EFTA00179613

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: STAKE CENTER LOCATING, INC., Crime Victim. STAKE CENTER LOCATING, INC., *Petitioner*, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, LAS VEGAS, *Respondent*, DEBORAH A. DIFRANCESCO, *Defendant-Real Party in Interest*, UNITED STATES OF AMERICA, *Plaintiff-Real Party in Interest*.	No. 13-73267 D.C. No. 2:13-cr-00089-JCM-GWF-1 OPINION

Petition for Writ of Mandamus to the
United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

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Submitted September 20, 2013*

Filed September 26, 2013

Before: A. Wallace Tashima, Milan D. Smith, Jr., and Sandra S. Ikuta, Circuit Judges.

Per Curiam Opinion

SUMMARY**

Criminal Law

A motions panel issued a per curiam opinion denying a crime victim's petition for a writ of mandamus seeking reversal of the district court's denial of the victim's motion for forfeiture under the Crime Victims' Rights Act.

The panel explained that the Crime Victims' Rights Act and the Mandatory Victim Restitution Act give victims a right to restitution, not a right to criminal forfeiture. The panel also explained that the Crime Victims' Rights Act expressly does not impair the government's broad discretion to seek forfeiture of assets implicated in an offender's wire fraud.

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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COUNSEL

Kenneth P. Childs, Stake Center Locating, Inc., Salt Lake City, Utah, for Petitioner.

Elizabeth Olson White, Appellate Chief and Assistant United States Attorney, District of Nevada, Reno, Nevada, for Plaintiff-Real Party in Interest.

Mark B. Bailus, Bailus Cook & Kelesis, Ltd., Las Vegas, Nevada, for Defendant-Real Party in Interest.

OPINION

PER CURIAM:

Petitioner Stake Center Locating, Inc. ("Stake Center") petitions for a writ of mandamus reversing the district court's denial of its motion for forfeiture under 18 U.S.C. § 3771, the Crime Victims' Rights Act ("CVRA").[1]

In the underlying criminal action, Deborah DiFrancesco, a former employee of Stake Center, was charged with crimes stemming from her embezzlement of funds from Stake Center and other victims, and pleaded guilty to one count of tax evasion and three counts of wire fraud. Pursuant to her plea agreement, DiFrancesco agreed to make restitution to Stake

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[1] Stake Center previously petitioned this court for mandamus, and we denied this petition as premature. *See Stake Ctr. Locating, Inc. v. U.S. Dist. Court (In re Stake Ctr. Locating, Inc.)*, 717 F.3d 1089, 1090 (9th Cir. 2013) (per curiam). The district court has now completed sentencing DiFrancesco, and Stake Center's renewed petition is properly before us.

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Center in the amount of $763,846. Stake Center moved the district court to compel the government to institute criminal forfeiture proceedings and to obtain property allegedly traceable to DiFrancesco's crimes and thus subject to forfeiture from third parties. The district court denied this motion.

We have jurisdiction under 18 U.S.C. § 3771(d)(3). In reviewing a CVRA mandamus petition, we need not balance the usual factors under *Bauman v. United States District Court*, 557 F.2d 650, 654–55 (9th Cir. 1977), but rather "must issue the writ whenever we find that the district court's order reflects an abuse of discretion or legal error." *Kenna v. U.S. Dist. Court*, 435 F.3d 1011, 1017 (9th Cir. 2006).

Here, the district court did not abuse its discretion or commit a legal error in denying Stake Center's motion for forfeiture. First, the CVRA and Mandatory Victim Restitution Act ("MVRA") give victims a right to restitution, not a right to criminal forfeiture. The CVRA provides that a crime victim has the "right to full and timely restitution as provided in law." 18 U.S.C. § 3771(a)(6). The Mandatory Victim Restitution Act ("MVRA") requires that a "defendant make restitution to the victim" of certain offenses. 18 U.S.C. § 3663A(a)(1). Criminal forfeiture is not, as petitioner contends, a type of restitution; "[c]riminal forfeiture is . . . separate from restitution, which serves an entirely different purpose." *United States v. Newman*, 659 F.3d 1235, 1241 (9th Cir. 2011). Among other differences between restitution and forfeiture, only the criminal defendant is subject to restitution, not third parties. *See* 18 U.S.C. § 3663A(a)(1), (b)(1) (requiring that "defendant make restitution" and "defendant" return property).

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Nor did the district court err in declining to order the U.S. Attorneys' Office to commence criminal forfeiture proceedings against the Internal Revenue Service and other non-parties alleged to possess assets implicated in DiFrancesco's criminal activities. Contrary to Stake Center's argument, forfeiture is mandatory for wire fraud only if the government exercises its discretion to seek such forfeiture. *See* 28 U.S.C. § 2461(c); Fed. R. Crim. P. 32.2(a); *United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1144 (9th Cir. 2011) (describing procedure for forfeiture). "[T]he Government retains broad discretion as to whom to prosecute." *Wayte v. United States*, 470 U.S. 598, 607 (1985) (quotation omitted). The CVRA expressly does not impair that broad discretion. *See* 18 U.S.C. § 3771(d)(6) ("Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.").[2]

Accordingly, Stake Center's petition for writ of mandamus is denied.

DENIED.

[2] Because we decide this issue on these grounds, we do not reach the other arguments advanced by the government why forfeiture proceedings cannot be commenced in this case.

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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 NOTICE OF FILING OF OBJECTIONS TO PRIVLEGE LOG

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to give notice of their filing of objections to the Government's two privilege logs (DE 212 and DE 216). The objections are attached hereto. The victims are filing these objections concurrently with a motion to compel production of the materials at issue.

DATED: August 16, 2013

Respectfully Submitted,

/s/ Bradley J. Edwards
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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on August 16, 2013, on the following using the Court's CM/ECF system:

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EXHIBIT A

PRIVILEGE LOG – WITH VICTIMS' OBJECTIONS

PRIVILEGE LOG – WITH VICTIMS' OBJECTIONS

Key to Objections (linking to Victims' Motion to Compel Production of Docments that Are Not Privileged)

Objection	Abbreviation
General Objections --	
Inadequate Privilege Log	Inadequate Log
Failure to Prove Factual Underpinnings of Privilege Claim	No Factual Underpinnings
Waiver of Confidentiality	Waiver
Government's Fiduciary Duty to Crime Victims Bars Privilege	Fiduciary Duty
Communications Facilitating Crime-Fraud-Misconduct Not Covered	Crime-Fraud-Misconduct
Factual Materials Not Covered	Factual Materials
Documents Not Prepared in Anticipation of CVRA Litigation	Not in Anticipation of Litigation
Attorney Client Objections -	
Ordinary Governmental Communications Not Covered	Ordinary Government Communication
Attorney-Client Relationship Not Established	No Attorney-Client Relationship
Deliberative Process Objections -	
Privilege Not Properly Invoked	Improper Invocation
Final Decision Exempted from Privilege	Final Decision
Qualified Privilege Overridden By the Victims' Need for the Documents	Overriding Need
Investigative Privilege -	
Privilege Not Properly Invoked	Improper Invocation
Qualified Privilege Overridden By the Victims' Need for the Documents	Overriding Need
Work Product Doctrine	
No Work Product Doctrine in the Context of a Claim Against Public Prosecutors	Claims Against Public Prosecutor
Qualified Privilege Overridden By the Victims' Need for the Documents	Overriding Need
Work Production Privilege Does No Apply When the Attorney's Conduct is at Issue	Attorney Conduct at Issue
Rule 6(e)	
Court-Authorized Disclosure Not Covered Under Rule 6(e)(3)(E)	Court Authorized Under 6(e)(3)(E)
The Court Has Inherent Power to Release Grand Jury Materials	Court Inherent Power to Release
Victims Have Properly Petitioned for the Release of Grand Jury	Proper Victim's Petition
The CVRA Gives the Court Authority to Release Grand Jury Materials	CVRA-authorized release

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Grand Jury Materials Can Be Severed from Other Materials — Material Severable
The Privacy Rights of Other Victims
Government Redaction Can Resolve Privacy Concerns — Redaction
No Assertion of Privacy Rights by Other Victims — No Assertion by Victims
Privacy Act
The Privacy Act Does Not Apply to Court-Compelled Disclosures for Discovery — Court-Compelled Disclosure

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-000001 thru P-000039	File folder entitled "CORR RE GJ SUBPOENAS" containing correspondence related to various grand jury subpoenas and attorney (Villafaña) handwritten notes	6(e) Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Overriding Need
Box #1 P-000040 thru P-000549	Operation Leap Year Grand Jury Log containing subpoenas OLY-01 through OLY-81, correspondence and research related to enforcement of same, documents produced in response to some subpoenas; and attorney (Villafaña) handwritten notes	6(e) Work Product Contains documents subject to investigative privilege Also contains documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims; Overriding Need

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-000550 thru P-000621	File folder entitled "Ritz Compact Flash SW" containing copies of a sealed search warrant application, warrant, and supporting documents	6(e) Contains information subject to investigative privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-000622 thru P-000693	File folder entitled "PNY Technologies Compact Flash SW" containing copies of a sealed search warrant application, warrant, and supporting documents	6(e) Contains information subject to investigative privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-000694 thru P-000781	File folder entitled "JE Corporations" containing attorney research on Epstein-owned corporations and prior litigation	Work Product Contains information subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Overriding Need
Box #1 P-000782 thru P-000803	File folder entitled "Capital One" containing subpoena and correspondence	6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-000804 thru P-000854	File folder entitled "DTG Operations/Dollar Rent-a-Car" containing subpoena and responsive documents	6(e) Contains documents and information subject to investigative privilege Also contains documents and information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-000855 thru P-000937	File folder entitled "JP Morgan Chase" containing subpoena, correspondence, and responsive documents	6(e) Contains documents and information subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-000938 thru P-000947	File folder entitled "Washington Mutual" containing subpoena, correspondence, and responsive documents	6(e) Contains documents and information subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-000948 thru P-000982	File folder entitled "Computer Search &" containing legal research on computer search and handwritten notes on indictment preparation	Work Product Attorney-Client Contains information subject to investigative privilege. Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-000983 thru P-001007	File folder entitled "Attorney Notes from Document Review" containing typed and handwritten attorney (Villafaña) notes, target letters, correspondence re grand jury subpoena	Work product 6(e) Contains information subject to investigative privilege. Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-001008 thru P-001056	File folder entitled "Notes from Fed Ex Records" containing handwritten and typed attorney (Villafaña) notes and screen shots of FedEx subpoena response electronic file	Work Product 6(e) Contains information subject to investigative privilege. Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-001057 thru P-001959	File folder entitled "Colonial Bank Records" containing records received in response to grand jury subpoena	6(e) Contains information subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-001960 Thru P-002089	File folder entitled "OLY Grand Jury Log Vol 2: OLY-51 THROUGH" containing subpoenas numbered OLY-51 through OLY-81 with related correspondence	6(e) Contains information subject to investigative privilege. Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-002090 Thru P-002169	File folder entitled "Epstein Corporate Records: OLY-51, OLY-52, OLY-53, OLY-54" containing subpoenas, records received in response to subpoenas, and related correspondence	6(e) Contains information and documents subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-002170 Thru P-002246	File folder entitled "Colonial Bank" containing subpoenas, correspondence related to subpoenas, records received in response to subpoenas	6(e) Contains information and documents subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-002247 Thru P-002265	File folder entitled "JEGE & Hyperion from Goldberger OLY-46 & OLY-47" containing documents received in response to subpoenas	6(e) Contains information and documents subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-002266 Thru P-002386	Indictment preparation binder containing: Grand jury subpoena log, evidence/activity summary chart, witness/victim names and contact list, attorney (Villafaña) handwritten notes, 302s, portions of state investigative file, attorney (Villafaña) typed notes, of individuals listed as "Additional victims"	Work product 6(e) Contains information and documents subject to investigative privilege. Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-002387 Thru P-002769	Indictment preparation binder containing: Grand jury subpoena log, evidence/activity summary chart, witness/victim names and contact list, attorney (Villafaña) handwritten notes, 302s, portions of state investigative file, attorney (Villafaña) typed notes, relevant pieces of grand jury materials, telephone records/flight records analysis charts, victim/witness photographs, DAVID records, NCICs, and related materials for persons identified as Jane Does #15, 16, 17, 18, 19, Past Employees, Misc. Witnesses	Work product 6(e) Contains information and documents subject to investigative privilege. Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-002770 Thru P-003211	Indictment preparation binder containing: witness/victim list with identifying information, sexual activity summary, telephone call summary chart, attorney (Villafaña) handwritten notes, 302s, portions of state investigative file, attorney (Villafaña) typed notes, relevant pieces of grand jury materials, telephone records/flight records analysis charts, victim/witness photographs, DAVID records, NCICs, and related materials for persons identified as Jane Does #1, 2, 3, 4, 5, 6, 7, 8	Work product 6(e) Contains information and documents subject to investigative privilege. Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Redaction; No Assertion by Victims
Box #1 P-003212 Thru P-003545	Indictment preparation binder containing meta-analysis charts of telephone/flight/grand jury information for a number of victim/witnesses, Nadia Marcinkova, and [redacted]	Work product 6(e) Contains information and documents subject to investigative privilege. Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-003546 Thru P-003552	FBI Reports of March 2008 interviews of additional witness/victim located in New York	Work product 6(e) Contains information and documents subject to investigative privilege. Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-003553 Thru P-003555B	Printout of filenames from Federal Express subpoena response with Attorney notations	Work product 6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-003556 Thru P-003562	Document entitled "Identified Numbers" with accompanying handwritten attorney list compiled from grand jury materials and attorney analysis of records	Work product 6(e) Contains information subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-003563 Thru P-003629	Folder entitled "Flight Manifests" containing manifests received pursuant to grand jury subpoena	6(e) Contains information and documents subject to investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-003630 Thru P-003633	File folder entitled "Recent Attorney Notes" containing handwritten attorney (Villafaña) notes regarding document review and case strategy	Work product 6(e) Investigative privilege Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-003634 Thru P-003646	File folder bearing victim name containing FBI interview report from May 2008, telephone activity report with attorney (Villafanaña) handwritten notes, related grand jury material	Work product Attorney-client privilege 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-003647 Thru P-003651	File folder entitled "Summary of Sexual Activity" containing chart bearing handwritten title "Sexual Activity – Summary" with meta-analysis of information, sorted by name of each victim/witness, including name and identifying information of each victim/witness	Work product 6(e) Investigative privilege Deliberative process Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-003652 Thru P-003663	File folder entitled "Victim Civil Suits"	Not privileged. Produced to counsel for Petitioners	N/A
Box #1 P-003664 Thru P-003678	File folder entitled "Research re JE Websites" containing attorney research	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #1 P-003679 Thru P-003680	File folder entitled "Serene Cano (N.Y. AUSA)" containing attorney (Villafaña) handwritten notes	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #1 P-003681 Thru P-003687	File folder entitled "Dr. Anna Salter" containing attorney (Villafaña) memo to expert witness and handwritten attorney notes	Work product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-003688 Thru P-003693	File folder entitled "I[] G[] Interview" containing attorney handwritten notes of interview, and attorney handwritten notes regarding potential charges	Work product Investigative privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Redaction; No Assertion by Victims
Box #1 P-003694 Thru P-003711	File folder entitled "Research re Travel for Prostitution" containing attorney (Villafaña) handwritten notes regarding grand jury presentation, chart entitled "Brought to Epstein's House" with handwritten notes, Message Pad meta-analysis chart, summary of evidence related to one victim/witness, and relevant grand jury information	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-003712	Empty file folder bearing name of victim/witness	Investigative privilege Also contains information subject to privacy rights of victim who is not a party to this litigation	N/A
Box #1 P-003713 Thru P-003746	File folder entitled "T[] M[]" containing grand jury subpoenas, motion and order to compel testimony, and correspondence regarding same	6(e) Documents under seal pursuant to court order	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-003747 Thru P-003751	File folder entitled [redacted] containing subpoena and correspondence regarding same	6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-003752 Thru P-004295	File folder entitled "PBPD Investigative File" obtained via subpoena	6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-004296 Thru P-004350	File folder bearing name of victim/witness containing meta-analysis chart showing telephone calls, travel, and grand jury materials relevant to possible charges	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-004351 Thru P-004381	File folder entitled "Daniel Gonzalez Documents 53909-004" containing attorney research related to bias issue	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #1 P-004382 Thru P-004478	File Folder entitled "FEDEX" containing documents obtained via subpoena	6(e) Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-004479 Thru P-004551	File Folder entitled "State of Delaware Records" containing documents obtained in preparation for indictment	6(e) Investigative privilege Work product	Inadequate Log No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-004552 Thru P-004555	File folder entitled "Jet Blue Records" containing documents obtained via subpoena	6(e) Work product Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-004556 Thru P-004560	File folder entitled "FL EMPLOYMENT RECORDS" containing FDLE records on targets and witnesses obtained at attorney request	Investigative privilege Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-004561 Thru P-004565	Filed folder entitled "JANUSZ BANASIAK" containing attorney (Villafaña) handwritten notes of interview	Work product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-004566 Thru P-004716	File folder entitled "JANUSZ BANASIAK RECORDS 23-0001 THROUGH 23-" containing documents obtained via subpoena	6(e) Work product Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-004717 Thru P-004722	File folder entitled "IGOR ZINOVIEV" containing attorney research regarding witness	Work product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-004723 Thru P-004725	File folder entitled "BEAR STEARNS RESEARCH" containing attorney research regarding potential witness and subpoena recipient	Work Product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-004726 Thru P-004819	File folder entitled "LAWSUITS INVOLVING EPSTEIN CORP'S" containing attorney research regarding Epstein's past personal and business litigative practices	Work Product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-004820 Thru P-004959	Filed folder entitled "SEC RECORDS" containing attorney research regarding Epstein financial relationships	Work Product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-004960 Thru P-005059	File folder entitled "Message Pads" containing selected items from evidence obtained via subpoena	Work Product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-005060 Thru P-005081	File folder bearing name of victim/witness containing correspondence with counsel for victim/witness, attorney witness outline with attorney handwritten notes, attorney handwritten notes regarding witness reports and case preparation	Work Product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-005082 Thru P-005083	File folder entitled "New York Trip" containing attorney notes re witness interview	Work product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
	P-005084 thru P-005107 are non responsive documents and have been removed		N/A

