

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-Vasque*, 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 Villafañá 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 Villafañá 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,

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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

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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:

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