXIS 12893, at *36. Logically, this includes the CVRA's establishment of victims' "reasonable right to confer with the attorney for the Government." 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims' views on the possible details of a plea bargain.

Id. at 394.

As we understand the Government's response, it asks this Court to decline to follow the Fifth Circuit's holding and create a split of authority on this important issue. See Gov't Response at 2-3. Notably, the Government does not cite *any* cases supporting its position. Instead, the Government would have this Court deviate from the Fifth Circuit's well-reasoned opinion because the Circuit's "discussion of the scope of the right to confer was unnecessary because the court ultimately declined to issue mandamus relief." Gov't Response at 2 (citing *Dean*, 527 F.3d at 395). This is simply untrue. The Fifth Circuit faced a petition for mandamus relief from the victims in that case, asking that a proposed "binding" plea agreement negotiated under Fed. R. Crim. P. 11(c)(1)(C) (i.e., a plea agreement obligating the judge to impose a specific sentence) be rejected. The victims asked for that relief because of the Government's failure to confer with them before the charges and accompanying plea agreement were filed. The Fifth Circuit held that the victims' rights had been violated in the passages quoted above. It then went on to remand the matter to the district court for further consideration of the effect of the violations of the victims' rights:

> We are confident, however, that the conscientious district court will fully consider the victims' objections and concerns in deciding whether the plea agreement should be accepted.
>
> The decision whether to grant mandamus is largely prudential. We conclude that the better course is to deny relief, confident that the district court will take heed that the victims have not been accorded their full rights under the CVRA and will carefully consider their objections and briefs as this matter proceeds.

527 F.3d at 396. Obviously, the Fifth Circuit could not have instructed the District Court to "take heed" of the violations of victims' rights unless it has specifically held, as a matter of law, that the victims' rights had been violated.

The Government's next effort to deflect the force of the Fifth Circuit's decision is that the

Circuit did not directly quote three words found in the CVRA's right to confer – the words "in the case." *See* Gov't Response at 2. But the Fifth Circuit had received briefs totaling close to 100 pages in that case and was obviously well aware of the statute at hand. Indeed, in the very paragraph the Government claims is troublesome, the Fifth Circuit cited to the district court opinion under review, which had quoted all the words in the statute. *See United States v. BP Products*, 2008 WL 501321 at *7 (noting victims right to confer "in the case"), *cited in In re Dean*, 527 F.3d at 394.

The Government finally notes that the Fifth Circuit properly stated that its ruling about the Government violating the right to confer applied "in the posture of this case." 527 F.3d at 394. But the posture of this case – at least in its relevant aspects -- is virtually identical to the posture there. The Fifth Circuit held that the Government had an obligation to confer with the victims *before charges were filed and before a final plea arrangement was reached.* Without giving the victims a chance to confer before hand, the plea agreement might be fatally flawed because it did not consider the concerns of the victims. Thus, the Fifth Circuit emphasized the need to confer with victims before any disposition was finally decided: "The victims do have reason to believe that their impact on the eventual sentence is substantially less where, as here, their input is received after the parties have reached a tentative deal. As we have explained, that is why we conclude that these victims should have been heard at an earlier stage." *Id.* at 395. The posture in this case is exactly the same – the Government should have conferred before the parties "reached a tentative deal." The fact that the deal reached here is slightly different than the deal reached in the *Dean* case (a non-prosecution agreement versus a plea agreement) is truly a distinction without a difference. If anything, the facts here cry out for conferral even more than in

that case. At least the defendant there agreed to plead guilty to a federal felony. Here, the wealthy defendant has escaped all federal punishment – a plea deal that Petitioner would have strenuously objected to . . . if the Government had given her the chance.

The Fifth Circuit's decision in *Dean* has been cited in one very recent District Court decision, which provides further support for Petitioner's position here. In *United States v. Rubin*, 2008 WL 2358591 (E.D.N.Y. 2008), the victims argued for extremely broad rights under the CVRA. After citing *Dean*, the District Court agreed that the rights were expansive and could apply before indictment, but subject to the outer limit that the Government be at least "contemplating" charges:

> Quite understandably, movants perceive their victimization as having begun long before the government got around to filing the superseding indictment. They also believe their rights under the CVRA ripened at the moment of actual victimization, or at least at the point when they first contacted the government. Movants rely on a decision from the Southern District of Texas for the notion that CVRA rights apply prior to any prosecution. In *United States v. BP Products North America, Inc.*, the district court reasoned that because § 3771(d)(3) provided for the assertion of CVRA rights "in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred," the CVRA clearly provided for "rights ... that apply before any prosecution is underway." (United States v. BP Products North America, Inc., Criminal No. H-07-434, 2008 WL 501321 at *11 (S.D.Tex. Feb.21, 2008) (emphasis in original), mandamus denied in part, *In re Dean*, No. 08-20125, 2008 WL 1960245 (5th Cir. May 7, 2008). But, assuming that it was within the contemplation and intendment of the CVRA to guarantee certain victim's rights prior to formal commencement of a criminal proceeding, the universe of such rights clearly has its logical limits. For example, the realm of cases in which the CVRA might apply despite no prosecution being "underway," cannot be read to include the victims of uncharged crimes that the government has not even contemplated. It is impossible to expect the government, much less a court, to notify crime victims of their rights if the government has not verified to at least an elementary degree that a crime has actually taken place, given that a corresponding investigation is at a nascent or theoretical stage.