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-005108 Thru P-005193	File folder entitled "ANNA SALTER" containing attorney research on select expert, use of experts at trials in child exploitation cases, and additional research materials on offenders and victims	Work product Investigative privilege	Inadequate Log; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-005194 Thru P-005300	File folder entitled "Extra Copies" containing meta-analysis chart and 302's of victim/witnesses used in preparing indictment package	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-005301 Thru P-005331	File folder entitled "JUAN ALESSI STATEMENT" containing transcript obtained via subpoena	6(e) Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-005332 Thru P-005341	File folder entitled "KEN LANNING" containing attorney research on select expert, including attorney handwritten notes	Work product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-005342 Thru P-005387	File folder entitled "Info re Planes" containing correspondence regarding subpoenas and documents received in response to subpoenas	6(e) Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #1 P-005388 Thru P-005442	File folder entitled "Police Reports & PC Affidavit" containing portions of police reports with attorney notes, related phone records, a list entitled "Victims" with identifying information and attorney handwritten notes, photographs and DAVID information, and additional attorney research regarding Epstein sexual activity	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-005443 Thru P-005496	File folder entitled "[Victim name] Transcript of Interview & GJ Transcript"	6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #1 P-005497 Thru P-005556	File folder entitled "Bear Stearns Subpoena Resp." containing material received in response to subpoena	6(e) Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #1 P-005557 Thru P-005576	U.S. Attorney's Office Criminal Case File Jacket containing file opening documents, expert witness payment documents	Work product Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-005578 Thru P-005583	U.S. Attorney's Office Asset Forfeiture Case File Jacket containing file opening and file closing documents	Work product Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #1 P-005584 Thru P-005606	File folder entitled "6001 Immunity Request" containing internal memoranda seeking witness immunity and correspondence with counsel for witness regarding same	6(e) Work product and deliberative process (as to internal memoranda) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-005607 Thru P-005914	File folder entitled "MASTER PHONE RECORDS" containing meta-analysis of all phone, travel, and grand jury data for all victim/witnesses for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-005915 Thru P-005977	File folder bearing name of victim/witness containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-005978 Thru P-006050	File folder bearing name of victim/witness containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-006051 Thru P-006065	File folder bearing name of victim/witness containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-006066 Thru P-006220	File folder entitled "JANE DOE #4" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-006221 Thru P-006222	File folder entitled ""JANE DOE #12" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-006223 Thru P-006522	File folder entitled "CORRECTED PHONE RECORDS 5/31/07" containing meta-analysis of all phone, travel, and grand jury data related to all victims/witnesses for indictment preparation	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-006523 Thru P-006802	File folder entitled "[Victim Name] Phone Records" containing telephone records received in response to subpoena	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-006803 Thru P-006860	File folder entitled "Lists of Identified Phone Numbers" containing charts of information culled from grand jury materials, interviews, and other investigation, with attorney handwritten notes, and information to issue follow-up grand jury subpoena	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-006861 Thru P-007785	File folder entitled "EPSTEIN/KELLEN CELL PHONE RECORDS" containing documents received via subpoena with attorney handwritten notes and highlighting	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-007786 Thru P-008120	Folder entitled "OLY GRAND JURY LOG: OLY-01 THROUGH OLY-50" containing subpoenas, correspondence regarding same, 6(e) letters, attorney handwritten notes regarding records received in response to subpoenas	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-008121 Thru P-008139	Handwritten flight logs received in response to subpoena	6(e) Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #2 P-008140 Thru P-008298	Grand jury presentation folder containing attorney handwritten notes, typed outline with additional handwritten notes, complete indictment package dated 2/19/2008, victim list with identifying information, photographs, and summary of activity	Work product 6(e) Investigative privilege Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-008299 Thru P-008363	File folder entitled "FINAL AGREEMENTS" containing subfolder entitled "Agrmts Filed in State Court" (P-008300-P-008327 [not being withheld as privileged – have been produced to opposing counsel]); signed Non-Prosecution Agreement, Addendum, and operative portion of 12/19/2007 Sanchez-Acosta letter (P-008328-P-008343 [not being withheld as privileged – have been produced to opposing counsel]); subfolder entitled "12/19/07 Acosta-Sanchez Ltr" containing unredacted copies of that letter (P-008344-P-008363 [pursuant to Court's Order, not being withheld as privileged – will be produced to opposing counsel upon lift of stay by 11th Circuit])		N/A
Box #2 P-008364 Thru P-008382	File folder entitled "Lacerda Immunity Request" containing internal memoranda, Justice Department documentation, and subpoena regarding immunity request	6(e) Work Product Deliberative Process Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-008383 Thru P-008516	File folder containing March 18, 2008 grand jury presentation materials, including "Operation Leap Year Revised Indictment Summary Chart (by victim)," grand jury materials, draft indictments, victim reference list, grand jury subpoena log	Work product 6(e) Investigative privilege Deliberative process Also contains information and documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-008517 Thru P-008535	6/25/2007 Letter from Gerald Lefcourt to Jeffrey Sloman and Andrew Lourie [pursuant to Court's Order, not being withheld as privileged – will be produced to opposing counsel upon lift of stay by 11th Circuit]		N/A
Box #2 P-008536 Thru P-008542	Handwritten attorney notes to prepare for interview of Jane Doe #2	Work product Investigative Privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Redaction; No Assertion by Victims
Box #2 P-008543 Thru P-008549	Handwritten attorney notes regarding May 8, 2007 grand jury presentation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-008550 Thru P-008615	File folder entitled "Most Recent Indictment & Good Cases" containing draft indictment and legal research	Work product 6(e) Investigative privilege Deliberative process Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-008616 Thru P-008686	File folder entitled "FBI Summary Charts" containing chart prepared at direction of AUSA, containing victim names, identifying information, summary of activity, and other information relevant to indictment	Work product Attorney-Client Privilege 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable ; Redaction; No Assertion by Victims
Box #2 P-008687 Thru P-008776	File folder entitled "[Victim name]/Jane Doe #4" containing phone records and meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information and documents subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-008777 Thru P-008808	File folder entitled "[Victim name]/Jane Doe #5" containing handwritten notes and meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-008809 Thru P-008847	File folder entitled "[Victim name]/Jane Doe #6" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-008848 Thru P-008862	File folder entitled "[Victim name]/Jane Doe #7" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-008863 Thru P-008890	File folder entitled "[Victim name]/Jane Doe #8" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-008891 Thru P-009103	File folder entitled "Certified Copy of State Case" containing certified copy of Epstein state criminal cases and change of plea transcript [not being withheld as privileged – copy provided to opposing counsel]		N/A
Box #2 P-009104 Thru P-009111	File folder entitled "Meeting Timeline" containing Villafaña typed notes summarizing meetings with opposing counsel prepared at request of R. Alexander Acosta, with handwritten correction and typed guideline estimate	Work product Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #2 P-009112 Thru P-009113	11/26/2008 Email from Roy Black to A. Marie Villafaña and Karen Atkinson re Jeffrey Epstein (work release) [pursuant to Court's Order, not being withheld as privileged – will be produced to opposing counsel upon lift of stay by 11th Circuit]		N/A

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-009114 Thru P-009115	7/3/2008 Email from A. Marie Villafaña to Col. M. Gauger at PBSO re Epstein work release with attachment [not being withheld as privileged – produced to opposing counsel]		N/A
Box #2 P-009116 Thru P-009125	12/6/2007 Letter from Jeffrey Sloman to Jay P. Lefkowitz re Jeffrey Epstein (victim notification) [pursuant to Court's Order, not being withheld as privileged – will be produced to opposing counsel upon lift of stay by 11th Circuit])		N/A
Box #2 P-009126 Thru P-009134	File folder entitled "[Victim name]/Jane Doe #9" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-009135 Thru P-009141	File folder entitled "[Victim name]/Jane Doe #13" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-009141A Thru P-009141C	File folder entitled "[Victim name]/Jane Doe #12" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-009142 Thru P-009152	File folder entitled [redacted] containing meta-analysis of all phone, travel, and grand jury data related to that individual for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-009153 Thru P-009156	File folder entitled [redacted] containing meta-analysis of all phone, travel, and grand jury data related to that individual for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-009157 Thru P-009208	File folder entitled "[Victim name]/Jane Doe #1" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-009209 Thru P-009213	File folder entitled "[Victim name]/Jane Doe #2" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #2 P-009214 Thru P-009271	File folder entitled "[Victim name]/Jane Doe #3" containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation	Work product 6(e) Investigative privilege Contains information subject to privacy rights of victims who are not parties to this suit	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-009272 Thru P-009354	File folder entitled "Purpose of Travel Cases" containing attorney research and handwritten notes	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-009355 Thru P-009403	File folder entitled "Interstate Commerce Cases" containing attorney research and handwritten notes	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-009404 Thru P-009536	File folder entitled "Attorney Conflict Research" containing attorney research and handwritten notes	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-009537 Thru P-009574	File folder entitled "Mann Act/Travel to Have Sex w/Minor" containing attorney research and handwritten notes	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-009575 Thru P-009603	File folder entitled "Travel Act" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-009604 Thru P-009711	File folder entitled "Florida Prostitution/Lewdness Statutes" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-009712 Thru P-009819	Booklet entitled "Attorney General Guidelines for Victim and Witness Assistance" [not being withheld as privileged – produced to opposing counsel]		N/A
Box #2 P-009820 Thru P-009965	File folder entitled "Corporate Liability Rsrch" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-009966 Thru P-010096	File folder entitled "Research re Knowledge of Age Unnecessary" containing attorney research and handwritten notes and copy of grand jury subpoena	Work Product 6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #2 P-010097 Thru P-010276	File folder entitled "Money Laundering" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010277 Thru P-010394	File folder entitled "1960 & Aiding/Abetting" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010395 Thru P-010488	File folder entitled "18 USC § 2255 Cases" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010489 Thru P-010509	File folder entitled "Research re Overt Acts & Witness Testimony" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010510 Thru P-010525	File folder entitled "Extradition" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-010526 Thru P-010641	File folder entitled "Rsrch re Crime Victims Rights" containing attorney research, handwritten notes, draft victim notification letter, and draft correspondence to Jay Lefkowitz (Also contains a November 28, 2007 letter from Kenneth Starr to Alice S. Fisher; and a November 29, 2007 letter from Jay Lefkowitz to R. Alexander Acosta (P-010528 thru P-010530 and P-010556 thru P-010559). Pursuant to the Court's Order, these will be produced to opposing counsel upon lift of stay by 11th Circuit)	Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #2 P-010642 Thru P-01650	File folder entitled "Immunity" containing attorney research on granting immunity to witnesses	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010651 Thru P-010659	File folder entitled "Research re G.J. Transcript" containing attorney research and draft pleadings re compelling production of grand jury transcript with subpoena	Work Product 6(e) Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-010660 Thru P-010757	File folder entitled "Research re GJ Transcript" containing grand jury subpoena, 6(e) letters, attorney research and correspondence related to subpoena	Work Product 6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #2 P-010758 Thru P-010793	File folder entitled "Original Proposed Ind." containing draft indictment	Work Product 6(e) Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #2 P-010794 Thru P-010829	File folder entitled "Epstein" containing sample indictments and attorney research re potential charges with attorney notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010830 Thru P-010853	File folder entitled "1591 & Money Laundering" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010854 Thru P-010876	File folder entitled "18 USC 2425" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-010877 Thru P-010920	File folder entitled "Knowledge of Age" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-010921 Thru P-011049	File folder entitled "2423(b) Constitutionality and Purpose of Travel" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-011050 Thru P-011212	File folder entitled "Mistake not a Defense" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-011213 Thru P-011237	File folder entitled "Research re 'Pandering'" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-011238 Thru P-011319	File folder entitled "Research re Grand Jury Instructions" containing attorney research and handwritten notes	Work Product 6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #2 P-011320 Thru P-011361	File folder entitled "Telephone = Facility of Commerce" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-011362 Thru P-011374	File folder entitled "Def of Prostitution" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #2 P-011375 Thru P-011456	File folder entitled "Relevant Florida Statutes" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #2 P-011457 Thru P-011626	File folder entitled "Unit of Prosecution Research" containing attorney research and handwritten notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #3 P-011627 Thru P-011662	File folder entitled "Attorney Notes" containing attorney handwritten and typed notes	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #3 P-011663 Thru P-011698 and P-012189 thru P-012361 (gap was scanning error)	File folder entitled "Drafts" containing draft indictments with attorney handwritten notes, draft internal memoranda, relevant witness interview reports and grand jury material and attorney handwritten notes	6(e) Work Product Deliberative Process Investigative Privilege Contains information subject to privacy rights of victims who are not parties to this	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #3 P-011699 Thru P-011777	File folder entitled "6/9/09 Signed Indictment" containing signed indictment package dated 6/9/2009 with corrections	6(e) Work product Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-011778 Thru P-011788	File folder entitled "6/12/09 Victim Notif. Log" containing chart with victim contact information and attorney notes regarding dates and type of contacts	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Box #3 P-011789 Thru P-011879	File folder entitled "Breach Memo" containing memorandum analyzing breach of Non-Prosecution Agreement with attachments	Work product Deliberative process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials
Box #3 P-011880 Thru P-011922	File folder entitled "Overt Act Lists" containing handwritten notes cross-checking all overt acts alleged in draft indictment by victim and typed overt act summary charts for indictment preparation	Work product Attorney-client privilege Deliberative process 6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-011923 Thru P-011966	Folder entitled "Responses to Arguments from JE Counsel" containing: ■ 7/13/2007 letter from Lilly Ann Sanchez to Andrew Lourie with handwritten attorney (Lourie) notes; ■ 6/25/2007 letter from Gerald Lefcourt to Jeffrey Sloman, Matt Menchal, Andrew Lourie, and Marie Villafaña with handwritten attorney (Villafaña) notes; ■ 6/25/2007 email from Andrew Lourie to Matt Menchel and Marie Villafaña entitled "Thoughts on Lefcourt's letter" Handwritten and typed attorney (Villafaña) notes regarding main themes raised by Epstein counsel	Work product Deliberative process 6(e) Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #3 P-011967 Thru P-012016	Composition book entitled "Operation Leap Year" containing attorney handwritten notes regarding investigation and case strategy	Work product Investigative privilege 6(e) Contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-012017 Thru P-012055	Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Incorporated Memorandum of Law	6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #3 P-012056 Thru P-012088	Affidavit of Roy Black, Esq. in Support of Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas	6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #3 P-012089 Thru P-012129	United States' Response to Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas and Cross-Motion to Compel	6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #3 P-012130 Thru P-012150	Declaration of Joseph Recarey	6(e)	Inadequate Log; No Factual Underpinnings; Fiduciary Duty
Box #3 P-012151 Thru P-012167	Ex Parte Declaration Number One in Support of United States' Response to Motion to Quash Subpoenas	6(e) Investigative Privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-012168 Thru P-012170	Ex Parte Declaration Number Two in Support of United States' Response to Motion to Quash Subpoenas	6(e) Investigative Privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Box #3 P-012171 Thru P-012173	Supplement to Ex Parte Declaration Number One in Support of United States' Response to Motion to Quash Subpoenas	6(e) Investigative Privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #3 P-012174 Thru P-012176	Draft of September 2009 letter from Marie Villafaña to Roy Black regarding breach of Non Prosecution Agreement with handwritten attorney (Villafaña) notes	Work Product Attorney-Client Privilege Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Box #3 P-012177 Thru P-012178	Undated handwritten attorney (Villafaña) notes regarding negotiations and allegations	Work Product Attorney-Client Privilege Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-012179 Thru P-012188	File Folder entitled "FBI G.J. Log" containing copy of FBI grand jury subpoena log with attorney (Villafaña) handwritten notes	6(e) Work Product Investigative Privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #3 P-012362 Thru P-012451	File folder entitled "Key Documents" containing correspondence between AUSA and case agent regarding indictment prep questions, victim identification information, corrections to draft indictment, indictment preparation timeline, key grand jury material	6(e) Work Product Attorney-Client privilege Investigative Privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #3 P-012451 Thru P-012452	File folder entitled "Victim List" containing list of victims with dates of birth and age information	Work Product Investigative Privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-012453 Thru P-012623	Complete indictment package marked "Originals 12/12/07"	Work-product Deliberative process 6(e) Also contains documents subject to investigative privilege Also contains documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims
Box #3 P-012624 Thru P-012653	Folder entitled "(Victims) Additional 302's" containing reports of interviews conducted in June 2007, October 2007, and March 2008.	Investigative Privilege Also contains documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Redaction; No Assertion by Victims
Box #3 P-012654 Thru P-012864	3-ring binder entitled "Child Molesters: A Behavioral Analysis" with attorney (Villafaña) handwritten notes	Work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Overriding Need
Box #3 P-012865 Thru P-013226	Indictment preparation binder containing: witness/victim list with identifying information, sexual activity summary, telephone call summary chart, attorney (Villafaña) handwritten notes, 302s, portions of state investigative file, attorney (Villafaña) typed notes, relevant pieces of grand jury materials, telephone records/flight records analysis charts, victim/witness photographs, DAVID records, NCICs, and related materials for persons identified as Jane Does #9, 10, 11, 12, 13, 14	Work Product Deliberative Process 6(e) Also contains documents subject to investigative privilege Also contains documents subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable; Redaction; No Assertion by Victims

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-013227	April 23, 2008 Memo from Jeffrey Sloman to Office of Professional Responsibility re Self Reporting, Corrected Version of the previously submitted April 21, 2008 Letter to OPR	Privacy Act	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Court Compelled Disclosure; Waiver
Box #3 P-013226 Thru P-013230	April 21, 2008 Letter from Jeffrey Sloman to Office of Professional Responsibility re Self Reporting	Privacy Act	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Court Compelled Disclosure; Factual Materials; Waiver
Box #3 P-013231 Thru P-013239	April 22, 2008 Letter from A. Marie Villafaña to Office of Professional Responsibility re Self-Report of Allegation of Conflict of Interest	Privacy Act	Inadequate Log; No Factual Underpinnings; Factual Materials; Fiduciary Duty; Court Compelled Disclosure; Waiver
Box #3 P-013240 Thru P-013247	April 21, 2008 Letter from Jeffrey Sloman to Office of Professional Responsibility re Self Reporting with attachments	Privacy Act	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Court Compelled Disclosure; Factual Materials; Waiver
Box #3 P-013248 Thru P-013251	Emails between Richard Sudder, Assistant General Counsel, Executive Office for United States Attorneys, and Benjamin Greenberg, First Assistant U.S. Attorney, Southern District of Florida, regarding Formal Notice of Office-wide Recusal of Southern District of Florida dated August 24 and August 29, 2011	Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver
Box #3 P-013252 Thru P-013253	Emails between Richard Sudder, Assistant General Counsel, Executive Office for United States Attorneys, and Benjamin Greenberg, First Assistant U.S. Attorney, Southern District of Florida, regarding Recusal matter, dated July 28, August 3, and August 24, 2011	Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-013254 Thru P-013257	Emails between Richard Sudder, Assistant General Counsel, Executive Office for United States Attorneys, and Benjamin Greenberg, First Assistant U.S. Attorney, Southern District of Florida, regarding Formal Notice of Office-wide Recusal of Southern District of Florida dated August 24 and August 29, 2011	Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver
Box #3 P-013258 Thru P-013259	Emails between Richard Sudder, Assistant General Counsel, Executive Office for United States Attorneys, and Benjamin Greenberg, First Assistant U.S. Attorney, Southern District of Florida, regarding Formal Notice of Office-wide Recusal of Southern District of Florida dated July 28 and August 3, 2011	Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver
Box #3 P-013260 Thru P-013262	Email from Richard Sudder, Assistant General Counsel, Executive Office for United States Attorneys, to Wifredo Ferrer (U.S. Attorney, SDFL), Robert O'Neill (U.S. Attorney, MDFL), Benjamin Greenberg, (FAUSA, SDFL), and Lee Bentley (FAUSA, MDFL) regarding Formal Notice of Office-wide Recusal of Southern District of Florida dated August 24, 2011. CC's David Margolis (ODAG), Jay Macklin (USAEO), Thomas Anderson (USAEO), Michelle Tapken (USAEO), James Read (USAEO)	Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Box #3 P-013263 Thru P-013271	Emails between Richard Sudder, Assistant General Counsel, Executive Office for United States Attorneys, and Benjamin Greenberg, First Assistant U.S. Attorney, Southern District of Florida, regarding recusal of Southern District of Florida, dated July 29, 2011, with attached memorandum from A. Marie Villafaña to Benjamin Greenberg summarizing Jeffrey Epstein Investigation	Attorney-Client Privilege Deliberative Process Work Product	No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver
Box #3 P-013272 Thru P-013278	Emails between Peter Mason, Executive Office for United States Attorneys, and Dexter Lee, Southern District of Florida, seeking advice regarding office-wide recusal, dated December 16 and 17, 2010, with attached letter from Paul Cassell to Wifredo A. Ferrer, dated December 10, 2010	Attorney-Client Privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Factual Materials; Waiver
Suppl. Box #3 P-013279 Thru P-013280	8/15/08 Emails between A. Acosta and A. Marie Villafaña, R. Senior, D. Lee and K. Atkinson re proposed correspondence to Jay Lefkowitz	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Waiver
Suppl. Box #3	Handwritten note re Epstein investigation	Attorney-Client Privilege Work Product Investigative privilege Also contains information subject to privacy rights of victims who are not	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013281		parties to this litigation	Prosecutor; Attorney Conduct at Issue; Redaction; No Assertion by Victims
Suppl. Box #3 P-013282 Thru P-013283	7/9/08 Email from A. Marie Villafaña to A. Acosta, J. Sloman, K. Atkinson, and FBI re proposed response to Goldberger letter re victim notification	Attorney-Client Privilege Work product Deliberative Process	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013284	7/10/08 Emails between J. Sloman and A. Marie Villafaña, K. Atkinson, and FBI re proposed response to Goldberger's letter e victim notification	Attorney-Client Privilege Work Product Deliberative Process	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013285 Thru P-013289	File folder entitled "8/5/08 AMCV e-mail re correct agrmt" containing 8/5/08 email from A. Marie Villafaña to A. Acosta, J. Sloman, R. Senior, K. Atkinson re "Jeffrey Epstein Agreement" discussing 6/24/08 email from A. Marie Villafaña to R. Black and J. Goldberger concerning the binding nature of the Agreement	Attorney-Client Privilege Work Product Deliberative Process	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Suppl. Box #3 P-013290 Thru P-013292	File folder entitled "8/14/08 E-mail from Lefk to AMCV" containing (undated) emails from A. Marie Villafaña to R. Senior, J. Sloman, A. Acosta, K. Atkinson, D. Lee re draft response to 8/14/08 email from J. Lefkowitz regarding "the December 2007 proposal"	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013293 Thru P-013299	File folder entitled "8/15/08 AMCV e-mail re Agrmt" containing 8/15/08 e-mails from A. Marie Villafaña to A. Acosta, J. Sloman, R. Senior, K. Atkinson, D. Lee re follow up on Agreement and from A. Acosta to Ann Marie Villafana on issue of Special Master with attached 8/15/08 emails from A. Marie Villafaña to A. Acosta, J. Sloman, R. Senior, K. Atkinson, D. Lee re Agreement; 8/15/08 email from J. Lefkowitz to A. Marie Villafana, K. Atkinson, R. Black, M. Weinberg re Agreement; 8/14/08 emails from A. Marie Villafaña to J. Lefkowitz, K. Atkinson, R. Black re interpretation of Agreement; email from J. Lefkowitz to A. Marie Villafaña, K. Atkinson re questions re Agreement; email from A. Marie Villafaña to J. Lefkowitz, K. Atkinson re production of Agreement to victims	Attorney-Client Privilege Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013300 Thru	File folder entitled "8/18/08 Lefkowitz Ltr to AMCV" containing A. Marie Villafaña's handwritten draft notes for	Attorney-Client Privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-0133303	proposed letter to J. Lefkowitz; 5/22/07 e-mail from A. Lourie to M. Menchel, J. Sloman, A. Marie Villafaña re meeting with G. Lefcourt with attached email from G. Lefcourt re solicitation for meetings	Work Product	Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013304 Thru P-013325	File folder entitled "6/25/07 Lefcourt to Sloman & Lourie containing 6/25/07 letter (with handwritten notes by A. Marie Villafaña) from G. Lefcourt to J. Sloman, M. Menchel, A. Lourie, A. Marie Villafaña addressing reasons for not prosecuting Epstein; handwritten outline by A. Marie Villafaña of possible response to letter	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship
Suppl. Box #3 P-013326 Thru P-013329	File folder entitled "9/17/07 Villafaña Lefkowitz containing 9/17/07 e-mail from A. Marie Villafaña to R. Garcia, A. Lourie and from R. Garcia to A. Marie Villafaña concerning status of plea negotiations	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013330 Thru P-013333	File folder entitled "11/8/07 Lefkowitz Sloman" containing 11/8/07 letter from J. Lefkowitz re issues arising during pendency of matter with attorney handwritten notes	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013334 Thru	File folder entitled "11/13/07 Sloman to Lefkowitz (was this sent?)" containing draft 11/13/07 letter from J. Sloman	Attorney-Client Privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013337	responding to J. Lefkowitz's letter	Work Product	Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013338 Thru 013341	File folder entitled "12/6/07 Sloman to Lefkowitz" containing 12/5/07 faxed letter w/ cover sheet from K. Starr and J. Lefkowitz to A. Acosta	[Not considered privileged. Will be produced to opposing counsel upon lifting of stay]	N/A
Suppl. Box #3 P-013342 Thru P-013350	File folder entitled "12/05/07 Starr to Acosta" containing drafts of 11/30/07 letters from A. Acosta to K. Starr and from J. Sloman to J. Lefkowitz re performance and victim notification with handwritten notes and edits by A. Marie Villafaña	Attorney-Client Privilege Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box #3 P-13351 Thru P-013361	File folder entitled "12/21/07 Lefkowitz Acosta" containing handwritten notes by A. Marie Villafaña, 12/21/07 letter from J. Lefkowitz to A. Acosta re performance of NPA and appeal to Washington with attorney handwritten notes	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Factual Materials; Attorney Conduct at Issue
Suppl. Box #3 P-013362 Thru P-013366	File folder labeled "12/26/07 Lefkowitz to Acosta" containing 2 copies of draft letter from A. Acosta to J. Lefkowitz (with 12/28/07 fax header)	Attorney-Client Privilege Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box #3	File folder labeled "Draft ltr from	Attorney-Client Privilege	Inadequate Log; No Factual Underpinnings;

