

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CIV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Related cases:

08-80232, 08-08380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092

**EPSTEIN'S REPLY TO PLAINTIFFS' RESPONSE TO EPSTEIN'S MOTION FOR
LEAVE TO FILE REDACTED VERSIONS OF SENSITIVE FIFTH AMENDMENT
ARGUMENTS AND SUBMIT UN-REDACTED ARGUMENTS TO THE COURT**

Defendant, JEFFREY EPSTEIN ("Epstein"), submits his reply to Plaintiff, Jane Doe's Response (DE #524) and Plaintiffs, Jane Doe Nos. 2 – 8's Response (DE #525) to Epstein's Motion for Leave to File Redacted Versions of Sensitive Fifth Amendment Arguments and Submit Un-Redacted Arguments to the Court ("Motion") (DE #518) and states:

1. Plaintiffs' primary contention in their Responses is that Epstein should not be permitted to file "new" redacted arguments in support of his Rule 4 Appeal. Plaintiffs' Responses misinterpret Epstein's Motion.

2. Most, if not all, of the arguments Epstein intends to file in redacted format and submit to for in-camera inspection have already been filed in redacted format and submitted to the Court (i.e. to Magistrate Judge Johnson) for in-camera inspection. See DE #s 242, 293, 390 and 480. In fact, Plaintiffs, Jane Doe Nos. 2 – 8, conceded, and correctly so, that "[Epstein] had

the right to make *in camera* submissions on the underlying Motion....” See Response (DE #525) at 2.

3. However, in an abundance of caution, Epstein seeks leave from Judge Marra to essentially re-file the redacted arguments related to the “target offenses” that have already been filed and submitted to Judge Johnson for an in-camera inspection. See DE #s 242, 293, 390 and 480. The purpose of filing the redacted arguments is to tailor them to the instant Rule 4 Appeal and to aid the Court in understanding the application of such arguments to the appeal (as opposed to generally referring to prior arguments and leaving the Court with the task of connection the dots and going back and forth referencing prior orders and motions).¹

4. In her March 4, 2010 Order (DE #480), Judge Johnson *sua sponte* allowed the in camera submissions provided by Epstein. See DE #480 at 5.

5. Now that Epstein is filing a Rule 4 Appeal, he is following the Court’s direction and seeking approval from Judge Marra before filing the redacted arguments and providing same to the Court in-camera. Again, substantially all of the redacted arguments Epstein seeks to file are the same as arguments previously submitted in-camera and considered by Judge Johnson. See DE #s 242, 293, 390 and 480.

6. Moreover, to the extent any of Epstein’s arguments are considered “new,” the Court has the discretion to entertain same. See Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009) (noting that “the district court acknowledged that it had discretion to consider Williams’ timeliness argument [made for the first time in his appeal of the magistrate judge’s order],” citing United States v. Howell, 231 F.3d 615 (9th Cir. 2000)).

¹ While some referencing on the Court’s part will be necessary, allowing the redacted filing will allow for better readership.

7. Jane Doe Nos. 2-8 do not cite any authority for their contention that “[a]dditional *in camera* submissions should not be allowed on appeal.” See Response (DE #525) at 2. Instead, they cite the Ninth Circuit Howell case, which held that a Court has **discretion** to reject newly offered evidence in an appeal of a magistrate judge’s decision. Plaintiffs advance no authority whatsoever for their position; they instead concede Epstein’s position that he has a right to make *in camera* submissions.

8. Simply put, Epstein wants to ensure that in determining his Rule 4 Appeal, Judge Marra allows and considers the arguments previously submitted to Judge Johnson *in-camera* and filed in redacted format.

9. Plaintiffs, Jane Doe Nos. 2-8, concede that “[Epstein] had the right to make *in camera* submissions on the underlying Motion....” See Response (DE #525) at 2. Yet they also take the inconsistent position that Epstein should not be permitted to file redacted arguments because of the associated difficulty in responding to such arguments. Id. How can Plaintiffs concede that Epstein has the right to make *in camera* submissions in one breath and then argue that he should be not be permitted to do so in the next? Epstein is not surprised by this inconsistent approach.

10. Plaintiffs cannot claim any prejudice resulting from Epstein filing redacted arguments since the filing of the same arguments in redacted form has already been approved by the Court and the Court has considered the un-redacted arguments *in camera*. See DE #480.

11. Despite Jane Doe’s unsupported contention, Epstein’s Motion is not an attempt to “run out the clock” and block Jane Doe from obtaining discovery, which is readily apparent from this timely reply. Instead, Epstein is merely protecting his Constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the Constitution as well as other rules of law. The theme

and thrust is that Epstein must provide this information to the Court in redacted form to preserve his Fifth Amendment rights.

12. For the foregoing reasons, Epstein requests that the Court grant his Motion (DE #518) and permit him to file redacted arguments and submit same in un-redacted form to the Court for in-camera review in connection with his Rule 4 Appeals. Defendant also respectfully requests that this Court provide in its order the procedure to follow for submitting in camera Rule 4 Appeals for both Jane Doe and Jane Doe Nos. 2 – 8 as well as a reasonable deadline for submitting and filing same.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 16th day of April, 2010.

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