Id. at *6. Here, of course, the criminal investigation went far beyond the "nascent or theoretical

stage" – to a point where the Government determined that crimes had been committed and that the defendant should plead guilty to either a state or federal offense.

For all these reasons, the Court should follow the Fifth Circuit and hold that Petitioner and the other victims in this case had the right to confer with the Government before it reached its non-prosecution agreement.

II. THE GOVERNMENT HAS NOT USED ITS "BEST EFFORTS" TO COMPLY WITH THE CRIME VICTIM'S RIGHTS ACT.

The Government next argues that it has somehow used its "best efforts" to comply with the CVRA in this case. Gov't Response at 3. The bulk of the Government's arguments concern various notices that it sent to victims. Buried in the middle of these arguments is the Government's stark concession that proves Petitioner's claim: "*[T]he specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made.*" Gov't Response at 6 (emphasis added). In other words, Petitioner – and the many other victims of the defendant's federal sex offenses – was deliberately kept in the dark about the fact that the Government was planning to reach a deal that would permit the defendant to escape all federal punishment in favor of an 18-month county jail sentence. This bald decision to conceal from the victims what was happening violated the basic premise of the Crime Victim's Rights Act: that victims deserve to know what is happening in their cases. Congress was concerned that in the federal system crime victims were "treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors too busy to care enough ... and by a court system that simply did not have a place for them." 150 CONG. REC. S4262 (Apr. 22, 2004) (statement of Sen. Feinstein). To remedy this problem, Congress gave victims "the simple

right to know what is going on, to participate in the process where the information that victims and their families can provide may be material and relevant ... ." *Id.*

The CVRA required the Government to confer with Petitioner and consider her views about the proposed arrangement in this case. Indeed, the Government's own regulations require prosecutors to "consider victims' views about prospective plea negotiations." U.S.DEP'T OF JUSTICE OFFICE FOR VICTIMS OF CRIME, ATTORNEY GENERAL GUIDELINES FOR VICTIMS AND WITNESS ASSISTANCE 30 (2005). Congress obviously intended for victims to have a meaningful role in the criminal justice process.

The Fifth Circuit recently confronted – and rejected – a very similar claim from the Government that it did not need to meaningfully confer with crime victims. There, the Government's purported justification for failing to confer was the risk of pre-trial publicity to the defendant. The Fifth Circuit summarily dismissed that argument, holding: "Congress made the policy decision -- which we are bound to enforce -- that the victims have a right to inform the plea negotiation process by conferring with prosecutors before a plea agreement is reached." *Id.* at 395. In this case, too, this Court is "bound to enforce" Congress' decision that prosecutors confer with victims before reaching a plea agreement.

The Government is not entitled to pick and choose which particular cases it will give victims the right to confer. In support of its remarkable position, the Government cites a provision in the CVRA that provides that "[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction." 18 U.S.C. § 3771(d)(6). But the Government made the same argument in the *Dean* case – and lost. The Fifth Circuit reversed the District Court decision that enforcing the right to confer might impair

prosecutorial discretion with the following statement: "[Giving the right to confer to victims] is not an infringement, as the district court believed, on the government's independent prosecutorial discretion, . . . instead, it is only a requirement that the government confer in some reasonable way with the victims before ultimately exercising its broad discretion." 574

Moreover, the Government's asserted justification for failing to confer is transparently flimsy. It asserts that, if the victims had been told that the plea agreement gave them advantages in civil litigation against the defendant, then that would have "provid[ed] Epstein the means of impeaching the victim witnesses . . . ." Gov't Response at 5. But obviously the victims were *already* subject to impeachment on that ground – even if no plea agreement was ever reached. The defense attorneys presumably would have asked all of the victims at any criminal trial about the possibility that they could pursue civil litigation against the defendant if he was convicted. The plea agreement did not change the obvious fact that a criminal conviction – whether by plea agreement or by jury trial – would facilitate civil claims by the victims of the defendant's crimes.