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013367 Thru P-013372	Sloman to Lefkowitz re termination" containing draft letter dated "April , 2008" from J. Sloman to J. Lefkowitz concerning the compliance with the Agreement	Work Product	Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013373 Thru P-013503	File folder labeled "6/3/08 Sloman Submission to the DAG" containing 6/3/08 letter from J. Sloman to Mark Filip, Office of the DAG, cc'd to R. Senior, A. Marie Villafaña, K. Atkinson, re Jeffrey Epstein, detailing events concerning the Agreement and thereafter and with relevant attachments	Attorney-Client Privilege Deliberative Process Work Product Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013504 Thru P-013507	File folder labeled "Mtg w/ Ken Starr, RAA, JS, Drew" containing handwritten notes by A. Marie Villafaña	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013508 Thru P-013514	File folder labeled "Internal Corr." containing 11/28/07 e-mails from J. Sloman to A. Marie Villafaña re responding to 11/28/07 e-mail from J. Lefkowitz to J. Sloman regarding victim notification with attachments	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue; Factual Materials; Waiver
Suppl. Box #3 P-013515 Thru	Draft 11/30/07 letter from A. Acosta to K. Starr cc'd to J. Sloman and A. Marie Villafaña re compliance with Agreement	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013525	and internal emails from J. Sloman, A. Acosta, and A. Lourie re items to address in letter	Deliberative Process	Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver; Factual Materials
Suppl. Box #3 P-013526 Thru P-013527	5/23/07 e-mail from A. Marie Villafaña to K. Atkinson re draft proposed internal e-mail about handling of case and attached email correspondence between Andrew Lourie and G. Lefcourt	Attorney-Client Privilege Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials
Suppl. Box #3 P-013528 Thru P-013530 P-013532 Thru P-013537	Handwritten notes by A. Marie Villafana dated 9/21 re telephone conference with possible victim representative, conflict check with names and email listed, list of names of potential victim representatives, payment discussion, and guideline calculation, email containing contact info for potential victim representative, draft Non Prosecution Agreement dated 9/10/07 4:17 pm	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013531	Typed note addressed to "Dear David" re response to grand jury subpoena	6(e) Investigative privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Suppl. Box #3 P-013538 Thru	File folder labeled "Notes Re Post-Agreement Communications" containing	Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013553	handwritten notes by A. Marie Villafaña	Deliberative Process	Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials
Suppl. Box #3 P-013554 Thru	File folder labeled "E-mails Re Plea Negotiations" containing: ■ 11/28/07 e-mail from A. Lourie to A. Marie Villafaña, A. Oosterbaan, R. Garcia re non-prosecution agreement, with attached correspondence; ■ 9/19/07 e-mail from A. Marie Villafaña to A. Lourie, R. Garcia, K. Atkinson re negotiating strategy, with attached correspondence; ■ 9/18/07 e-mail from A. Marie Villafaña to A. Acosta, A. Lourie, R.Gar ■ 9/17/07 e-mail from A. Marie Villafaña to A. Acosta re negotiation; ■ 9/17/07 e-mail from A. Marie Villafaña to R. Garcia, A. Acosta, A. Lourie, K. Atkinson, J. McMillan re negotiations; ■ 9/17/07 e-mail from A. Marie Villafaña to R. Garcia, A. Lourie re negotiation strategy; ■ 9/14/07 e-mail from A. Marie Villafaña to J. Sloman, A. Acosta, R. Garcia, A Lourie, K. Atkinson, S. Ball re proposed plea agreement and Information	Attorney-Client Privilege Work Product Deliberative Process Investigative Privilege	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver; Final Decision

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
	■ 9/14/07 e-mail from A. Marie Villafaña to J. Sloman, A. Acosta, A Lourie, R Garcia, K. Atkinson, J. McMillan, S. Ball re plea negotiations ■ 9/13/07 e-mail from A. Marie Villafaña to J. Atkinson, S. Ball, J. McMillan re indictment package; ■ 9/13/07 e-mail from A. Marie Villafaña to A. Oosterbaan re trust agreement with attached correspondence ■ 9/13/07 e-mail from A. Marie Villafaña to A. Oosterbaan re trust agreement ■ 9/13/07 e-mail from A. Marie Villafaña to R. Garcia, J. Sloman re conference call with J. Lefkowitz; ■ 9/13/07 e-mail from A. Marie Villafaña to A. Lourie re plea negotiations with attached correspondence; ■ 9/13/07 e-mail from A. Marie Villafaña to A. Lourie re charging strategy with attached correspondence; ■ 9/13/07 e-mail from A. Marie Villafaña to K. Atkinson, S. Ball, J. McMillan re indictment package; ■ 9/13/07 e-mail from A. Marie Villafaña to A. Acosta, J. Sloman, R. Garcia, K. Atkinson, A. Lourie re plea negotiations;		

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
	■ 9/11/07 e-mail from A. Marie Villafaña to A. Lourie re meeting w/ G. Lefcourt with attached correspondence; ■ 9/11/07 e-mail from A. Marie Villafaña to A. Lourie re revised Agreement with attached correspondence; ■ 9/11/07 e-mail from A. Marie Villafaña to J. Sloman re non-prosecution agreement edits with attached correspondence; ■ 9/11/07 e-mail from A. Marie Villafaña to A. Oosterbaan re status of negotiations with attached correspondence; ■ 9/10/07 e-mail from A. Marie Villafaña to J. Sloman re negotiations; 9/10/07 e-mail from A. Marie Villafaña to J. Sloman, J. McMillan re state grand jury proceedings; ■ 9/17/07 e-mail from A. Acosta to A. Marie Villafaña, R. Garcia, A. Lourie, K. Atkinson, J. McMillan re draft Agreement with attached correspondence; ■ 9/14/07 e-mail from J. Sloman to A. Marie Villafaña, A. Acosta, R. Garcia, A. Lourie, K. Atkinson, S. Ball, re finalizing documents; ■ 9/14/07 e-mail from A. Lourie to A. Marie Villafaña re charging strategy		

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
	with attached correspondence; ■ 9/13/07 e-mail from A. Oosterbaan to A. Marie Villafaña re setting up trust fund; ■ 9/13/07 e-mail from A. Lourie to A. Marie Villafaña re final negotiations with attached correspondence; ■ 9/11/07 e-mail from A. Lourie to A. Marie Villafaña re scheduling a meeting regarding finalizing the agreement with attached correspondence; ■ 9/11/07 e-mail from J. Sloman to A. MarieVillafaña re non-prosecution agree ■ 9/11/07 e-mail from J. Sloman to A. MarieVillafaña re non-prosecution agree ■ 9/11/07 e-mail from A. Oosterbaan to A. Marie Villafaña re negotiations with attached correspondence; ■ 9/17/07 e-mail from A. Marie Villafaña to R. Garcia A. Lourie re negotiation strategy		
Suppl. Box #3 P-013609 Thru P-013615	File folder entitled "[] Target Letter" containing copy of signed letter and contact info for counsel for target	6(e) Investigative Privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Factual Materials; Court Authorized Under 6(e)(3)(E); Court Inherent Power to Release; Proper Victim's Petition; CVRA-authorized release; Material Severable
Suppl. Box #3 P-013616	File folder entitled "Atty Notes re Revised Indictment" containing	Attorney-Client Privilege Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Thru P-013621	handwritten notes by A. Marie Villafaña	Work Product Investigative Privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box #3 P-013622 Thru P-013643	File folder entitled "Research Re Possible Misdemeanors" containing attorney research	Work product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box #3 P-013644 Thru P-013653	File folder entitled "Notes Re Plea Negotiations" containing 9/17/07 e-mail from A. Marie Villafaña to J. Richards, N. Kuyrkendall re status update; undated and typed handwritten notes by A. Marie Villafaña re items to be completed on case, strength of case, victim interviews, summary of evidence, guidelines calculations	Attorney-Client Privilege Work Product Deliberative Process Investigative privilege Also contains information subject to privacy rights of victims who are not parties to this litigation	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Factual Materials; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver
Suppl. Box #3 P-013654 Thru P-013745	File folder entitled "Plea Agreement Drafts" containing several draft plea agreements some with handwritten notes by A. Marie Villafaña; copies of draft non-prosecution agreement some with handwritten notes by A. Marie Villafaña; copy of a draft Information	Attorney-Client Privilege Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box #3 P-0013747	File folder entitled "Draft Non-Prosecution Agreements" containing	Attorney-Client Privilege Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Thru P-013810	several draft non- prosecution agreements some with handwritten notes by A. Marie Villafaña; plea sheet State Circuit Court; copies of draft Information; draft plea proffer; draft motion and order to seal; draft penalty sheet; draft plea agreement	Deliberative Process	Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials
Suppl. Box 3 P-013811 Thru P-013833	File folder entitled "Information Packet Drafts" containing several drafts of Informations, and complete draft Information packet	Attorney-Client Privilege Work Product Deliberative Process	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Ordinary Government Communication; No Attorney-Client Relationship; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box 3 P-013834 Through P-013835	Two pages of filed document, D.E. 62, page 2 of 54 and page 6 of 54, containing handwritten attorney notes	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013836 Thru P-013837	Palm Beach Daily News Article, "Attorneys want Jeffrey Epstein Agreement Thrown Out," with attorney's notes written on margin	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013838 Thru P-013841	Letter from Paul Cassell to Wifredo A. Ferrer, December 10, 2010, Subject: Request for Investigation of Jeffrey Epstein Prosecution, with underlines, written notes, and comments by DOJ attorney	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013842	Email from Dexterr Lee to Ruth Plagenhoef (OPR), February 25, 2011, 4:31 p.m., Re: request for OPR Investigation – Jeffrey Epstein Non-Prosecution Agreement	Atty work-product Atty-client privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
			Conduct at Issue
Suppl. Box 3 P-013843 Thru P-013844	E-mail, Marie Villafana to Andrew Lourie, Rolando Garcia, and Karen Atkinson, September 19, 2007, 4:33 p.m., RE: Plea Agreement	Atty work-product atty-client privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013845 Thru P-013846	E-mail, Andrew Lourie to Marie Villafana, September 19, 2007, 4:21 p.m., RE: Epstein, with internal U.S. Attorney's Office e-mails attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013847 Thru P-013849	E-mail, Marie Villafana to Andrew Lourie, Rolando Garcia, and Karen Atkinson, September 18, 2007, 11:43 a.m., RE: Draft Agreements?, with e-mail from Jay Lefkowitz (September 18, 2007, 11:09 a.m.) attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue Waiver
Suppl. Box 3 P-013850	E-mail, Marie Villafana to Alex Acosta, Andrew Lourie, Rolando Garcia, Karen Atkinson, and John McMillan, September 18, 2007, 9:31 a.m., RE: Epstein Negotiations	Atty work-product	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013851 Thru P-013853	E-mail, Marie Villafana to Rolando Garcia and Andrew Lourie, September 17, 2007, 10:35 a.m., RE: Epstein [providing update re plea negotiations]	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013854	E-mail, Marie Villafana to Andrew Oosterbaan, September 13, 2007, 8:10 p.m., RE: Epstein, with e-mail from Andrew Oosterbaan (September 13, 2007, 7:54 p.m.), attached	Atty work-product	No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3	E-mail, Marie Villafana to Jeff Sloman	Atty work-product	Inadequate Log; No Factual Underpinnings;

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013855	and Andrew Lourie, September 10, 2007, 5:24 p.m., RE: FBI	Atty-client privilege	Fiduciary Duty; Ordinary Government ; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue Communication; No Attorney-Client Relationship
Suppl. Box 3 P-013856 Thru P-013857	E-mail, Marie Villafana to Jeff Sloman, September 6, 2007, 5:47 p.m., RE: Epstein, with e-mail from Jeff Sloman (September 6, 2007, 5:35 p.m.), attached	Atty work-product Atty-client privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013858	Email, Marie Villafana to Jeff Sloman, September 6, 2007, 9:29 a.m., Re: Meeting on Friday	atty work-product	No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013859 Through P-013860	Email, Gerald Lefcourt to Marie Villafana, Lilly Ann Sanchez, Roy Black, re: Jeffrey Epstein	[Not considered privileged. Will be produced to opposing counsel upon lifting of stay]	N/A
Suppl. Box 3 P-013861 Thru P-013865	E-mail, Marie Villafana to Matthew Menchel, July 13, 2007, 3:14 p.m., RE: Epstein, with e- mail from Menchel (July 5, 2007, 3:30 p.m.), Villafana to Menchel (July 4, 2007, 5:16 p.m.), and Sloman to Villafana (July 3, 2007, 1:47 p.m.), attached	Atty work-product atty-client privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Ordinary Government Communication; No Attorney-Client Relationship; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013866	E-mail, Marie Villafana to Jeff Sloman, Matthew Menchel, Andrew Lourie, Karen Atkinson, and Shawn Ball, July 3, 2007, 6:26 a.m., RE: Epstein	Atty work-product	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013867 Thru	E-mail, Marie Villafana to Matthew Menchel, June 21, 2007, 3:24 p.m., RE: Meeting Next Week, with e-mails from	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor;

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013868	Menchel to Villafana (June 21, 2007, 2:58 p.m.), and Villafana to Menchel (June 21, 2007, 1:37 p.m.), attached		Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013869	E-mail, Marie Villafana to Matthew Menchel, Jeff Sloman, Andrew Lourie, and Karen Atkinson, June 18, 2007, 5:04 p.m., RE: Epstein	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013870 Thru P-013871	E-mail, Andrew Lourie to Marie Villafana, May 24, 2007, 9:25 a.m., FW: Jeffrey Epstein, with e-mail from Gerald Lefcourt to Andrew Lourie (May 23, 2007, 5:00 p.m.), Andrew Lourie to Gerald Lefcourt (May 22, 2007, 6:32 p.m.), and Gerald Lefcourt to Andrew Lourie Marie Villafana, and Lilly Ann Sanchez (May 22, 2007, 2:05 p.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013872	E-mail, Andrew Lourie to Matthew Menchel, Jeff Sloman, and Marie Villafana, May 22, 2007, 3:11 p.m., FW: Jeffrey Epstein, with e-mail from Lefcourt to Lourie, Villafana, and Lilly Ann Sanchez (May 22, 2007, 2:05 p.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013873	E-mail Menchel to Villafana and Lourie, May 14, 2007, 10:52 a.m., RE: Operation Leap Year, with e-mail from Villafana to Lourie and Menchel (May 14, 2007, 10:38 a.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013874	Inadvertently marked as privileged, will be produced		N/A

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Through P-013875			
Suppl. Box 3 P-013876 Thru P-013877	E-mail, Villafana to Lourie,Garcia, and Atkinson, September 19, 2007, 4:33 p.m., RE: Draft Plea Agreement, with e-mail from Lefkowitz to Villafana (September 19, 2007, 3:44 p.m.), and Lefkowitz to Villafana (September 19, 2007, 3:35 p.m.) attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013878 Thru P-013879	E-mail, Lourie to Villafana, September 19, 2007, 4:21 p.m., RE: Epstein, with e-mails from Villafana to Lourie and Garcia (September 19, 2007, 4:13 p.m.), Villafana to Lourie and Garcia (September 19, 2007, 4:05 p.m.), and Lourie to Villafana and Garcia (September 19, 2007, 3:50 p.m.), Villafana to Lourie (September 19 2007, 2:36 p.m.), Lourie to Villafana (September 19, 2007, 2:33 p.m.), and Villafana to Lourie and Garcia (September 19, 2007, 2:31 p.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013880 Thru P-013882	E-mail, Villafana to Lourie,Garcia, and Atkinson, September 18, 2007, 11:43 a.m., RE: Draft Agreements?, with e-mails from Villafana to Lourie, Garcia and Atkinson (September 18, 2007, 11:18a.m.),	Atty work-product	No Factual Underpinnings; Fiduciary Duty; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
Suppl. Box 3 P-013883	E-mail, Villafana to Acosta, Lourie, Garcia, Atkinson, and McMillan, September 18, 2007, 9:31 a.m., RE: Epstein Negotiations	Atty work-product	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013884 Thru P-013886	E-mail, Villafana to Garcia and Lourie, September 17, 2007 10:35 a.m., RE: Epstein, with e-mail from Garcia (September 17, 2007, 10:26 a.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013887	E-mail, Marie Villafana to Andrew Oosterbaan, September 13, 2007, 8:10 p.m., RE: Epstein, with e-mail from Andrew Oosterbaan (September 13, 2007, 7:54 p.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013888	E-mail, Marie Villafana to Jeff Sloman and Andrew Lourie, September 10, 2007, 5:24 p.m., RE: FBI	Atty work-product Atty-client privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013889 Thru P-013890	E-mail, Marie Villafana to Jeff Sloman, September 6, 2007, 5:47 p.m., RE: Epstein, with e-mail from Jeff Sloman (September 6, 2007, 5:35 p.m.), attached	Atty work-product Atty-client privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013891	Email, Marie Villafana to Jeff Sloman, September 6, 2007, 9:29 a.m., Re: Meeting on Friday	atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3	Email, Gerald Lefcourt to Marie Villafana, Lilly Ann Sanchez, Roy	[Not considered privileged. Will be	N/A

Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013892 Through P-013893	Black, re: Jeffrey Epstein	produced to opposing counsel upon lifting of stay]	
Suppl. Box 3 P-013894 Thru P-013898	E-mail, Marie Villafana to Matthew Menchel, July 13, 2007, 3:14 p.m., RE: Epstein, with e- mail from Menchel (July 5, 2007, 3:30 p.m.), Villafana to Menchel (July 4, 2007, 5:16 p.m.), and Sloman to Villafana (July 3, 2007, 1:47 p.m.), attached	Atty work-product atty-client privilege	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013899	E-mail, Marie Villafana to Jeff Sloman, Matthew Menchel, Andrew Lourie, Karen Atkinson, and Shawn Ball, July 3, 2007, 6:26 a.m., RE: Epstein	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013900 Thru P-013901	E-mail, Marie Villafana to Matthew Menchel, June 21, 2007, 3:24 p.m., RE: Meeting Next Week, with e-mails from Menchel to Villafana (June 21, 2007, 2:58 p.m.), and Villafana to Menchel (June 21, 2007, 1:37 p.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013902	E-mail, Marie Villafana to Matthew Menchel, Jeff Sloman, Andrew Lourie, and Karen Atkinson, June 18, 2007, 5:04 p.m., RE: Epstein	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013903 Thru P-013904	E-mail, Andrew Lourie to Marie Villafana, May 24, 2007, 9:25 a.m., FW: Jeffrey Epstein, with e-mail from Gerald Lefcourt to Andrew Lourie (May 23, 2007, 5:00 p.m.), Andrew Lourie to Gerald Lefcourt (May 22, 2007, 6:32 p.m.), and Gerald Lefcourt to Andrew Lourie Marie Villafana, and Lilly Ann	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
	Sanchez (May 22, 2007, 2:05 p.m.), attached		
Suppl. Box 3 P-013905	E-mail, Andrew Lourie to Matthew Menchel, Jeff Sloman, and Marie Villafana, May 22, 2007, 3:11 p.m., FW: Jeffrey Epstein, with e-mail from Lefcourt to Lourie, Villafana, and Lilly Ann Sanchez (May 22, 2007, 2:05 p.m.), attached	Atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013906	E-mail Menchel to Villafana and Lourie, May 14, 2007, 10:52 a.m., RE: Operation Leap Year, with e-mail from Villafana to Lourie and Menchel (May 14, 2007, 10:38 a.m.), attached	Atty work-product	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013907 Through P-013908	Inadvertently marked as privileged, will be produced		N/A
Suppl. Box 3 P-013909 Thru P-013911	Memorandum, Lisa Howard, Assistant Counsel, U.S. Department of Justice, Office of Professional Responsibility (OPR), to Ruth Plagenhoef, Acting Associate Counsel, OPR, undated, Subject: Recommendation	Deliberative Process Privilege; atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Improper Invocation; Final Decision; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013912 Thru P-013914	Memorandum, Lisa Howard, Assistant Counsel, OPR, to Ruth Plagenhoef, Acting Associate Counsel, OPR, Subject: Recommendation, with handwritten note dated 5/4/11	Deliberative Process Privilege, atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Improper Invocation; Waiver; Final Decision; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3	Memorandum, Lisa Howard, Assistant	Deliberative Process	Inadequate Log; No Factual Underpinnings;

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013915 Thru P-013918	Counsel, OPR, to Ruth Plagenhoef, Acting Associate Counsel, OPR, Subject: Recommendation, with two post-it notes attached with handwritten attorney notations, and handwritten notations, underlines, and circled text throughout the body of the two page memorandum	Privilege; atty work-product	Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Improper Invocation; Waiver; Final Decision; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013919 Thru P-013921	Draft letter, marked "Confidential", from Robin C. Ashton, Counsel, Office of Professional Responsibility to Wifredo A. Ferrer, United States Attorney, with handwritten corrections, strikethroughs, and added text	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver; Final Decision
Suppl. Box 3 P-013922 Thru P-013924	Draft Letter, marked "Confidential", from Robin C. Ashton, to Wifredo A. Ferrer, with handwritten corrections	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box 3 P-013925 Thru P-013927	Draft Letter, from Robin C. Ashton to Professor Paul G. Cassell, with handwritten correction	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box 3 P-013928 Thru P-013930	Draft Letter, from Robin C. Ashton to Professor Paul G. Cassell, with handwritten corrections	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box 3 P-013931 Thru P-013933	Draft Letter, from Robin C. Ashton to Professor Paul G. Cassell, with handwritten corrections, circled text,	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor;

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
	strikethroughs, and additional text		Attorney Conduct at Issue
Suppl. Box 3 P-013934 Thru P-013936	Draft Letter, marked "Confidential," from Robin C. Ashton to Wifredo A. Ferrer, with handwritten corrections	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue
Suppl. Box 3 P-013937 Thru P-013939	Draft Letter, Robin C. Ashton to Professor Paul G. Cassell, with handwritten corrections	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver
Suppl. Box 3 P-013940 Thru P-013942	Draft Letter, marked "Confidential: To Be Opened by Addressee Only," Robin C. Ashton to Wifredo A. Ferrer, with handwritten corrections	Deliberative Process Privilege Attorney Work Product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Crime-Fraud-Misconduct; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Waiver; Final Decision; Factual Materials
Suppl. Box 3 P-013943	E-mail, Ruth Plagenhoef to Lisa Howard, May 5, 2011, 11:19 a.m., RE: Re-write of Epstein letters for your review, with e-mail from Lisa Howard to Ruth Plagenhoef (May 5, 2011, 11:08 a.m.), and Plagenhoef to Howard (May 5, 2011, 11:10 a.m.), and Howard to Plagenhoef (May 5, 2011, 10:41 a.m.), attached	Deliberative Process Privilege Attorney Work Product	No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Final Decision; Waiver
Suppl. Box 3 P-013944	E-mail, Plagenhoef to Howard, May 5, 2011, 11:17 a.m., RE: Re-write of Epstein lett your review, with e-mail from Howard to Plagenhoef (May 5, 2011, 11:08	Deliberative Process Privilege	No Factual Underpinnings; Fiduciary Duty; Improper Invocation; Overriding Need; Final Decision; Waiver

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
	Plagenhoef to Howard (May 5, 2011, 11:01 a.m.), and Howard to Plagenhoef (May 5, 2011, 10:41), attached		
Suppl. Box 3 P-013945	E-mail, Plagenhoef to Howard, May 4, 2011, 5:01 p.m., RE: draft letters in Epstein matter, with e-mail from Howard to Plagenhoef (May 4, 2011, 4:57 p.m.), attached	Deliberative Process Privilege	No Factual Underpinnings; Fiduciary Duty; Improper Invocation; Overriding Need
Suppl. Box 3 P-013946	E-mail, Plagenhoef to Robin C. Ashton, May 4, 2011, 4:08 p.m., RE: FYI on the Florida matter	Law Enforcement investigatory record, atty work product; deliberative process privilege	No Factual Underpinnings; Fiduciary Duty; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Final Decision; Waiver
Suppl. Box 3 P-013947	E-mail, Paul Cassell to Plagenhoef, May 3, 2011,12:23 p.m., RE: OPR Inquiry – request for information, with post-it note attached with handwritten attorney notes on telephone call between Plagenhoef and Howard with Dexter Lee and Marie Villafana	atty work product; law enforcement investigatiory record	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Not in Anticipation of Litigation; Improper Invocation; Overriding Need; Claims Against Public Prosecutor; Attorney Conduct at Issue; Factual Materials; Final Decision
Suppl. Box 3 P-013948 Thru P-013951	E-mail, Plagenhoef to Howard and Robin C. Ashton, May 3, 2011, 12:30 p.m., FW: OPR Inquiry – request for information, with attached e-mails. Handwritten attorney notes on margin	atty work-product	No Factual Underpinnings; Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013952 Thru P-013953	E-mail, Dexter Lee to Ruth Plagenhoef, March 16, 2011, 10:52 a.m., RE: Referral of Cassell Request for Investigation, with e-mail from Paul Cassell to Dexter Lee and Marie Villafana (March 15, 2011, 7:21 p.m.), attached	atty work-product; atty-client privilege	No Factual Underpinnings; Fiduciary Duty; Ordinary Government Communication; No Attorney-Client Relationship; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3	E-mail, Plagenhoef to Neil Hurley, OPR,	atty work-product, atty-	Inadequate Log; No Factual Underpinnings;

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Bates Range	Description	Privilege(s) Asserted	Victims' Objections
P-013954 Thru P-013955	December 16, 2010, 10:59 a.m., FW: OPR Referral – Allegation of Misconduct – U.S. Attorney's Office, S.D.Fla., with e-mail from Dexter Lee to Plagenhoef (December 16, 2010, 10:22 a.m.), attached. Handwritten attorney notations.	client privilege	Fiduciary Duty; Crime-Fraud-Misconduct; Factual Materials; Ordinary Government Communication; No Attorney-Client Relationship; Waiver; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct at Issue
Suppl. Box 3 P-013956 Thru P-013846	Fourteen (14) pages of handwritten attorney notes on case, telephone interviews with DOJ attorneys	atty work-product	Inadequate Log; No Factual Underpinnings; Fiduciary Duty; Material Severable; Crime-Fraud-Misconduct; Factual Materials; Claims Against Public Prosecutor; Overriding Need; Attorney Conduct At Issue.

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not to provide legal advice or assistance to the police officers but rather to provide the city with information relating to alleged indiscretion within the department).

Attorney-Client Relationship Not Established. Any attorney-client privilege has not been properly invoked because the Government has not provided factual material identifying who is the attorney, who is the client, and how the communications were confidential. *See Bogle v. McClure*, 332 F.3d 1347, 1358 (11th Cir. 2003).

B. Deliberative Process Privilege

Privilege Not Properly Invoked – Any deliberative process privilege has not been properly asserted, because it must be asserted by the head of the department having control over the requested information who must explain why revealing the information would compromise deliberative processes. *See Landry v. F.D.I.C.*, 204 F.3d 1125, 1135 (D.C. Cir. 2000).

Final Decision Exempted from Privilege – Any deliberative process privilege would only cover only the processes by which a decision was made, not the final decision itself. *See, e.g., NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151-52 (1975).

Qualified Privilege Overridden By the Victims' Need for the Documents – Any deliberative process privilege would be a qualified privilege, which would be overridden by the victims' compelling need to obtain the materials here. *See, e.g., Newport Pac., Inc. v. County of San Diego*, 200 F.R.D. 628, 638-41 (S.D. Cal. 2001) (in action charging county Board of Supervisors with violating Federal Fair Housing Act, the interest in free expression by policy makers during the deliberative process leading up to those actions was outweighed by the litigant's interest in obtaining information concerning those deliberations).

C. Investigative Privilege

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Privilege Not Properly Invoked – Any investigative privilege has not been properly asserted, because it must be asserted by the head of the department having control over the requested information who must explain why revealing the information would compromise deliberative processes. *See Landry v. F.D.I.C.*, 204 F.3d 1125, 1135 (D.C. Cir. 2000).

Qualified Privilege Overridden By the Victims' Need for the Documents – Any investigative privilege would be a qualified privilege, in which the public interest in nondisclosure must be balanced against the need of a particular litigant for access to the privileged information. *Tuite v. Henry*, 98 F.3d 1411, 1418 (D.C. Cir. 1996). The balancing is ordinarily made by considering the ten factors identified in *Frankenhauser v. Rizzo*, 59 F.R.D. 339, 344 (E.D. Pa. 1973). Those ten factors decisively tip in favor of the victims receiving access to the information.

D. Work Product Doctrine.

No Work Product Doctrine in the Context of a Claim Against Public Prosecutors – The work product doctrine does not apply to claims advanced by crime victims that federal prosecutors have violated their public responsibilities under the Crime Victims' Rights Act. *See U.S. v. Arthur Young & Co.*, 465 U.S. 805, 817 (1984) (refusing to extend work product privilege to public accountants, because they have 'a public responsibility transcending any employment relationship with the client"); *In re Grand Jury Subpoena*, 112 F.3d at 919-21 ("the strong public interest in honest government and in exposing wrongdoing by public officials would be ill-served by recognition of a governmental attorney-client privilege applicable in criminal proceedings inquiring into the actions of public officials.").

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Qualified Privilege Overridden By the Victims' Need for the Documents – The work product doctrine is a qualified privilege that can be overcome where a litigant shows it has a substantial need for the materials and that it has exhausted other means of obtaining the relevant information it seeks. *In re Grand Jury Subpoena Dated July 6, 2005*, 510 F.3d 180, 185-86 (2d Cir. 2007). The victims here can make this showing.

Work Production Privilege Does Not Apply When the Attorney's Conduct is at Issue – If the attorney's conduct is a central issue in the case, the work-production protection does not apply. *See, e.g., In re John Doe,* 662 F.2d 1073, 1080 (4th Cir. 1981); *Charlotte Motor Speedway, Inc. v. International Ins. Co.*, 125 F.R.D. 127, 130 (M.D.N.C. 1989).

E. Rule 6(e) – Grand Jury Secrecy

Court-Authorized Disclosure Not Covered Under Rule 6(e)(3)(E) – The Court can authorize disclosure of grand jury materials pursuant to Fed. R. Crim. P. 6(e)(3)(E). It has already authorized disclosure of grand jury materials here, and the Government has no independent "privilege" to interpose against court-ordered disclosure of grand jury materials.

The Court Has Inherent Power to Release Grand Jury Materials – The Court has "inherent power beyond the literal wording of Rule 6(e)(3) to disclose grand jury material" and has properly exercised that power here. *United States v. Aisenberg*, 358 F.3d 1327, 1347 (11th Cir. 2004).

Victims Have Properly Petitioned for the Release of Grand Jury Materials – A litigant can petition for release of grand jury materials. Fed. R. Crim. P. 6(e)(3)(F). The Court has properly granted the victims petition for release of the materials. They have also concurrently-filed such a petition.

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The CVRA Gives the Court Authority to Release Grand Jury Materials – The Court is obligated to enforce crime victims' rights. 18 U.S.C. § 3771(b)(1) (the court "shall ensure" that crime victims receive their rights). This obligation carries with it authority to release necessary materials to protect victims' rights, including grand jury materials.

Grand Jury Materials Can Be Severed from Other Materials – The Government can redact grand jury information from the requested materials, and produce the remaining materials. *See, e.g., In re Grand Jury Investigation*, 445 F.3d 266, 280 (3rd Cir. 2006).

F. The Privacy Rights of Other Victims

Government Redaction Can Resolve Privacy Concerns. The Government cannot withhold materials in this case because of the privacy rights of other victims when it has the simple option of simply redacting the names and identifying information of these other victims before producing the materials. The Government has already followed this procedure elsewhere and should do so here. *See, e.g.,* Bates 000966-67 (materials about victim "B.B.").

No Assertion of Privacy Rights by Other Victims. Several of the victims cited by the Government are represented by undersigned counsel and do not wish to interpose privacy rights here. Nor has the Government established that they can assert the privacy rights of other victims.

G. The Privacy Act

The Privacy Act Does Not Apply in the Context of Court-Compelled Disclosures for Discovery. *See* 5 U.S.C. § 552a(b)(11).

CONCLUSION

Because the Government's assertions of privilege are not well-founded, the Court should provide all of the documents the Government submitted for in camera inspection to the victims.

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DATED: August 16, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on August 16, 2013, on the following using the Court's CM/ECF system:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE No. 1 and JANE DOE No. 2

v.

UNITED STATES
_____/

AFFIDAVIT OF BRADLEY J. EDWARDS, ESQ. REGARDING NEED FOR PRODUCTION OF DOCUMENTS

1. I, Bradley J. Edwards, Esq., do hereby declare that I am a member in good standing of the Bar of the State of Florida. Along with co-counsel, I represent Jane Doe No. 1 and Jane Doe No. 2 (as referred to as "the victims") in the above-listed action to enforce their rights under the Crime Victims Rights Act (CVRA). I also represented them (and several other victims) in civil suits against Jeffrey Epstein for sexually abusing them. I am also familiar with the criminal justice system, having served as state prosecutor in the Broward County State Attorney's Office.

2. This affidavit covers factual issues regarding the Government's assertions of privilege to more than 13,000 pages of documents it has produced for in camera inspection in this case. This affidavit provides factual information demonstrating that the Government's assertions of privilege are not well founded. It further demonstrates that the victims have a compelling and substantial need for the information requested and have no other way of obtaining the information.

Background Regarding Unsuccessful Efforts to Reach Stipulated Facts with the Government

3. On July 7, 2008, I filed a petition to enforce the CVRA rights of Jane Doe No. 1 and Jane Doe No. 2 with regard to sex offenses committed against them by Jeffrey Epstein while they were minors. The course of the proceedings since then is well-known to the Court. For purposes of this affidavit regarding privileges, it is enough to briefly recount the efforts of the victims to reach a stipulated set of facts with the Government – efforts that the Government has blocked.

4. The Court first held a hearing on victims' petition on July 11, 2008. The Court discussed a need to "hav[e] a complete record, and this is going to be an issue that's … going to go to the Eleventh Circuit, [so it] may be better to have a complete record as to what your position is and the government's is as to what actions were taken." Tr. at 25-26. The Court concluded the hearing with the following instructions: "So I'll let both of you confer about whether there is a need for any additional evidence to be presented." Tr. at 32.

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5. The victims and the U.S. Attorney's Office then attempted to reach a stipulated set of facts underlying the case. The U.S. Attorney's Office offered a very abbreviated set of proposed facts, and the victims responded with a detailed set of proposed facts. Rather than respond to the victims' specific facts, however, the U.S. Attorney's Office suddenly reversed course. On July 29, 2008, it filed a Notice to Court Regarding Absence of Need for Evidentiary Hearing (DE 17). The U.S. Attorney's Office took the following position: "After consideration, the Government believes that an evidentiary hearing is not necessary" (DE 17 at 1). The Office asserted that the Court need only take judicial notice of the fact that no indictment had been filed against Epstein to resolve the case.

6. On August 1, 2008, the victims filed a response to the Government's "Notice," giving a proposed statement of facts surrounding the case. DE 19 at 5. The victims' response also requested that the Court direct the Government to confer with the victims regarding the undisputed facts of the case, and produce the non-prosecution agreement and other information about the case. *Id.* at 14. On August 14, 2008, the Court held a hearing on the case regarding the confidentiality of the non-prosecution agreement. The Court ultimately ordered production of the agreement to the victims.

7. After the U.S. Attorney's Office made the non-prosecution agreement available to the victims, the victims reviewed it and pursued further discussions with the U.S. Attorney's Office. Ultimately, however, the U.S. Attorney's Office declined to reach a stipulated set of facts with the victims and declined to provide further information about the case.

8. With negotiations at an impasse, the victims attempted to learn the facts of the case in other ways. In approximately May 2009, counsel for the victims propounded discovery requests in both state and federal civil cases against Epstein, seeking to obtain correspondence between Epstein and prosecutors regarding his plea agreement – information that the U.S. Attorney's Office was unwilling to provide to the victims and information that was highly relevant both to the victims' civil suit and their CVRA enforcement action. Epstein refused to produce that information, and (as the Court is aware) extended litigation to obtain the materials followed. The Court rejected all of Epstein's objections to producing the materials.

