

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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

JANE DOE #1 and JANE DOE #2

v.

UNITED STATES

/

**JANE DOE #1 AND JANE DOE #2'S RESPONSE TO EPSTEIN'S MOTION FOR
PROSPECTIVE LIMITED INTERVENTION AT THE REMEDY STAGE OF THESE
PROCEEDINGS**

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to respond to Epstein's Motion for Prospective Limited Intervention at the Remedy Stage of These Proceedings (DE 207). Although his intervention is belated, the victims do not oppose Epstein's intervention at that late stage of the proceedings limited to the remedy issue so narrowly defined by Epstein. The victims would note, however, three consequences of that late and limited intervention. First, Epstein's intervention at that point would be subject to the law of the case – that is, he would be subject to all findings of fact made by the Court at that time; second, Epstein's intervention at that point would subject him to such discovery requests as the Court might find appropriate at that time; and third, his intervention would be (as he himself indicated) limited to the remedy of the rescission of the non-prosecution agreement. Subject to these three consequences to Epstein, the victims do not oppose his intervention.

BACKGROUND

This is not the first time that Epstein has sought “limited” intervention in this case. As the Court will recall, Epstein sought limited intervention back on September 2, 2011. Epstein filed such a motion with regard to correspondence between his attorneys and federal prosecutors. DE 93. In response, the victims objected that his efforts were untimely and appeared to be tactically motivated to avoid assuming obligations in the case. DE 96. The victims also warned against “subjecting the Court (and the victims) to an endless stream of ‘limited’ intervention motions from Epstein and his attorneys whenever a hearing does not unfold to his liking.” DE 96 at 17. Ultimately, however, the Court sided with Epstein, allowing his limited intervention (and that of his attorneys) on issues related to the correspondence. DE 158, 159.

Now another hearing has not unfolded to Epstein’s liking; on June 18, 2013, the court ruled against the Government’s motion to dismiss. DE 189. In response, Epstein has now filed another motion for “limited” intervention – this one a “prospective” motion anticipating (correctly in the victims’ view) that this case will soon reach the point where the Court has found violations of the Crime Victims’ Rights Act (CVRA) and will need to determine whether invalidating the non-prosecution agreement (NPA) is one appropriate remedy for that violation. As the Court well knows, one of many remedies that the victims will seek is to have the NPA between Epstein and the Government invalidated. *See* DE 127 at 8-13 (explaining why an agreement negotiated in violation of the CVRA is subject to invalidation). While the Government objected to the victims’ argument (DE 205-6 at 5-15), the Court recently sided with the victims, holding that rescission is a proper remedy for CVRA violations: “the court finds that the CVRA is properly interpreted to authorize the rescission or ‘re-opening’ of a prosecutorial

agreement – including a non-prosecution agreement – reached in violation of a prosecutor’s conferral obligations under the statute.” DE 189 at 7.

In his current motion for limited intervention, Epstein argues that he should be allowed to intervene to contest any rescission remedy: “Epstein has a clear . . . interest in opposing any remedy that would entail rescission of his non-prosecution agreement with the government.” DE 207 at 1-2. Epstein further argues that his motion to intervene is timely. *Id.* at 3-7. Epstein makes clear that he “does not seek to intervene generally in the action but instead only as to the issue of [the rescission] remedy” *Id.* at 2.

DISCUSSION

In the victims’ view, Epstein’s motion to intervene is not timely. He offers no good reason for failing to file it sooner. And, in fact, Epstein is undisputedly not intervening for his stated “limited” purpose now, but is rather informing the Court that he intends to intervene at some later date, which will inevitably be more untimely. In the interest of narrowing the disputes in this case, however, the victims will not oppose his motion for limited intervention.

The victims wish to make clear three consequences of the Epstein’s narrow motion for “prospective” and “limited” intervention – consequences on which their non-opposition is conditioned.

First, Epstein’s motion for “prospective” intervention at the remedy stage would be, by definition, at the tail end of the case when many rulings will have been made by the Court. Of course, those earlier rulings (both as to factual and legal matters) will be the “law of the case” at the point in the proceedings. *See, e.g., United States v. Bulger, ---F.Supp.2d---, 2013 WL 1831211 at * 7 (D. Mass. 2013)* (“The law of the case doctrine contemplates that a legal decision

made at one point during a legal proceeding should remain the law of that case throughout the litigation, unless and until the decision is modified or overruled by a higher court" (internal quotation omitted)). Epstein's argument will have to be confined to new issues not previously litigated.

Second, once Epstein intervenes on remedy issues, the Court may determine that further discovery is required. If so, Epstein would be subject to those discovery requests no less than other litigants (i.e., the Government) in this case.

Third, according to the plain terms of his motion, Epstein is seeking "limited" intervention – specifically intervention to "oppose the rescission of his non-prosecution agreement with the government, a matter that fundamentally impacts his constitutional and contractual rights . . ." DE 207 at 2. The victims will be seeking a number of other remedies – apart from rescission of the NPA. Epstein would not be heard on those other remedies in view of his limited intervention motion.

CONCLUSION

The victims do not oppose Epstein's motion for limited intervention, subject to noting the three consequences discussed in this response. The Court should accordingly grant his motion, but subject to those three conditions, as well as any additional conditions the court finds necessary.

DATED: July 12, 2013

Respectfully Submitted,

s/ Bradley J. Edwards

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CERTIFICATE OF SERVICE

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