In light of all this, this Court should reach the obvious conclusion: The Government did not use its "best efforts" to protect the rights of Petitioner (and the other victims) in this case when it failed to confer with her about the non-prosecution agreement.

III. THE GOVERNMENT DID NOT CONFER WITH PETITIONER.

The Government finally makes a factual argument about the state of negotiations in this case. The brief discussion (see Gov'ts Response at 7-8) is somewhat vague. One short passage in the response, however, seems to assert that Petitioner was given some sort of notice about the plea agreement about nine months ago. Gov't Response at 7 ("In October 2007, C.W. was not represented by counsel. . . . She was given telephonic notice of the agreement, as were three other

victims.").

If the Government is asserting that Petitioner was told that a non-prosecution agreement had been reached with the defendant as early as October 2007, Petitioner strongly disputes this alleged "fact." To the contrary, undersigned counsel was told by federal prosecutors within the last 60 days that a federal "indictment" was under consideration.

Petitioner does not believe that the Government is truly asserting that she was told about a non-prosecution agreement because, elsewhere in its brief, the Government makes the opposite assertion: "*[T]he specific terms of the negotiation were not disclosed prior to a final agreement being reached because the Government believed doing so would jeopardize and prejudice the prosecution in the event an agreement could not be made.*" Gov't Response at 6 (emphasis added).

Because of the confusion about what the Government is truly asserting, Petitioner requests an opportunity to address the facts directly with the Court at the hearing. If necessary, Petitioner also requests leave of Court after the hearing to provide whatever supplemental information (by way of affidavit or otherwise) that would be needed to prove that she was never told that the Government was considering a federal non-prosecution agreement with the defendant, much less given a chance to confer with the Government on this extraordinarily lenient disposition.

IV. THE COURT SHOULD ENTER AN ORDER DIRECTING THE GOVERNMENT TO CONFER WITH THE PETITIONER BEFORE ANY NON-PROSECUTION AGREEMENT BECOMES FINALIZED.

For all these reasons, it is obvious that Petitioner's right to confer was violated in this case. The question then arises as to the appropriate remedy. The obvious remedy is to declare

the non-prosecution agreement illegal and direct that the Government proceed to negotiate a new agreement – in a process that respects Petitioner's (and the other victims') rights.

The non-prosecution agreement here violates federal law. As described by the Government (the victims have not been even given the courtesy of a copy of the agreement), the agreement prevents federal prosecution of the defendant for numerous sex offenses. Yet the agreement was reached without giving Petitioner her right to confer – a violation of 18 U.S.C. § 3771(a)(5).

When other plea arrangements have been negotiated in violation of federal law, they have been stricken by the courts. For example, *United States v. Walker*, 98 F.3d 944 (7th Cir. 1996), held that where a sentence on a new crime could not run concurrently with a probation revocation the defendant was then serving – contrary to the assumption of the parties to the plea agreement – the defendant was not entitled to specific performance of the plea agreement. The Court explained that the case was one "in which the bargain is vitiated by illegality . . . ." Here, of course, exactly the same is true: the non-prosecution agreement is vitiated by illegally – namely, the fact that it was negotiated in violation of the victims' rights. Other cases reach similar conclusions. *See, e.g., United States v. Cooper*, 70 F.3d 563 (10th Cir. 1995) (prosecutor agreed to recommend probation, but it now appears that would be an illegal sentence in this case, and thus the only adequate remedy is to allow defendant to withdraw the plea); *Craig v. People*, 986 P.2d 951 (Colo. 1999) (because "neither the prosecutor nor the trial court have authority to modify or waive the mandatory parole period," such "is not a permissible subject of plea negotiations," and thus, even if "the trial court erroneously approves of such an illegal bargain" such plea is "invalid" and thus will not be specifically enforced). Nor can the defendant claim

some right to specific performance of an illegal non-prosecution agreement. *See State v. Garcia*, 582 N.W.2d 879 (Minn. 1998) (plea agreement for 81 months sentence, but court added 10-year conditional release term because, under facts of case, a sentence without such release term was "plainly illegal," and thus the remedy of specific performance not available); *State v. Wall*, 348 N.C. 671, 502 S.E.2d 585 (1998) (plea agreement was for sentence to be concurrent with one not yet completed, but state statute mandates consecutive sentence on facts of this case; "defendant is not entitled to specific performance in this case because such action would violate the laws of this state"); *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006); (where "the plea bargain seemed fair on its face when executed, it has become unenforceable due to circumstances beyond the control of [the parties], namely the fact that one of the enhancement paragraphs was mischaracterized in the indictment, resulting in an illegal sentence far outside the statutory range," proper remedy is plea withdrawal, as "there is no way of knowing whether the State would have offered a plea bargain within the proper range of punishment that he deemed acceptable"); *State v. Mazzone*, 212 W.Va. 368, 572 S.E.2d 891 (2002) (where plea agreement was that defendant would plead guilty to 2 felony counts of felon in possession of firearm and prosecutor would dismiss the remaining 6 counts re other offenses with prejudice, and all parties erroneously believed these 2 crimes were felonies, lower court "correctly resolved this unfortunate predicament by holding that a plea agreement which cannot be fulfilled based upon legal impossibility must be vacated in its entirety, and the parties must be placed, as nearly as possible, in the positions they occupied prior to the entry of the plea agreement").