9. On June 30, 2010, counsel for Epstein sent to counsel for the victims approximately 358 pages of e-mail correspondence between criminal defense counsel and the U.S. Attorney's Office regarding the plea agreement that had been negotiated between them. *See* DE48-Attachment 1/Exhibit A. These e-mails began to disclose for the first time the extreme steps that had been taken by the U.S. Attorney's Office to avoid prosecuting Epstein and to avoid having the victims in the case learn about the non-prosecution agreement that had been reached between Epstein and the Government. While the Court ordered that all of the correspondence be turned over to the victims, Epstein chose to disobey that order and instead only produced the correspondence authored by the Government and redacted all correspondence authored by him or his attorneys.

10. In mid-July 2010, Jane Doe No. 1 and Jane Doe No. 2 settled their civil lawsuits against Epstein. Then, armed with the new information, they turned to moving forward in the CVRA case. On September 13, 2010, the victims informed the Court that they were preparing new filings in the case.

11. On October 12, 2010, the Court entered an order directing the victims to provide a status report on the case by October 27, 2010. That same day, counsel for the victims again contacted

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the U.S. Attorney's Office about the possibility of reaching a stipulated set of facts in the case. That same day, the U.S. Attorney's Office responded: "*We don't have any problem with agreeing that a factual assertion is correct if we agree that is what occurred*" (DE 41 at 2).

12. On October 23, 2010, the victims e-mailed to the U.S. Attorney's Office a detailed proposed statement of facts, with many of the facts now documented by the correspondence between the U.S. Attorney's Office and Epstein's counsel. The victims requested that the U.S. Attorney's Office identify which facts it would agree to. In a letter to the U.S. Attorney's Office, the victims stated:

> If you believe that any of the facts they propose are incorrect, Jane Doe No. 1 and Jane Doe No. 2 would reiterate their long-standing request that you work with us to arrive at a mutually-agreed statement of facts. As you know, in the summer of 2008 Jane Doe No. 1 and Jane Doe No. 2 were working with you on a stipulation of facts when you reversed course and took that position that no recitation of the facts was necessary (*see* doc. No. 19 at 2). . . . I hope that your e-mail means that you will at least look at our facts and propose any modifications that you deem appropriate. Having that evidence quickly available to the Court could well help move this case to a conclusion.

That same day, the U.S. Attorney's Office agreed to forward the proposed statement of facts to the appropriate Assistant U.S. Attorney for review (DE 41 at 2-3).

13. On October 26, 2010, rather than stipulate to undisputed facts, the U.S. Attorney's Office contacted the victims' attorneys and asked them to delay the filing of their motion for a two-week period of time so that negotiations could be held between the Office and the victims in an attempt to narrow the range of disputes in the case and to hopefully reach a settlement resolution without the need for further litigation. Negotiations between the victims and the U.S. Attorney's Office then followed over the next two days. However, at 6:11 p.m. on October 27, 2010 – the date on which the victims' pleading was due – the U.S. Attorney's Office informed the victims that it did not believe that it had time to review the victims' proposed statement of facts and advise which were accurate and which were inaccurate. The Office further advised the victims that it believed that the victims did not have a right to confer with their Office under the CVRA in this case because in its view the case is "civil" litigation rather than "criminal" litigation (doc. No. 41 at 3). [1]

14. As a result, purely as an accommodation to the U.S. Attorney's Office, on October 27, 2010, the victims filed a report with the Court in which they agreed to delay filing their motion and accompanying facts for up to two-weeks to see if negotiations can resolve (or narrow) the disputes with the U.S. Attorney's Office (DE 41 at 4). Discussions with the U.S. Attorney's Office dragged on, including a personal meeting between Jane Doe No. 1 and the U.S. Attorney in December 2010.

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[1] In seeming contradiction to this position, on March 17, 2011, the U.S. Attorney's Office informed the victims that it would not be making any initial disclosures to the victims as required for civil cases by Fed. R. Civ. P. 26(a)(1). The U.S. Attorney's Office did not explain why they believe that this rule of civil procedure is inapplicable if they think this case is properly viewed as a "civil" case.

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15. After further discussions failed to produce any agreement or other visible progress, the victims informed the U.S. Attorney's Office that they would file their "summary judgment" motion with the Court on March 18, 2011 and requested further cooperation from the Office on the facts.

16. Ultimately, after months of discussion, the U.S. Attorney's Office informed counsel for the victims that – contrary to promises made earlier to stipulate to undisputed facts – no such stipulation would be forthcoming. Instead, on March 15, 2011, the U.S. Attorney for the Southern District of Florida, Wifredo A. Ferrer, sent a letter to the victims declining to reach any agreement on the facts:

> Because, as a matter of law, the CVRA is inapplicable to this matter in which no federal criminal charges were ever filed, your requests for the government's agreement on a set of proposed stipulated facts is unnecessary and premature. That is, because whether the rights in 18 U.S.C. § 3771(a) attach prior to the filing of a charge in a federal court is a matter of statutory interpretation, resolution of that question is not dependent upon the existence of any certain set of facts, other than whether a charging document was ever filed against Jeffrey Epstein in the United States District Court for the Southern District of Florida. And while this Office remains willing to cooperate, cooperation does not mean agreeing to facts that are not relevant to the resolution of the legal dispute at issue . . . .

Letter from Wifredo A. Ferrer to Paul G. Cassell (March 15, 2011).

17. Accordingly, unable to work with the Government to reach a resolution of the facts, on March 21, 2011, the victims filed a Motion for Summary Judgment, alleging 53 undisputed facts along with some evidentiary support for each of the facts. DE 48. The victims also filed a motion to have their facts accepted because of the Government's failure to contest their facts. DE 49. The victims also filed a motion to have the Court direct the Government to not withhold relevant evidence. DE 50.

18. Following a hearing on the motions, on September 26, 2011, the Court rejected the Government's argument that the CVRA was inapplicable in this case because the Government had never filed charges against Epstein. DE 99. The Court, however, rejected the victims' argument that it should accept their facts because of the Government's failure to contest the facts. DE 99 at 11. Instead, the Court directed that discovery could proceed in the form of requests for admission and document production requests. *Id.* at 11. The Court reserved ruling on the victims' motion that the Government should be directed not to withhold evidence.

19. In light of the Court's order, on October 3, 2011, the victims filed requests for production with the Government. The requests included 25 specific requests, each of which linked very directly to the facts that the victims were attempting to prove in this case.

20. On November 7, 2011, the day when the Government's responses were due, rather than produce even a single page of discovery, the Government filed a motion to dismiss the victims' petitions. DE 119. On that same day, the Government filed a motion to stay discovery. DE 121. The victims filed a response, arguing that the Government's motion was a stall tactic. DE 129. The victims also filed a motion to compel production of all of their discovery requests. DE 130. The Government filed a reply, arguing that it was not stalling. Indeed, the Government told the Court that "the United States has agreed to provide some information to [the victims] even

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during the pendency of the stay [of discovery] and is undertaking a search for that information." DE 140 at 4. Contrary to that representation, however, over the next seventeen months, the Government did not produce any information to the victims, despite the victims reminding the Government of that statement made to the court.

21. Ultimately, after some additional motions and rulings, on June 19, 2013, the Court denied the Government's motion to dismiss and lifted any stay of discovery. DE 189. That same day, the Court entered an order granting the victims' motion to compel and directing the Government to produce (1) all correspondence between it and Epstein; (2) all communications between the Government and outside entities; and (3) every other document requested by the victims. DE 190 at 2. With respect to the third item, the Court allowed the Government to assert privilege by producing the items in question for in camera inspection and filing a contemporaneous privilege log. *Id.* The Court required that the privilege log must "clearly identify[] each document[] by author(s), addressee(s), recipient(s), date, and general subject matter . . . ." DE 190 at 2.

22. On July 19 and July 27, 2013, the Government made its production. With regard to item (1) – correspondence with Epstein, the Government withheld the correspondence pending a ruling from the Eleventh Circuit on Epstein's motion to stay production of these materials. With regard to the other items, the Government produced 14,825 pages of documents to the Court for in camera inspection, but turned over only 1,357 pages to the victims. Thus, the Government asserted privilege to more than 90% of the documents in question. The documents that the Government produced were almost worthless to the victims, as they included such things that the victims' own letters to the Government (Bates 0001-04), court pleadings filed by the victims themselves or other victims, by Epstein, or by news media organizations (*e.g.,* Bates 00142-88, 00229-31, 281-311, 00668-69), public court rulings on Epstein related matters (*e.g.*, Bates 0008-10, 0012-14. 0036-86, 00190-228), public newspaper articles (e.g., Bates 0011, 0030, 0032-33), and similar materials already available to the victims. It also included roughly four hundred pages of notices sent to the various other victims in this case – notices that were substantively indistinguishable from the notices the victims themselves in this case had already received. Almost without exception, the documents the Government produced do not go to the disputed issues in this case.

23. The Government made one last production of materials in this case on August 6, 2013. This involved roughly 1,500 pages of documents that were largely meaningless in the context of the contested issues in the case. They included public documents in the case such the crime victims' own pleadings, *see, e.g.,* Bates 000671-000711 (copy of the victims' redacted summary judgment motion). Curiously, while the Government has produced these documents that would likely fall into an "irrelevant" category of documents, they have simultaneously refused production of hundreds of other documents that are responsive to our requests on the basis of relevance.

24. The victims have tried to obtain information on all relevant subjects through requests for admission. The Government, however, has refused to admit many of the victims' central allegations in this case. A copy of the victims' requests for admissions and the Government's responses is attached to this affidavit so that the Court can see that the victims have diligently tried to pursue this avenue for developing the facts in this case.

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25. The victims have also tried to obtain information on subjects related to their suit by voluntary requests for interview with persons who are no longer employed by the Justice Department. For example, I have sent letters to both Bruce Reinhart and Alex Acosta, who both have information about the Epstein case, requesting an opportunity to discuss the case with them. Both of them have ignored my letters.

The Need for the Materials Requested by the Victims

26. The documents that the victims requested that the Government produce to them on October 3, 2011, are all highly relevant to their CVRA enforcement action. We would not have requested them otherwise. The victims also have no other means of obtaining the requested material. This section of the affidavit explains why the materials are needed by the victims. For the convenience of the Court, the affidavit will proceed on a section-by-section basis concerning the need for the materials. Also for the convenience of the Court, a copy of the October 3, 2011, request for production is attached to this Affidavit. Also attached is the victims' supplemental discovery request of June 24, 2013. As the Court will note from reviewing the requests for production, most of the requests specifically recount the allegations that the requested documents would support, in an effort to eliminate any dispute from the Government that the documents were not relevant to the case. Many of the requests for production link directly to specific paragraphs in the victims' previously-filed summary judgment motion. Accordingly, the victims have a very specific need for these documents to support the allegations in the summary judgment motion found at DE 48 at 3-23.

27. The Court has previously concluded that the victims' proof of their claims is, at this point in the case, inadequate. Instead, the Court has ruled: "Whether the evidentiary proofs will entitle [the victims] to that relief [of setting aside the non-prosecution agreement] is a question properly reserved for determination upon a fully developed evidentiary record." DE 189 at 11-12. The Court has further indicated that it will be considering an "estoppel" argument raised by the Government as a defense in this case. DE 189 at 12 n.6. The Court has noted that this argument "implicates a fact-sensitive equitable defense which must be considered in the historical factual context of *the entire interface between Epstein, the relevant prosecutorial authorities and the federal offense victims* – including an assessment of the allegation of a deliberate conspiracy between Epstein and federal prosecutors to keep the victims in the dark on the pendency of negotiations between Epstein and federal authorities until well after the fact and presentation of the non-prosecution agreement to them as *a* fait accompli." DE 189 at 12 n.6 (emphasis added). The victims have a compelling need for information about the Government's actions to show what the "entire interface" was and to respond to the Government's estoppel arguments, as well as other defenses that it appears to be preparing to raise. *See, e.g.,* DE 62 (52-page response from the Government to the victim's summary judgment motion, raising numerous factually-based and other arguments against the victim's position).

28. Request for Production ("RFP") No. 1 requests information regarding the Epstein investigation. These documents are needed to support the victims' allegations that the Government had a viable criminal case for many federal sex offenses that it could have pursued against Epstein. *See, e.g.,* DE 48 at 3-7.

29. RFP No. 2 requests information regarding crime victim notifications in this case. These documents are needed to support the victims' allegations that their rights under the CVRA, their

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right to notice and to confer with the Government, were violated in this case. In particular, these documents are needed to demonstrate that the victims were not properly notified about the non-prosecution agreement (NPA) entered into by the Government and Jeffrey Epstein and that the Government did not confer with the victims about the agreement. *See, e.g.,* DE 48 at 11-17.

30. RFP No. 3 requests information about the NPA, including in particular its confidentiality provision. These documents are needed to demonstrate that the confidentiality provision precluded disclosing the agreement to Jane Doe No. 1 and Jane Doe No. 2, as well as to other victims. *See, e.g.,* DE 48 at 10-17. These documents are further needed to demonstrate that Jeffrey Epstein specifically orchestrated the secrecy of the agreement, thereby deliberately causing the Government's CVRA violation in this case. *See, e.g.,* DE 48 at 13.

31. RFP No. 4 requests documents relating to negotiations between the Government and Jeffrey Epstein concerning the court and/or location in which Jeffrey Epstein would enter any guilty plea (including in particular any negotiations concerning concluding the plea in Miami or another location outside of West Palm Beach). These documents are relevant to the victims allegations that the Government was interested in finding a place to conclude any plea agreement that would effectively keep Epstein's victims (most of whom resided in or about West Palm Beach) from learning what was happening through the press. *See, e.g.,* DE 48 at 7-8.

32. RFP No. 5 requests documents pertaining to negotiations between the Government and Jeffrey Epstein regarding any legal representation of the victims in civil cases against Epstein. These documents are needed to prove the victims' allegation that part of the plea negotiations with Epstein involved Epstein's efforts to make sure that the victims would be represented in civil cases against Epstein by someone who was not an experienced personal injury lawyer or by someone familiar to Epstein or his legal team. *See, e.g.,* DE 48 at 9.

33. RFP No. 6 requests documents concerning the Government's and/or Epstein awareness or discussion of possible public criticism and/or victim objections to the non-prosecution agreement that they negotiated. The documents are needed to prove the victims' allegations that the Government wanted the non-prosecution agreement with Epstein concealed from public view because of the intense public criticism that would have resulted had the agreement been disclosed and/or the possibility that victims would have objected in court and convinced the judge not to accept the agreement. *See, e.g.,* DE 48 at 7-8, 11. They are also relevant to bias and motive by the authors or subjects of other documents in this case.

34. RFP No. 7 requests documents regarding the Government's awareness of its potential CVRA obligations in this case and regarding any discussions between the Government and Epstein concerning these CVRA obligations in this case. These documents are needed to prove the victims' allegations that the Government was aware that it potentially had obligations under the CVRA to notify the victims about the non-prosecution agreement and any related state court plea agreement. *See, e.g.,* DE 48 at 12-13.

35. RFP No. 8 requests documents regarding Epstein's lobbying efforts to persuade the Government to give him a more favorable plea arrangement and/or non-prosecution agreement, including efforts on his behalf by former President Bill Clinton, Prince Andrew, and Harvard Law Professor Alan Dershowitz. These materials are needed to prove the victims allegation that, after Epstein signed the non-prosecution agreement, his performance was delayed while he used his significant social and political connections to lobby the Justice Department to obtain a

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more favorable plea deal. *See, e.g.,* DE 48 at 16-18. These materials also are needed to establish the course of the proceedings in this case, which is necessary in light of the Government's letters to the victims (discussed in the next paragraph) concerning the status of the case.

36. RFP No. 9 requests documents regarding the letters sent to the victims by the FBI on January 10, 2008, Jane Doe No. 1 and Jane Doe No. 2 advising them that "this case is currently under investigation." These documents are needed to show that these letters were inaccurate or, at the very least, highly misleading, because they conveyed the impression that no plea arrangement (for example, a non-prosecution agreement) had been negotiated between Epstein and the Government. *See, e.g.,* DE 48 at 16. These documents are also needed to respond to the Government's "estoppel" defense, as noted in the Court's order DE 189 at 12 n.6.

37. RFP No. 10 requests documents regarding the victims' allegations that the FBI was led to believe that their investigation of Epstein was going to produce a federal criminal prosecution and that the FBI was also misled by the U.S. Attorney's office about the status of the case. The Government has argued that these documents are not relevant to the case, because the only issue is whether the Government misled the victims. But the Government fails to recognize that the victims received information about the case through the FBI. These documents are therefore needed to demonstrate that the victims received inaccurate information about the status of the case – inaccurate information caused by the U.S. Attorney's Office's negotiations with Epstein. If the FBI agents were not accurately informed about the progress of the cases, then they could not have accurately informed the victims about the progress of the case – a central point in the victims' argument. Moreover, these documents would show a common scheme or plan – something made admissible in a trial by operation of Fed. R. Evid. 404(b). Of course, if the U.S. Attorney's Office was misleading the FBI about the NPA, it would have been part of the same scheme or plan to mislead the victims as well. The documents are also needed to support specific allegations in the victims' summary judgment motion. *See, e.g.,* DE 48 at 16-17.

38. RFP No. 11 requests documents regarding various meetings that the Government (including FBI agents) had with the victims. These documents are needed to prove that during those meetings the Government did not disclose to the victims (or to their attorneys) that a non-prosecution agreement had been negotiated with Epstein, and even signed with Epstein, that related to their cases, allegations that the victims have advanced in their summary judgment motion. *See, e.g.,* DE 48 at 16-18.

39. RFP No. 12 requests all documents connected with a request from the U.S. Attorney's Office to me (Bradley J. Edwards) to write a letter concerning the need for filing federal charges against Epstein and follow-up to that letter. These documents are needed to show that this request was made to me without disclosing the existence of the non-prosecution agreement. Thus, just as Jane Doe No. 1 and Jane Doe No. 2 were deceived about the NPA, I was deceived as well. *See, e.g.,* DE 48 at 18-19. It is also needed to contradict the Government's apparent position that it disclosed the "existence' of the NPA to me and to the victims. *See, e..g.,* Gov't Answers to RFA ¶ 13(d) ("The government admits that, when Epstein was pleading guilty to the state charges discussed in the non-prosecution agreement, the USAO and Epstein's defense attorneys sought to keep the document memorializing the non-prosecution agreement confidential, but denies that they sought at that time to keep the existence of the non-prosecution agreement confidential.").

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40. RFP No. 13 requests documents regarding how, on or about June 27, 2008, the Government learned that Epstein would be entering his plea to state charges on or about June 30, 2008. The documents are needed to describe the course of proceedings in this case and to prove both the Government's and Epstein's awareness that he would be entering a guilty plea (and thus blocking prosecution of other crimes) without the victims' full knowledge of what was happening. *See, e.g.,* DE 48 at 19-20.

41. RFP No. 14 requests documents relating to the Government and Epstein working together to keep the existence of the non-prosecution agreement secret, including declining comment about the existence of such an agreement when asked about it when his guilty plea in state court became public knowledge. These documents are needed to prove the victims' allegations that the Government concealed the NPA from them, *see, e.g.,* DE 48 at 14-18,and to contradict what appears to be the Government's position, namely that the victims were aware of the NPA shortly after it was negotiated, *see, e.g.,* Gov't Answers to RFA ¶ 13(b) (claiming that "the USAO had communicated with Jane Doe #1 about the non-prosecution agreement prior to Epstein's June 30, 2008 guilty plea."). These documents are also necessary to contradict the Government's apparent claim that the NPA did not bar discussions with crime victims. *See, e.g.,* Gov't Answers to RFA ¶ 13(d) (Government denying request that it admit that "Epstein's defense attorneys had negotiated for a confidentiality provision in the non-prosecution agreement that barred conferring with victims about the agreement").