This Court is obligated to take steps to protect Petitioner's rights. Under the CVRA, "[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the

crime victim is afforded the rights described in [the CVRA]." 18 U.S.C. § 3771(b)(1). The CVRA also confers on crime victims the right to "assert the rights described in [the CVRA]." 18 U.S.C. § 3771(d)(1). Obviously there is now a court proceeding before this Court in which Petitioner is asserting rights under the CVRA. This Court must therefore protect her rights by declaring the non-prosecution agreement invalid.

V. THE PUBLIC IS ENTITLED TO SEE THE GOVERNMENT'S EXPLANATIONS FOR ITS EXTRAORDINARILY LENIENT NON-PROSECUTION AGREEMENT.

The Government has also filed its pleadings in this matter under seal. There is no sound reason for concealing from the public the Government's explanations in this matter. Accordingly, the Government's pleadings should be unsealed.

The Government offers two explanations for sealing its pleadings. First, the Government claims that the pleading would reveal correspondence with minors. Gov't Motion at 1. But the Government has redacted the names of the minors involved (including Petitioner's name), so there is no good basis for sealing. (Counsel does respectfully request that the Government double-check its redactions to make sure that no name has been overlooked.) Indeed, the very statute that the Government cites (18 U.S.C. § 3509(d)(2)) envisions that minors' names will be redacted and then the remaining pleadings made available to the public. *See* 18 U.S.C. § 3509(d)(2) ("The person who makes a filing [involving a minor] shall submit to the clerk of the court . . . the paper with the portions of it that disclose the name of or other information concerning a child redacted, *to be placed in the public record*") (emphasis added).

Second, the Government asserts that its pleading should be kept under seal "to maintain the confidentiality of the agreement reached with an interested party." Gov't Motion at 2.

Petitioner believes exactly the opposite is true – confidentiality will undermine public confidence in the federal criminal justice system.

This case involves a non-prosecution agreement with a politically-connected billionaire that has drawn considerable public attention. *See, e.g.,* Palm Beach Post.Com, *Banker Epstein Pleads in Prostitution Case, Gets 18 Months* (June 30, 2008) ("He lives in a Palm Beach waterfront mansion and has kept company with the likes of President Bill Clinton, Prince Andrew and Donald Trump, but investment banker Jeffrey Epstein will call the Palm Beach County jail home for the next 18 months"). The public is entitled to know all of the circumstances surrounding this federal (non) prosecution. The public may well wonder – as Petitioner does in this case – why a defendant who committed multiple sex crimes over an extended period of time against numerous minor victims is receiving only an 18-month jail sentence and a "free pass" from the federal government. If the Government had conferred with Petitioner, she would have explained why this proposed disposition did not begin to reflect "the seriousness of the offense" 18 U.S.C. § 3553(a)(2)(A).

The Eleventh Circuit has instructed that the district courts must make substantial findings before sealing records in cases before it. For instance, in *United States v. Ochoa-Vasque*, 428 F.3d 1015 (11th Cir. 2005), it reversed an order from this Court that had sealed pleadings in a criminal case, emphasizing the importance of the public's historic First Amendment right of access to the courts. To justify sealing, "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." *Id.* at 1030. The Government has not discussed the controlling court authority on sealing orders, much less attempted to prove that there is an "overriding interest"

justifying sealing. For this reason, the Government's attempts to keep secret what has been done in this case should be rejected and its motion for sealing of its response denied.

CONCLUSION

The Petitioner requests the intervention of this Court to ensure that her rights are respected and accorded, as promised in the Crime Victims' Rights Act. The Court should enter an order finding the non-prosecution agreement in this case was negotiated in violation of the CVRA and therefore is illegal and invalid. The Court should also deny the Government's motion to seal its pleadings in this case.

DATED this 11th day of July, 2008.

Respectfully Submitted,

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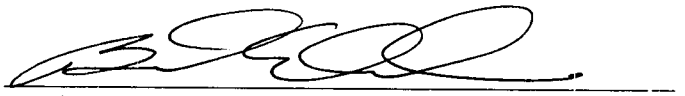
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by hand delivery in open court to the Attorney appearing on behalf of the United States Attorney's Office, this 11h day of July, 2008.



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