42. RFP No. 15 requests documents pertaining to the feasibility of notifying the victims about the NPA, along with information concerning how the victims came to receive a "corrected" notification letter on about September 3, 2008 – months after Epstein had pled guilty. These documents are needed to demonstrate that the Government had no valid reason for failing to provide notice to the victims. It is also needed to demonstrate why the victims at first received inaccurate information about the NPA, as well as Jeffrey Epstein's involvement in that inaccurate notice. *See, e.g.,* DE 48 at 15-16.

43. RFP No. 16 requests documents regarding Bruce Reinhart, a senior prosecutor who was present in the U.S. Attorney's Office during the time that the Office negotiated the NPA with Epstein, blocking his prosecution for federal crimes in the Southern Districdt of Florida. In RFP No. 16, the victims have sought documents showing that Reinhart learned confidential, non-public information about Epstein matter. The Court will recall that Reinhart has filed a sworn affidavit with this Court, in which he flatly declared that while he was a prosecutor in the Office: "I never learned any confidential, non-public information about the Epstein matter." DE 79-1 at 3 (¶ 12). When Reinhart made that statement, it seemed improbable to me, because Reinhart was in close contact with other prosecutors in the Office and would seem likely that he would have discussed the high-profile Epstein case with them. Additionally, I learned through public record that while still a prosecutor at the Office Mr. Reinhart established his criminal defense office at the exact address (and exact Suite number) as Jeffrey Epstein's personal business address. However, I did not have any direct way of contradicting Reinhart's sworn statement. Since then, however, in answering the victims' Requests for Admissions, the Government has admitted that it possesses information that Reinhart learned confidential, non-public information about the Epstein case and that he discussed the Epstein case with other prosecutors. Gov't Answers to RFA's ¶ 15(a) & (b). Of course, this means that the Government has documents that Reinhart

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filed a false affidavit with this Court. This gives rise to the reasonable inference that, if Reinhart was willing to provide false information about this subject, he may have additional information about the case that is being concealed as well.

44. Materials about Reinhart are also needed to support the victims' summary judgment motion. *See, e.g.,* DE 48 at 22-23 (raising allegations about Reinhart).

45. Reinhart's affidavit with the Court also states: "Because I did not have any, I did not share non-public confidential information about the Epstein investigation with any of Epstein's attorneys." DE 79-1 at 4 (¶ 17). Because the Government has information demonstrating that the first part of this statement is false, it may well be that the second part of the statement is false as well. Given that Mr. Reinhart established a business address identical to Epstein's business address, at a time while he was still working at the US Attorney's Office, and that Mr. Reinhart ultimately represented several of Epstein's co-conspirators, jet pilots, and staff, during the civil litigation, any involvement Mr. Reinhart had with the Epstein case while working at the Office is highly relevant.

46. The Government has further admitted that it possesses documents reflecting contacts between Bruce Reinhart and persons/entities affiliated with Jeffrey Epstein before Reinhart left his job at the U.S. Attorney's Office. Gov't Answers to RFA's ¶ 16. As stated above, Reinhart left the U.S. Attorney's Office to start a private firm that was located in the same address as Epstein's personal business where he was daily. This would appear to be a violation of the Florida rules of ethics for attorneys.

47. Information about Reinhart's connections to Epstein is critical to the victims' allegations in this case. If Reinhart was helping Epstein gain insight into the prosecutions efforts, that would provide a motive for Reinhart (and other prosecutors) not to properly notify the victims and not to confer with them. Also, if Epstein was improperly receiving information about the prosecution efforts against him (or lack thereof), that could be highly relevant to the remedies stage of this case, in which the victims will ask (among other things) to have the NPA agreement invalidated. Epstein has already indicated that he will raise a double jeopardy argument against that effort. However, double jeopardy considerations do not apply in situations where the defendant was not truly in jeopardy of prosecution. In addition, the Court may wish to consider, in crafting a remedy, Epstein's culpability for the violations of the NPA. Evidence that Epstein was improperly obtaining information about the prosecution efforts against him would be highly relevant to that culpability assessment. It is also relevant to the estoppel defense that the Government (and perhaps Epstein as well) intend to raise.

48. Evidence concerning Reinhart's connections, including improper connections, to Epstein is also relevant to bias and motive in this case. It would show, for example, the Reinhart had a reason to encourage others in the U.S. Attorney's Office to give Epstein a more lenient deal than the one he was entitled to.

49. RFP No. 16 requested information not only about improper connections between Epstein and Reinhart, but more broadly about such connections with any other prosecutors. Of course, if the Government possesses such information, it would be highly relevant to the victims' allegations for the reasons just discussed. In its answers to the victims' Requests for Admission, the Government admits that it has information about a personal or business relationship between Jeffrey Epstein and another prosecutor involved in the Epstein case, Matthew Menchel. Answers

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to Requests for Admission at ¶ 20. The Government should be required to disclose all of those documents so that the victims can determine whether there was anything improper about those relationships. In my experience, it is highly unusual for federal prosecutors to work on a case prosecuting someone (such as Jeffrey Epstein) and then, shortly thereafter, leave the employment of the federal government and enter into a business relationship with the person who was being prosecuted.

50. RFP No. 17 asks for documents concerning an investigation into the Epstein prosecution undertaken by the Justice Department's Office of Professional Responsibility (OPR) in Washington, D.C. The investigation was undertaken at the request of the victims, who asked the Justice Department to determine whether "improper influences" were brought to bear during the negotiations involving the possible prosecution (and ultimately the non-prosecution) of Jeffrey Epstein. It is apparent from the privilege logs that the Government has produced that OPR generated a great deal of correspondence (at least 46 pages) regarding this request. *See* Bates P-013909 to P-013955. Of course, improper influences being brought to bear on the Epstein prosecution would support the victims' allegations that they were not being properly notified. Moreover, OPR may well have investigated the specific allegations that are at issue in this case – or directed others to undertake such an investigation. Here again, this information would be critical to supporting the victims' case. In fact, because OPR has presumably investigated many of the precise actions and actors, about which the victims complain in this litigation, and have already gathered many of the documents needed, the production of the OPR case file could probably short-cut this litigation and discovery process.

51. There is no other way to obtain this information from OPR. On May 6, 2011, nearly half a year after the victims' request of December 10, 2010, for an investigation, OPR sent a letter to my co-counsel, Professor Paul Cassell, in which it stated that it "regret[ted] it could not be of assistance" in providing information about the allegations.

52. RFP No. 18 asks for information about why the U.S. Attorney's Office for the Southern District of Florida was "conflicted out" of handling various issues related to the Epstein case. This information is needed to show why the victims did not receive proper notifications about the NPA that the Office negotiated with Epstein. It appears that the conflict of interest that has been recognized may have to do with the Office's treatment of the victims. Moreover, in its production of documents, and in follow-up correspondence, the U.S. Attorney's Office for the Southern District of Florida has indicated that there are no responsive documents being held by the U.S. Attorney's Office in the other district that is handling conflict matters. (It appears that this other office is the Middle District of Florida.) This appears to be improbable, because the conflict matters would presumably generate many documents covered by the victims' discovery requests, including the OPR investigative file. Accordingly, the conflict matter is highly relevant to determining whether the U.S. Attorney's Office has provided complete production to the victims. A conflict of interest would also be highly relevant to the motivations of the Government attorneys throughout the handling of the Epstein case.

53. RFP No. 19 asks for information supporting allegations made in March 2011, by former U.S. Attorney Alexander Acosta. He sent a three-page letter to the news media in which he claimed that when Government attorneys began investigating Epstein, Epstein launched "a yearlong assault on the prosecution and the prosecutors." This information is needed to explain

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why the U.S. Attorney's Office would have withheld notifications from the victims about the NPA. If the prosecutors were being assaulted, as Acosta has said they were, then they would have reason to disregard their obligations to crime victims. In addition, this would show improper behavior by Epstein, which would be relevant at the remedies stage of this case in determining the scope of any remedy. These allegations would also bear strongly on motive and bias.

54. RFP No. 20 requests documents between the Government and state and local prosecutors and police agencies (including The Palm Beach Police Department) regarding the non-prosecution agreement. Because this involves information outside of the Department, it is the victims understanding that the Government has already turned over all of this information to them, as the Court has directed. *See* DE 190 at 2 (requiring production of information with persons or entities outside the federal government). For the sake of completeness, however, it is worth noting that this information is needed to demonstrate that the victims were not properly informed that Epstein's plea to state charges would trigger the NPA and preclude prosecution for crimes committed against them.

55. RFP No. 21 requests correspondence regarding the NPA. Here again, the victims understand that the Government is prepared to produce all of this information to them (once the stay pending action by the Eleventh Circuit is lifted). Again, for the sake of completeness, it is worth noting that this correspondence is needed to demonstrate the victims' claims that the Government was concealing the existence of the NPA from them and that this was done at Epstein's behest. The Court has specifically noted that the victims have a need for information that will allow them to argue to the Court in support of their "allegation of a deliberate conspiracy between Epstein and federal prosecutors to keep the victims in the dark on the pendency of negotiations between Epstein and federal authorities until well after the fact and presentation of the non-prosecution agreement to them as a *fait accompli*." DE 189 at 12 n.6.

56. RFP No. 22 requests information about any considerations that Epstein provided, or offered to provide, to any individual within the Government. Here again, the victims understand that this information is being provided to them. It is again worth noting, however, that this information is highly relevant to explaining why the U.S. Attorney's Office would not have properly notified the victims about what was happening in their case, an allegation that is at the center of the victims' summary judgment motion. *See, e.g.,* DE 48 at 11 (noting allegation that Epstein pushed the U.S. Attorney's Office to keep the NPA secret from public view to avoid public criticism).

57. RFP No. 23 asks for documents that will assist Jane Doe No. 1 and Jane Doe No. 2 in protecting their rights under the CVRA. This request links to the Government's obligations under the CVRA to use its "best efforts" to protect victims' rights. 18 U.S.C. § 3771(c)(1). The direct connection between this request and the victims' case is self-explanatory.

58. RFP No. 24 request correspondence related to the Epstein prosecution that the Government had with entities outside the federal government. Here again, it is my understanding that these materials have already been ordered produced. *See* DE 190 at 2 (requiring production of information with persons or entities outside the federal government). For the sake of completeness, this information is again relevant to showing the course of the Epstein

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investigation and why the victims were not properly notified about event during that investigation.

59. RFP No. 25 requests all initial productions that are required under the Federal Rules of Civil Procedure. This is a protective request to ensure that, should it be determined that the Civil Rules apply, they then receive all materials to which they are entitled.

60. In June 2013, the victims sent a supplemental request for production, asking the Government to provide any information concerning any investigation that the Department undertook concerning the treatment of the victims during the investigation in this case, including any FBI, grand jury, OPR or other investigation in the Southern District of Florida, Middle District of Florida, or elsewhere. Here again, this information is critically needed, as it would go directly to proving the victims' allegations that their rights were violated during the investigation of Epstein. This information would also go directly to defeating the Government's "estoppel" argument. This information would also show motive and bias.

Inadequate Privilege Log

61. The Government has produced a privilege log that violates the Court's order in this case. I have been greatly hampered in responding to the Government's assertions of privilege because of that inadequate log. Indeed, in many cases, it is impossible to determine whether the Government's assertions of privilege are even plausible because of the inadequacy of the log.

62. The Court has directed the Government to produce a privilege log that "clearly identif[ies] each document[] [as to which privilege is asserted] by author(s), addressee(s), recipient(s), date, and general subject matter . . . ." DE 190 at 2. Many of the entries in the privilege log fail to meet this requirement.

63. A good illustration of the inadequacies of the privilege log comes from the very first entry in the log, covering Box No. 1 (P-000001 through P-000039), some 39 pages of documents. DE 212-1. Yet the only description of these 39 pages is: "File folder entitled 'CORR RE GJ SUBPOENAS' containing correspondence related to various grand jury subpoenas and attorney (Villafaña) handwritten notes."

64. Another good illustration of the inadequacies of the privilege log is provided on page 20 of the first privilege log, with regard to Box No. 3 (P-012362 through P-012451). The Government asserts privilege here regarding 90 pages of documents. Yet the only description of these 90 pages is: "File folder entitled 'Key Documents' containing correspondence between AUSA and case agent regarding indictment prep questions, victim identification information, corrections to draft indictment, indictment preparation timeline, key grand jury materials."

65. There are many other illustrations of the inadequacies of the privilege log which the Court will see when it examines it. I have also filed contemporaneously a response to the government's privilege log, which identifies many situations of an inadequate privilege log, as well as other responses that are needed to respond to the Government's privilege log.

66. The Government has never contacted me or co-counsel about any burdens associated with producing a privilege log that complied with the Court's directives. At all times relevant to this case, I would have been willing to work with Government counsel to minimize any excessive burden from producing an adequate privilege log. The requests for production that I sent to the Government specifically invited discussion to avoid any excessive burden.

Failure to Prove Factual Underpinnings of Privilege Claim

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67. Many of the Government's privilege assertions require factual premises – such as the existence of an attorney-client relationship and the rendition of legal services within that relationship. Yet the Government has not provided the factual underpinnings for any of its privilege assertions.

68. An illustration of this problem is found on page 1 of the supplemental privilege log (DE 216-1), with regard to supplemental box No. 3 (P-013284). The entry here reads: "7/10/08 emails between J. Sloman and A. Marie Villafaña, K. Atkinson, and FBI re proposed response to Goldberger's letter re victim notification." The log then indicates that the Government is asserting attorney-client privilege, work product privilege, and deliberative process privilege. The Government, however, does not provide any document for any of the factual underpinnings of any of these claims. For example, with regard to the attorney-client claim, the Government does not explain who the attorney is and who the client is. With regard to the work product claim, the Government does not explain what litigation this document contemplated. And with regard to deliberative process, the Government does not explain what deliberative process was involved.

69. There are many other illustrations of the Government's failure to prove the factual underpinnings of privilege assertions, which the Court will see when it examines the privilege log and the victims responsive log.

Waiver of Confidentiality

70. Some of the privileges that the Government has asserted have been waived. Of course, a requirement of a privilege is that confidentiality be maintained. Some of the materials have been circulated outside of any confidential circle, thereby waiving privilege.

71. An illustration of waiver found on page 1 of the supplemental privilege log (DE 216-1), with regard to supplemental box No. 3 (P-013282 to 83). The entry here reads: "7/08/08 email from A. Marie Villafaña to A. Acosta, J. Sloman, Ki. Atkinson, and FBI re proposed response to Goldberger's letter re victim notification." The log then indicates that the Government is asserting attorney-client privilege regarding these emails. But the emails were not internal to the U.S. Attorney's Office, but were also sent to the "FBI." (This is another illustration of the inadequacies of the privilege log, because who in the FBI the materials were sent to is not disclosed.) But the FBI is a law enforcement investigative agency, not an agency that provides legal advice. Accordingly, any attorney-client privilege would be waived by dissemination of this e-mail outside the U.S. Attorney's Office.

72. Another illustration of waiver is found on page 3 of the supplemental privilege log (DE 216-1), with regard to supplemental box No. 3 (P-013504 to P-013507). The entry here reads: "File folder labeled 'Mtg w/ Ken Starr, RAA, JS, Drew' containing handwritten notes by A. Marie Villafaña." Kenn Starr, of course, is a *defense* attorney who represented defendant Epstein. Recording information provided by a defense attorney is not part of any governmental attorney-client privilege.

73. Another illustration of waiver is found on page 7 of the supplemental privilege log (DE 216-1), with regard to supplemental box No. 3 (P-013644 through P-013653). The entry here reads: "File folder entitled "Notes Re Plea Negotiations" containing 9/17/07 e-mail from A. Marie Villafaña to J. Richards, N. Kuyrkendall re status update; undated and typed handwritten notes by A. Marie Villafaña re items to be completed on case, strength of case, victim interviews,

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summary of evidence, guidelines calculations." The Government is asserting attorney-client privilege regarding this e-mail. I understand the reference to "Richards' and "Kuyrkendall" to be references to FBI agents – not attorneys in the U.S. Attorney's Office. Accordingly, the attorney-client privilege would not extend to this e-mail.

The Government's Fiduciary Duty to Crime Victims Bars Any Privilege

74. I am familiar with the caselaw recited in our pleadings regarding a "fiduciary exception" (also known as the "*Garner* exception" in some settings) to privileges. In this case, the Government had a fiduciary obligation to protect the CVRA rights of Jane Doe No. 1 and Jane Doe No. 2. Specifically, because they were recognized "victims" under the CVRA, the Government had obligations to provide them rights under the CVRA, including the right to confer, the right to notice, and the right to be treated with fairness. Because of this fiduciary duty, an exception applies to many of the Government privilege claims regarding interactions with the victims.

75. The fiduciary duty of the Government to the victims in this case is clear. In 2007, the FBI determined that both Jane Doe No. 1 and Jane Doe No. 2 were victims of sexual assaults by Epstein while they were minors beginning when they were approximately fourteen years of age and approximately thirteen years of age respectively. These sexual assaults involved use of means of interstate commerce (i.e., a telephone) and travel in interstate commerce. Both Jane Does were initially identified through the Palm Beach Police Department's investigation of Epstein.

76. Confirming the fact that the Government had identified Jane Doe No. 1 as a victim in this case, on about June 7, 2007, FBI agents hand-delivered to Jane Doe No. 1 a standard CVRA victim notification letter. The notification promises that the Justice Department would make its "best efforts" to protect Jane Doe No. 1's rights, including "[t]he reasonable right to confer with the attorney for the United States in the case" and "to be reasonably heard at any public proceeding in the district court involving . . . plea . . . ." The notification further explained that "[a]t this time, your case is under investigation."

77. Similarly, on about August 11, 2007, FBI agents hand-delivered to Jane Doe No. 2 a standard CVRA victim notification letter. The notification promises that the Justice Department would make its "best efforts" to protect Jane Doe No. 1's rights, including "[t]he reasonable right to confer with the attorney for the United States in the case" and "to be reasonably heard at any public proceeding in the district court involving . . . plea . . . ." The notification further explained that "[a]t this time, your case is under investigation."

78. Early in the investigation, the FBI agents and the Assistant U.S. Attorney had several meetings with Jane Doe No. 1. Jane Doe No. 2 was represented by counsel that was paid for by Epstein and, accordingly, all contact was made through that attorney. These meetings occurred because the FBI had obligations to protect the victims' rights under the CVRA.

79. In October 2007, shortly after the initial non-prosecution agreement was signed between Epstein and the U.S. Attorney's Office for the Southern District of Florida, Jane Doe No. 1 was contacted to be advised regarding the investigation. On October 26, 2007, Special Agents E. Nesbitt Kuyrkendall and Jason Richards met in person with Jane Doe No. 1 because she was recognized as a "victim' of Epstein's crime.

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80. In all of these dealings between the Government and the victims, as well as other dealings of a similar nature, the Government had a fiduciary obligation to protect the interests of the victims under the Crime Victims Rights Act. Accordingly, the Government is precluded from raising any privilege claim to which a fiduciary exception applies or, at the very least, any privilege assertion would be outweighed by the victims' compelling need for the material.

81. An illustration of a situation where the fiduciary duty exception applies is found on page 1 of the supplemental privilege log (DE 216-1), with regard to supplemental box No. 3 (P-013282 to 83). The entry here reads: "7/08/08 email from A. Marie Villafaña to A. Acosta, J. Sloman, K. Atkinson, and FBI re proposed response to Goldberger's letter re victim notification." In responding to defense attorney Goldberger's letter about victim notification, the U.S. Attorney's Office had a statutory duty under the CVRA to protect the victims' interests. Accordingly, the Office cannot assert privilege when questions about whether it fulfilled its obligations to the victims have arisen in this case or, at the very least, any privilege assertion would be outweighed by the victims' compelling need for the materials.

82. Another illustration of a situation where the fiduciary duty exception applies is found on page 16 of the first privilege log (DE 212-1), with regard to Box #2 P-010526 to P-010641. The entry reads: "File folder entitled 'Rsrch re Crime Victims Rights' containing attorney research, handwritten notes, draft victim notification letter, and draft correspondence to Jay Lefkowitz." Here again, the materials at issue go to the heart of this case – what kind of notifications were made to the victims and how did the defense attorneys shape and limit those notifications. Moreover, in evaluating victims' rights issues and determining what kind of letter to send, the Government was fulfilling legal duties that it owed to the victims. Accordingly, the Office cannot now assert privilege when questions about whether it fulfilled its obligations to the victims have arisen in this case.

Communications Facilitating Crime-Fraud-Misconduct Not Covered

83. I am familiar with the cases cited in our brief regarding an exception to various privileges when the communications concern crime, fraud, or government misconduct. Many of the important documents about the treatment of the victims to which the Government is asserting privilege would fall within that exception.

84. With regard to fraud and government misconduct, a number of the documents in the Government's privilege log concern concealment from the victims of the existence of a non-prosecution agreement between the Government and Epstein. I have reviewed a copy of the non-prosecution agreement signed on about September 24, 2007, by Epstein and his attorneys and a representative of the U.S. Attorney's Office. The text of that agreement bars disclosure of the agreement to the victims.

85. On about January 10, 2008, my clients Jane Doe No. 1 and Jane Doe No. 2 received letters from the FBI advising them that *"[t]his case is currently under investigation.* This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." The statement in the notification letter was deceptive, because it did not reveal that the case had previously been resolved by the non-prosecution agreement entered into by Epstein and the U.S. Attorney's Office discussed previously. Moreover, the FBI did not notify Jane Doe No. 1 or Jane Doe No. 2 that a plea agreement had been reached previously, and that part of the agreement was a non-prosecution agreement with the U.S. Attorney's Office for the

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Southern District of Florida and that the Non-Prosecution Agreement would resolve the federal case completely. (Whether the FBI itself had been properly informed of the non-prosecution agreement is also unclear. We are not alleging misconduct by the FBI, but rather that the FBI was not properly informed about the case or, in any event, was acting at the direction of the U.S. Attorney's Office.)

86. In about April 2008, Jane Doe No. 1 contacted the FBI because Epstein's counsel was attempting to take her deposition and private investigators were harassing her. Assistant U.S. Attorney A. Marie Villafaña secured pro bono counsel to represent Jane Doe No. 1 and several other identified victims in connection with the criminal investigation. Pro bono counsel was able to assist Jane Doe No. 1 in avoiding the improper deposition. AUSA Villafaña secured pro bono counsel by contacting Meg Garvin, Esq. of the the National Crime Victims' Law Center in Portland, Oregon, which is based in the Lewis & Clark College of Law. During the call, Ms. Garvin was not advised that a non-prosecution agreement had been reached in this matter.

87. On May 30, 2008, another one of my clients who was recognized as an Epstein victim by the U.S. Attorney's Office, received letters from the FBI advising her that *"[t]his case is currently under investigation.* This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." The statement in the notification letter was deceptive because it did not reveal that the case had been resolved by the non-prosecution agreement entered into by Epstein and the U.S. Attorney's Office in September 2007.

88. In mid-June 2008, I contacted AUSA Villafaña to inform her that I represented Jane Doe No. 1 and, later, Jane Doe No. 2. I asked to meet to provide information about the federal crimes committed by Epstein, hoping to secure a significant federal indictment against Epstein. AUSA Villafaña and I discussed the possibility of federal charges being filed. At the end of the call, AUSA Villafaña asked me to send any information that I wanted considered by the U.S. Attorney's Office in determining whether to file federal charges. I was not informed that previously, in September 2007, the U.S. Attorney's Office had reached an agreement not to file federal charges. I was also not informed that any resolution of the criminal matter was imminent at that time. Presumably the reason the U.S. Attorney's Office withheld this information from me was because of the confidentiality provision that existed in the non-prosecution agreement. At this point it is clear that AUSA Villafana was restricted in what she was being permitted to tell me.

89. On July 3, 2008, I sent to AUSA Villafaña a letter. In the letter, I indicated my client's desire that federal charges be filed against defendant Epstein. In particular, I wrote on behalf of my clients: "We urge the Attorney General and our United States Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual predator." When I wrote this letter, I was still unaware that a non-prosecution agreement had been reached with Epstein – a fact that continued to be concealed from me (and the victims) by the U.S. Attorney's Office. I only learned of this fact later on.

90. As alleged in the preceding paragraphs, and elsewhere in this affidavit and in this case, deliberate concealment from crime victims and their legal counsel of the existence of a signed

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non-prosecution agreement would be a fraud and government misconduct. Documents relating to that fraud and misconduct would then fall outside of many of the privileges being asserted.

91. An illustration of a document to which the crime-fraud-misconduct exception applies on this basis is found on page 3 of the supplemental privilege log (DE 216-1), with regard to Suppl. Box #3 P-013342 to P-013350. The entry reads: "File folder entitled '12/05/07 Starr to Acosta' containing drafts of 11/30/07 letters from A. Acosta to K. Starr and from J. Sloman to J. Lefkowitz re performance and victim notification with handwritten notes and edits by A. Marie Villafaña." Again, these materials are central to the dispute in this case, as they involve discussions between the U.S. Attorney's Office and defense attorneys about notifications to crime victims. And given the dates of the communications, in all likelihood they would be related to the deceptive notifications that the Government made to the victims a few weeks later.

92. Another illustration of a document to which the crime-fraud-misconduct exception applies is found on page 1 of the supplemental privilege log (DE 216-1), with regard to Suppl. Box #3 P-013282 to P-013283. The entry reads: "7/9/08 Email from A. Marie Villafaña to A. Acosta, J. Sloman, K. Atkinson, and FBI re proposed response to Goldberger letter re victim notification." These communications would presumably reflect efforts by the government prosecutors and Epstein's defense attorneys (e.g., Goldberger) to keep the non-prosecution agreement secret.

93. Another illustration of where the crime-fraud-misconduct exception would apply is to information that the Government possesses that Bruce Reinhart learned private, non-public information about the Epstein case. This would show (at the very least) misconduct by Bruce Reinhart in later representing Epstein-related entities. Because the Government's (inadequate) privilege log does not reveal which entries relate to Reinhart, it is not possible to point the Court to the specific documents that demonstrate this misconduct. These documents, however, are covered by the crime-fraud-misconduct exception.

94. Another illustration of where the crime-fraud-misconduct exception could potentially apply is with regard to information that the Government possesses that Matthew Menchel has a personal or business relationship with defendant Jeffrey Epstein. Gov't Answers to RFA's ¶ 20. This could potentially show misconduct by Menchel, and also potentially a motive to violate the victims' rights as explained previously. The Government's privilege log has numerous entries showing that Menchal was substantially and personally involved in making decisions related to the Epstein prosecution. *See, e.g.,* page 19 of the first privilege log (DE 212-1), with regard to Box #3 P-011923 to P-011966. The victims have information suggesting that immediately after leaving his employment with the U.S. Attorney's Office, Menchel was associated with Epstein-controlled entities or had some business relationship with him. The documents that the Government possesses showing a personal or business relationship between one of its prosecutors and the man he was charged with prosecuting should be produced.

95. The Government has admitted that its internal affairs component – the Office of Professional Responsibility – has collected information about possible improper behavior during the investigation of the Epstein matter. Gov't Answers to RFA ¶22 (government admits that "The Justice Department's Office of Professional Responsibility and/or other Government entities have collected information about . . . other government attorney's [apart from Bruce Reinhart's] possible improper behavior in the Epstein matter"). The fact that the Government's own investigating agencies have collected such information demonstrates that there is a prima facie

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case of improper behavior, which is enough to trigger the crime-fraud-misconduct exception to various privileges.

Factual Materials Not Privileged

96. As noted in the accompanying legal memorandum, factual materials are generally not covered by the privileges at issue in this case. Many of the materials to which the Government is asserting privilege are factual materials.

Assertions of Attorney-Client Privilege

97. The Government has asserted attorney client privilege regarding many documents. Yet with regard to most of these assertions, it is impossible to determine who is the attorney, who is the client, whether professional legal services are being rendered, and whether the communications were confidential to those involved in the delivery of legal services. Accordingly, it is very difficult for me to respond to many of the assertions of attorney client privilege and, in any event, the Government has failed to carry *its* burden of showing that the privilege applies.

98. An illustration of documents at to which attorney-client privilege appears to have been improperly asserted or inadequately described is found at page 7 of the first privilege log (DE 216-1), with regard to Suppl. Box #3 P-013811 to P-013833. The entry for these twenty-two pages of documents reads: "File folder entitled 'Information Packet Drafts' containing several drafts of Informations, and complete draft Information packet." It is impossible from this description to see how the attorney-client privilege applies to these documents. I could provide many other illustrations of the problem.

99. The Government's attorney-client privilege claim directly covers situations where it was in a fiduciary relationship with the victims and therefore is limited in now asserting privilege. For example, page 3 of the supplemental privilege log (DE 216-1) contains an entry concerning Suppl. Box #3 P-013342 through P-013350, which involves "File folder entitled '12/05/07 Starr to Acosta' containing drafts of 11/30/07 letters from A. Acost to K. Starr and from J. Sloman to J. Lefkowitz re performance and victim notification with handwritten notes and edits by A. Marie Villafaña." This information goes very directly to the issues involved in this case, as it goes directly to "victim notification." Yet the Government has asserted an attorney-client privilege to prevent the victims from learning what is in these documents. The fiduciary exception to the attorney-client privilege applies in this situation, and limits the government's ability to invoke a privilege. This also appears to be shared communications between the Government and Epstein's attorneys, and it is unclear how the attorney-client privilege could ethically apply to such documents.

100. As one example of why the victims have established a compelling need for the materials described in the preceding paragraph (and other materials like them) is the fact that the Court has indicated that it will be considering an "estoppel" argument raised by the Government as a defense in this case. DE 189 at 12 n.6. The Court has noted that this argument "implicates a fact-sensitive equitable defense which must be considered in the historical factual context of *the entire interface between Epstein, the relevant prosecutorial authorities and the federal offense victims* – including an assessment of the allegation of a deliberate conspiracy between Epstein and federal prosecutors to keep the victims in the dark on the pendency of negotiations between Epstein and federal authorities until well after the fact and presentation of the non-prosecution agreement to them as *a* fait accompli." DE 189 at 12 n.6 (emphasis added). The materials to

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which the Government is asserting attorney-client privilege go directly to that "interface" between *the victims,* the Government, and Epstein. The victims have a compelling need for this information and the fiduciary exception to the attorney-client privilege applies to permit the Court to provide these documents to the victims.

101. The Government has not explained any harm that would come from releasing the documents covered by attorney client privilege to the victims. If the Government raises any such harm, I respectfully request an opportunity to provide additional information on that alleged harm.

Deliberative Process Privilege

102. Some of the correspondence that is being withheld by the Government under the deliberative process privilege concerns an investigation that the Justice Department's Office of Professional Responsibility (OPR) opened with regard to the Epstein case. This investigation was undertaken at the request of the victims in this case. On December 10, 2010, co-counsel, Professor Paul Cassell of the University of Utah College of Law, and I met with the U.S. Attorney for the Southern District of Florida regarding this case in the U.S. Attorney's Office in Miami, Florida. At on that date, Professor Cassell presented a letter to the U.S. Attorney, Mr. Ferrer, asking him to personally investigate what happened during the Epstein prosecution and how the victims were treated during that investigation. Based on the privilege log that has been provided, as well as subsequent correspondence sent to Professor Cassell, that request for investigation was turned over to OPR in Washington, D.C.

103. The ultimate outcome of the OPR investigation is unclear. What is clear is that many documents are being withheld about that investigation – documents that would go to the central issues in this case. Approximately three whole pages of the privilege log – pages 12 through 14 of the supplemental privilege log (DE 216-1) – relate to the OPR investigation of how the Epstein case was handled and how the victims were treated.

104. A deliberative *process* privilege claim can only be asserted with regard to the process of reaching a decision, not the ultimate decision itself. The Government here has apparently asserted a deliberative process claim over not only the OPR process, but also over the OPR decision. It is not clear which document embodies the final OPR decision (or, given the inadequacies of the Government's privilege log, whether that final decision has been produced). Given the limited descriptions of the documents that have been provided, it appears that the OPR decision may be reflected in a document found on page 13 of the supplemental privilege log (DE 216-1), with regard to Suppl. Box #3 P-013940 to P-013942. The description there reads: "Draft Letter, marked 'Confidential: To Be Opened by Addressee Only,' Robin C. Ashton to Wifredo A. Ferrer, with handwritten corrections." No date is provided regarding this letter. Nor is there any indication as to whether the letter was or was not circulated to other persons. It is also noteworthy that this letter is described as a "draft" letter. Nowhere in the privilege log is the final version of the letter indicated, raising questions about what was "draft" and what was "final." If this is the final embodiment of OPR's conclusions, then this letter would not be protected by a "deliberative process" privilege, because the deliberations would have come to an end. (It is also worth noting that because OPR is an agency that investigates misconduct by federal prosecutors, it would not be providing attorney-client advice to prosecutors and its

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documents would not be attorney-client privileged with regard to, for example, the U.S. Attorney's Office for the Southern District of Florida.)

105. The fact that OPR has investigated many of the exact claims raised by Jane Does 1 and 2, and were able to gather documents unobstructed by the Government in order to reach its conclusion likely means that production of the OPR file to the victims in this case could significantly shortcut this discovery process and the litigation. Additionally, if OPR "needed" the documents to investigate and make findings regarding the victims' claims, then logically the victims share that "need" and have no other means through which to obtain the documents. The Government has not explained any harm that would come from releasing the documents covered by deliberative process privilege to the victims. If the Government raises any such harm, I respectfully request an opportunity to provide additional information on that alleged harm.

Investigative Privilege

106. The investigative privilege is a qualified privilege, which balances the need of particular litigate for access to information against any public interest in non-disclosure. That balancing process is ordinarily made with reference to factors discussed in *Frankenhauser v. Rizzo*, 59 F.R.D. 339, 344 (E.D.Pa.1973), specifically:

> (1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identities disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the police investigation has been completed; (7) whether any intradepartmental disciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to the plaintiff's case.

On the facts of this case, these factors weigh in favor of disclosing the information the victims have requested.

107. With regard to factor (1) (the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information), I represented four victims of Epstein's sex offenses in Federal Court – Jane Doe No. 1, Jane Doe No. 2, and a victim I will refer to as "S.R." and "M.J.", and other victims of Jeffrey Epstein's abuse as well. If further information is disclosed about this case, that will not discourage them from providing information, but rather will encourage them. I have also talked personally to attorneys for a number of other victims in this case. I have been told that many of these other victims hope that Jane Doe No. 1 and Jane Doe No. 2 are successful in their case.

108. With regard to factor (2) (the impact upon persons who have given information of having their identities disclosed), Jane Doe No. 1 and Jane Doe No. 2 are not asking for information that would identify any particular victim. Accordingly, there will be no effect on other victims. Additionally, I am aware of the true names of many of Epstein's victims and that information has

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not been disseminated to the public where those individual victims did not wish for their identities to be disseminated.

109. With regard to factor (3) (the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure), this is a lawsuit to force the compliance by the Government with its CVRA obligations. Accordingly, the Government's "program" of providing victims' rights will be directly improved if the victims are able to enforce their rights in this lawsuit.

110. With regard to factor (4) (whether the information sought is factual data or evaluative summary), many of the items that the victims seeks are factual summaries. An example of this is found at page 18 of the first privilege log (DE 212-1), with regard to Box #3 P-011778 to P-011788. The entry reads: "File folder entitled '6/12/09 Victim Notif. Log' containing chart with victim contact information and attorney notes regarding dates and type of contacts." This would include, for example, dates of contacts with Jane Doe No. 1 and Jane Doe No. 2, which would be purely factual information.

111. With regard to factor (5) (whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question), Jane Doe No. 1 and Jane Doe No. 2 are plainly *victims* of a crime, not criminal defendants. Indeed, as the Court is aware, it is the *criminal defendant* (Jeffrey Epstein) who has undertaken several "limited" intervention efforts to try and block disclosure of information to the victims.

112. With regard to factor (6) (whether the police investigation has been completed), the investigation of Epstein was completed years ago and the Government has not produced in its privilege log any information indicating recent investigative activity.

113. With regard to factor (7) (whether any intradepartmental disciplinary proceedings have arisen or may arise from the investigation), it appears than OPR investigation has arisen as a direct result of the victims' efforts in this case. However, it does not appear that release of any information to the victims would hamper any disciplinary proceedings. Indeed, to the extent that the victims are able to obtain information about this case and find information about misconduct, then they can provide that information to Government and other disciplinary entities as appropriate.

114. With regard to factor (8) (whether the plaintiff's suit is non-frivolous and brought in good faith), it should be clear at this juncture of a five-year long case that the victims have a substantial claim that is brought in good faith.

115. With regard to factor (9) (whether the information sought is available through other discovery or from other sources), as recounted throughout this affidavit, the victims have no other way to obtain the information at issue in this privilege debate, as it involves information internal to the Justice Department.

116. With regard to factor (10) (the importance of the information sought to the plaintiff's case), the information that the victims are seeking is highly important to their case. Indeed, without adequate proof, the Court has indicated that it may have to deny the victims' petition. DE 99 at 11. Throughout this affidavit, I have provided numerous examples and explanations of why the victims need the information that they are requesting. The documents to which the Government

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is asserting investigative privilege, for example, bear directly on the Government's alleged "estoppel" defense, which the victims need a complete evidentiary record to dispute.

Work-Product Doctrine

117. A work product claim can be defeated by a showing of substantial need and undue hardship to obtain the materials in other ways. In this affidavit, I have tried to articulate the specific and compelling need for all of the materials that victims are seeking. I will not repeat all of those assertions here, but simply note that I stand ready to provide any additional information that the Court may require to determine the compelling need that the victims have for the materials they have requested as well as the undue hardship (if not actual impossibility) of obtaining the materials in other ways. Any balancing of considerations tips decisively in the victims favor.

118. As one example, the victims have a compelling need for the materials that OPR collected as part of its investigation. Because Justice Department attorneys are generally required to talk to OPR investigators, OPR was apparently able to investigate the claims of misconduct related to the Epstein case by getting statements from the attorney's involved. These interviews appear to be recorded in materials found at page 14 of the supplemental privilege log (DE 216-1), with regard to Suppl. Box #3 P-013956 to P-013846 [sic – apparently should be P-013970, a total of 14 pages]. Judging from the entry, these notes would be factual statements from Justice Department prosecutors about how the Epstein case was handled and whether any misconduct occurred during the handling of the case. Those are central issues in this case. There is no other way for the victims to obtain information about these subjects, because the Justice Department has declined to provide information on this subject.

119. The victims have established a substantial need for the materials they are requesting in the previous paragraphs of this affidavit that review, request-by-request, their document production requests numbers 1 through 25 and supplemental request number 1.

120. As another example of why the victims have established a compelling need for the materials is the fact that the Court has indicated that it will be considering an "estoppel" argument raised by the Government as a defense in this case. DE 189 at 12 n.6. The Court has noted that this argument "implicates a fact-sensitive equitable defense which must be considered in the historical factual context of *the entire interface between Epstein, the relevant prosecutorial authorities and the federal offense victims* – including an assessment of the allegation of a deliberate conspiracy between Epstein and federal prosecutors to keep the victims in the dark on the pendency of negotiations between Epstein and federal authorities until well after the fact and presentation of the non-prosecution agreement to them as *a* fait accompli." DE 189 at 12 n.6 (emphasis added). The materials to which the Government is asserting work product protection go directly to that "interface" between the victims, the Government, and Epstein. The victims have no other way of showing what that interface is. The Government will not be harmed if the materials are provided to the victims.

Grand Jury Information

121. The victims' legal pleading has explained why the Government has not properly asserted any grand jury secrecy to the documents at issue. In addition, many of the Government's grand jury privilege assertions appear to broadly cover both grand jury and non-grand jury information. Even if the Court allows the Government to assert some form of grand jury privilege, it should require the Government to sever grand jury materials from non-grand jury materials.

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122. An illustration of this problem comes from page 12 of the first privilege log (DE 212-1), with regard to Box #2 P-008616 to P-008686. The entry reads: "File folder entitled 'FBI Summary Charts' containing chart prepared at direction of AUSA, containing victims names, identifying information, summary of activity, and other information relevant to indictment." This does not appear to be a document that was ever presented to the grand jury or that directly discloses grand jury proceedings. Moreover, to the extent that it involves some kind of limited disclosure of grand jury proceedings, that limited disclosure could be redacted and the other information provided to the victims.

123. It does not appear that any of the alleged grand jury materials that the Government is asserting privilege involve on-going grand jury issues. Moreover, it does not appear that disclosing any of the materials would "tip off" a potential target to a Government investigation. Of course, Jeffrey Epstein (and his associates) are well aware of the Government's investigation into their crimes against young girls for sexual purposes.

124. The Government has not explained any harm that would come from releasing the documents to the victims. If the Government raises any such harm, I respectfully request an opportunity to provide additional information on that alleged harm.

Privacy Rights of Other Victims

125. Jane Doe No. 1 and Jane Doe No. 2 do not seek confidential or identifying information about any other victims. To clarify that fact, on July 31, 2013, I sent a letter to the Government stating, in part, that "to avoid any interference with any privacy rights of victims who are not parties to this litigation, Jane Doe #1 and Jane Doe #2 are not seeking any identifying information about other victims. In any of the documents that Jane Doe #1 and Jane Doe #2 have requested the Government produce, the Government should not produce the names of other victims or other identifying information (e.g., address or telephone number) but should instead redact that information."

* * * * *

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of August, 2013.

/s/ Bradley J. Edwards
BRADLEY J. EDWARDS, ESQ.

Attachments:
1. October 3, 2011, request for production;
2. June 24, 2013, supplemental request for production; and
3. Victims' Requests for Admissions and Government Answers

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EXHIBIT 1

To

Brad Edwards Affidavit

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE #1 and JANE DOE #2,

Plaintiffs

v.

UNITED STATES,

Defendants

_____/

JANE DOE #1 AND JANE DOE #2'S FIRST REQUEST FOR PRODUCTION TO THE GOVERNMENT REGARDING INFORMATION RELEVANT TO THEIR PENDING ACTION CONCERN THE CRIME VICTIMS RIGHTS ACT

COME NOW Jane Doe #1 and Jane Doe #2 ("the victims"), by and through undersigned counsel, and request the defendant United States (hereinafter "the Government") to produce the original or best copy of the items listed herein below for inspection and/or copying, pursuant to the Court's Order (DE #99) directing discovery in this case.

BACKGROUND

As the Government will recall, the victims have asked the Government to stipulate to undisputed facts in this case. The Government has declined. Accordingly, the victims filed their Motion for Finding of Violations of the Crime Victims' Rights Act and Request for a Hearing on Appropriate Remedies (DE 48) (the victims' "summary judgment motion") along with a Motion to Have Their Facts Accepted Because of the Government's Failure to Contest Any of the Facts (DE 49).

On September 26, 2011, the Court denied the victims' motion to have their facts accepted (DE 99 at 11). At the same time, however, the Court has ordered discovery to develop the

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factual record concerning the summary judgment motion (DE 99 at 11). The Court reserved ruling on the victims' motion for an order directing the Government not to suppress relevant evidence (DE 99 at 11).

On September 28, 2011, the victims requested that the Government voluntarily provide documents concerning this case. The Government declined to provide even a single document. Accordingly, the victims now seek the following information relevant to their pending summary judgment motion.

DISCOVERY REQUESTED

The numbered discovery requests below should all be construed in light of the definitions of terms provided at the end of the requests.

1. In the victims' currently-pending summary judgment motion, the victims contend that the Government conducted an extensive criminal investigation into Jeffrey Epstein's sexual exploitation of young girls, including Jane Doe #1 and Jane Doe #2 between 2001 and 2008. The victims also contend that the FBI and other federal agencies established that Epstein operated a large criminal enterprise that used paid employees and underlings to repeatedly find and bring minor girls to him. In deferring ruling on the victims' summary judgment motion, the Court noted that the victims had alleged that the FBI and the U.S. Attorney's Office's "investigation developed a strong case for a federal prosecution against Epstein based on 'overwhelming' evidence." DE 99 at 2. The Court, however, also noted that this was an allegation that needed "further factual development." DE 99 at 2 n.2. Please provide all documents, correspondence, and other information that supports these victims' allegations, including:

   (a) the FBI case file on the Epstein case;
   (b) all documents, correspondence, witness statements, FBI 302s, and other similar information, that the Government collected as part of its case against and/or investigation of Epstein, including any information provided to Epstein or receive from Epstein as part of "discovery" or exchange of information concerning the case;
   (c) all documents, correspondence, witness statements, and other similar information that the Government received from any federal, state, local, or other law enforcement agency regarding sex offenses committed against children by Jeffrey Epstein;
   (d) the 82-page prosecution memorandum (a/k/a "pros memo") outlining numerous federal sexual offenses committed by Epstein (and any attachments to that memorandum) and the 53-page draft indictment for numerous federal

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offenses that the Government developed in this case and any similar successor or predecessor document; and

(e) Any other prosecution memorandum regarding Jeffrey Epstein (and any documents attached to that memorandum) and all draft federal indictments that were prepared regarding Epstein. Please also provide all documents, correspondence, and other information regarding these prosecution memoranda and the draft federal indictments.

2. Throughout their pending summary judgment motion, the victims contend that they received only limited notifications from the Government (and, in particular, the U.S. Attorney's Office acting through FBI agents) about the plea negotiations that occurred with Jeffrey Epstein and the non-prosecution agreement that was ultimately reached. Please provide all documents, correspondence and other information regarding victim notifications in this case, including (but not limited to):

a) All crime victims notifications (and draft notifications) sent to Jane Doe #1 and Jane Doe #2 and the other identified victims of Epstein's offenses;
b) All correspondence, documents, and other information regarding negotiations between the Government and Epstein's defense attorneys concerning the extent and nature of notifications to be made to Epstein's victims;
c) All correspondence, documents, and other information regarding discussions between the Government, the FBI, the Palm Beach Police Department, the Palm Beach County State Attorney's Office, and Epstein's defense attorneys concerning the extent and nature of notifications to be made to Epstein's victims;
d) All correspondence, documents, and other information regarding "marching orders" that were given to FBI agents regarding the information that they could provide to the victims about the negotiations and the non-prosecution agreement;
e) All correspondence, documents, and other information regarding information that could be given to attorneys for the victims about the non-prosecution agreement, including information about what could be told to Brad Edwards (counsel for Jane Doe #1 and Jane Doe #2) about the non-prosecution agreement;
f) All correspondence, documents, and other information regarding Epstein's awareness that his victims (including Jane Doe #1 and Jane Doe #2) would not be notified of the non-prosecution agreement (and its ultimate presentation in court) or given a chance to confer regarding the plea negotiations he was conducting with the Government.

3. The victims allege in their pending summary judgment motion that the Government negotiated a non-prosecution agreement with Epstein and that among the subjects covered in that non-prosecution agreement was a confidentiality provision that precluded disclosing the agreement to them and to other victims. Please provide all draft plea agreements (both state and federal) and non-prosecution agreements prepared either by attorneys for the Government or by attorneys for Epstein, as well as any correspondence, documents or other information pertaining to these agreements and to any confidentiality provision in these agreements. Please indicate that date on which each of these proposed agreements was drafted and by whom.

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4. The victims allege in their pending summary judgment motion that the Government was interested in finding a place to conclude any plea agreement that would effectively keep Epstein's victims (most of whom resided in or about West Palm Beach) from learning what was happening through the press. Please provide all correspondence, documents, and other information pertaining to negotiations between the Government and Jeffrey Epstein concerning the court and/or location in which Jeffrey Epstein would enter any guilty plea (including in particular any negotiations concerning concluding the plea in Miami or other location outside of West Palm Beach).

5. The victims allege in their pending summary judgment motion that part of the plea negotiations with Epstein involved Epstein's efforts to make sure that the victims would be represented in civil cases against Epstein by someone who was not an experienced personal injury lawyer. Please provide all correspondence, documents, and other information pertaining to negotiations between the Government and Jeffrey Epstein regarding any legal representation of the victims in civil cases against Epstein, including any negotiations about what kinds of representation should be provided in a plea agreement or non-prosecution agreement.

6. The victims allege in their pending summary judgment that the Government wanted the non-prosecution agreement with Epstein concealed from public view because of the intense public criticism that would have resulted had the agreement been disclosed and/or the possibility that victims would have objected in court and convicted the judge not to accept the agreement. Please provide all correspondence, documents, and other information concerning the Government's and/or Epstein awareness or discussion of this possible public criticism and/or victim objections.

7. The victims allege in their pending summary judgment motion that the Government was aware that it potentially had obligations under the CVRA to notify the victims about the non-prosecution agreement and any related state court plea agreement. Please provide all correspondence, documents, and other information regarding the Government's awareness of its potential CVRA obligations in this case and regarding any discussions between the Government and Epstein concerning these CVRA obligations in this case. This should include any objections raised by Epstein to any notification of the victims (including Jane Doe #1 and Jane Doe #2) and any Government response to these objections. This should also include any correspondence and information about whether the CVRA applied to the victims.

8. The victims allege in their pending summary judgment motion that, after Epstein signed the non-prosecution agreement, his performance was delayed while he used his significant social and political connections to lobby the Justice Department to obtain a more favorable plea deal (including lobbying components of the Justice Department in Washington, D.C., including the Child Exploitation Obscenity Section). Please provide all correspondence, documents, and other information regarding Epstein's lobbying efforts to persuade the Government to give him a more favorable plea arrangement and/or non-prosecution agreement, including efforts by former President Bill Clinton, Andrew Albert Christian Edward (a/k/a Prince Andrew, Duke of York), Harvard Law Professor Alan Dershowitz, Ken Starr, Lillian Sanchez, Jay Lefkowitz, and Roy Black on his behalf.

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9. On January 10, 2008, Jane Doe #1 and Jane Doe #2 received letters from the FBI advising them that "this case is currently under investigation." Please provide all documents, correspondence, and other information relating to those representations being made by the FBI to Jane Doe #1 and Jane Doe #2, including all information about whether the FBI was aware of the non-prosecution agreement at that time and about whether Epstein was aware of the notifications being made to the victims.

10. In their pending summary judgment motion, the victims have alleged that the FBI was led to believe that their investigation of Epstein was going to produce a federal criminal prosecution and that the FBI was also misled by the U.S. Attorney's office about the status of the case. Please provide all documents, correspondence, and other information relating to these allegations, including:

a) All documents, correspondence, and other information relating to discussions between the U.S. Attorney's Office and the FBI concerning the status of the investigation and the plea discussions with Epstein, as well as what kind of charges would appropriately be filed against Epstein;
b) All documents, correspondence, and other information relating to the U.S. Attorney's Office's representations to the FBI and any other state or local law enforcement agency about how this case was being handled; and
c) All documents, correspondence, and other information relating to whether the FBI would support the position of the U.S. Attorney's Office that it has not violated the rights of Epstein's victims in this case.

11. In their pending summary judgment motion, the victims have alleged that they had various meetings with Government prosecutors and/or agents (including FBI agents). Related to these meetings, they also allege that in mid-June 2008, their attorney (Bradley J. Edwards) discussed with an AUSA involved in the case the need for filing federal charges and that the AUSA asked the attorney to send a letter about why such charges should be filed without disclosing the existence of a previously-signed non-prosecution agreement. The victims further allege that on about July 3, 2008, their attorney sent a letter urging the filing of federal charges against Epstein. Please provide all documents, correspondence, and other information regarding these meetings with the victims and their legal counsel, including meetings with the victims on October 26, 2007, and January 31, 2008, and the contact with their legal counsel in mid-June 2008. Please also provide all documents, correspondence, and other information related to contacts between the Government and the National Crime Victim's Law Institute (NCVLI) concerning possible legal representation or other assistance to the victims by NCVLI.

12. In their pending summary judgment motion, the victims allege that in mid-June 2008, their attorney (Bradley J. Edwards) discussed with an AUSA involved in the case the need for filing federal charges and that the AUSA asked the attorney to send a letter about why such charges should be filed without disclosing the existence of the non-prosecution agreement. The victims further allege that on about July 3, 2008, their attorney sent a letter urging the filing of federal charges against Epstein. Please provide all documents, correspondence, and other information regarding these contacts, including e-mails and correspondence generated as a result of the attorney's inquiry and any action that was taken in response to the letter that he sent.

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13. In their pending summary judgment motion, the victims allege that on or about June 27, 2008, the Government learned that Epstein would be entering his plea to state charges on about June 30, 2008. Please provide all documents, correspondence, and information regarding:

a) How the Government Office learned that the plea was going to be entered;
b) How the Government notified victims about the entry of the guilty plea; and
c) The contents of the notifications given to the victims about the entry of the guilty, including whether the victims were informed about the non-prosecution agreement and about whether the entry of this plea would preclude prosecution of crimes Epstein had committed against them.

14. In their pending summary judgment motion, the victims have alleged that the Government and Epstein worked together to keep the existence of the non-prosecution agreement secret, including declining comment about the existence of such an agreement when asked about it when his guilty plea in state court became public knowledge. Please provide all documents, correspondence, and information about the Government's and Epstein's efforts to keep the existence of the non-prosecution agreement secret, including all e-mails and correspondence about "declining comment" or similar devices to keep the non-prosecution agreement secret.

15. In their pending summary judgment motion, the victims allege that at all materials times, it would have been practical and feasible for the Government to have kept the victims informed about the discussions concerning the non-prosecution agreement. The victims further allege that on about July 9, 2008, the U.S. Attorney's Office provided notice to Jane Doe #1 of some of the terms of the agreement between it and Jeffrey Epstein. The victims also received a "corrected" notification letter on about September 3, 2008. Please provide all documents, correspondence, and other information about these notifications, including:

a) any information about whether these notifications should or should not include some mention of the non-prosecution agreement;
b) any information about the contents of these notifications;
c) any communications between the Government and Epstein's counsel regarding what the notifications should contain, including any communication on or about July 9, 2008, objecting to parts of the draft;
d) Any communications between the Government and Epstein's counsel about which parts of the non-prosecution agreement were operative (including whether Part 3 was operative);
e) Any communications between the Government and Epstein's counsel regarding the September 3, 2008, corrected notification letter; and
f) any documents, correspondence, and other information regarding the practicality and feasibility of providing notice to the victims of the existence of the agreement, which shall include any correspondence related to meeting with the victims or notifying them in any way of the non-prosecution agreement.

16. In their pending summary judgment motion, the victims allege that one of the senior prosecutors in the U.S. Attorney's Office joined Epstein's payroll shortly after important decisions were made limiting Epstein's criminal liability – and improperly represented people close to Epstein. In light of this fact, the peculiar nature of the non-prosecution agreement

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reached in this case, and other information in the possession of the victims, it is also possible that other improper relationships exist between Government agents and Epstein. Please provide any documents, correspondence, and other information regarding the possibility of any improper relationship, including:

a) Attorney Bruce Reinhart's involvement in and/or awareness of any aspect of the Government's criminal investigation and/or possible prosecution/non-prosecution of Epstein;

b) Attorney Bruce Reinhart's involvement in and/or awareness of the Government's interest in any witness, subject, or target of the Epstein investigation, including [redacted] Ghislaine Maxwell, [redacted] Larry Morrison, Larry Visoki, David Rogers, William Hammond, and Robert Roxburgh;

c) All documents, correspondence, and other information reflecting telephone calls (including telephone logs and telephone billing statements) made by or received by Reinhart from Jeffrey Epstein, the Florida Science Foundation, Jack Goldberger, Alan Dersowitz, Roy Black, Ken Starr, Lillian Sanchez, and any other person involved with the criminal defense of Jeffrey Epstein, including telephone calls to and from Jack Goldberger and the Florida Science Foundation;

d) All documents, correspondence, and other information (including, for example, e-mails) that were sent to, copied to, or sent by Reinhart in which the word "Epstein," [redacted] "Morrison," "Visoki," "Rogers," "Hammond," Roxburgh," "Villafana, " "Florida Science Foundation," "Starr," "Black," "Goldberger," "Jeffrey," "Australian," [redacted] "Sanchez," "358 El Brillo Way" appears and which are connected to or related to Jeffrey Epstein, Jack Goldberger, or the Jeffrey Epstein investigation or prosecution;

e) All documents, correspondence, and other information (including for example e-mails) of a similar nature that indicate that any other Government prosecutor has represented (or discussed representing) a person or entity related to Jeffrey Epstein or has received business or funds from a person or entity related to Jeffrey Epstein;

f) All documents, correspondence, and other information that indicate or suggest that any Government prosecutor or investigator (including state and local prosecutor or investigator) has had any form of business, social, personal, or other relationship with Jeffrey Epstein or a person or entity related to Jeffrey Epstein; and

g) All documents, correspondence, and other information that indicate or suggest that any Government prosecutor or investigator (including state and local prosecutor or investigator) would receive anything of value, directly or indirectly from Jeffrey Epstein or a person or entity related to Jeffrey Epstein (including any charitable contributions to be made by Epstein to any entity).

17. In December 2010, the victims sent a letter to the U.S. Attorney's Office for the Southern District of Florida, requesting that the Office investigate whether "improper influences" were brought to bear during the negotiations involving the possible prosecution (and ultimately the non-prosecution) of Jeffrey Epstein. That letter led to a reference of the matter to the Office of

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Professional Responsibility (OPR) in the Justice Department in Washington, D.C., which began some kind of an inquiry/investigation. Please provide:

a) All documents, correspondence, and other information collected by the Office of Professional Responsibility (OPR) and any other component of the Justice Department (including the FBI) in response to the victims' letter;
b) All documents, correspondence, witness statements, and other information collected as part of OPR's inquiry/investigation;
c) All documents, correspondence, witness statements and other information collected as part of any criminal inquiry/investigation that was initiated as a result of that letter, including any inquiry/investigation into criminal conflict of interest violations (such as 18 U.S.C. § 205 and § 207)
d) All documents, correspondence, witness statements, and other information collected by any federal investigative agency that was triggered by OPR's inquiry/investigation, including any FBI inquiry/investigation regarding any improper influences or criminal or ethical violations that may have been committed by government attorneys during the handling of the Epstein investigation and/or prosecution;
e) Any documents, correspondence, and other information regarding the accuracy or inaccuracy of Bruce Reinhart's sworn statements (found in DE 79-1 at p. 31) that he "did not participate in any way in the Office's investigation of Epstein;" that he "was not involved in any of the Office's decisionmaking with regard to the Epstein matter;" and that he "never learned any confidential, non-public information about the Epstein matter;"
f) Any documents, correspondence, or other information regarding the circumstances that lead OPR to send a letter to the victims on May 6, 2011, indicating that they would not provide any further assistance to the victims in connection with their allegations that improper influences were brought to bear on the Epstein case;
g) Any document, correspondence, e-mail, memoranda, or other information prepared by OPR, the FBI, or other Justice Department Component as a result of or following up on the victims' December 2010 letter concerning the Epstein case; and
h) Any documents, correspondence, or other information that OPR has collected or obtained regarding the Epstein investigation and/or prosecution.

18. At a couple points during the prosecution of this action, including in approximately December 2010 and most recently after the August 2011 hearing, the Justice Department in Washington, D.C., discussed or determined that the U.S. Attorney's Office for the Southern District of Florida (USAO SDFL) was "conflicted out", or may be conflicted out, of handling various issues related to the Epstein case because it suffered from a conflict of interest. The Justice Department accordingly sent various issues related to the Epstein case (and, on information and belief, issues related to Jane Doe #1 and Jane Doe #2) to the Department of Justice and to a United States Attorney's Office in another District. Please provide all documents, correspondence, and other information regarding the potential conflicts of interest that the Justice Department discussed or determined existed for the USAO SDFL, as well as any referral that was made to Main Justice or to any other District, including any documents that

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were transmitted to any other District regarding the conflict and regarding what was to be investigated.

19. In March 2011, former U.S. Attorney Alexander Acosta sent a three-page letter to the news media in which he claimed that when Government attorneys began investigating Epstein, Epstein launched "a yearlong assault on the prosecution and the prosecutors." Shortly thereafter, Jeffrey Epstein's defense attorney Roy Black sent a responsive letter to Alexander Acost's letter to the news media in which he claimed that he did not pry into the personal lives of prosecutors but merely pointed out misconduct and over-reaching by certain people involved in the Epstein investigation. Please provide all documents, correspondence and other information that supports or contradicts Acosta's allegations in his letter, including any information that the Justice Department received from Epstein attacking the prosecutors and investigators working on the case. Please also provides all documents, correspondence, information about misconduct and over-reaching that was provided by Black and that the Government found that supported or contradicted such allegations.

20. In their pending summary judgment motion, the victims have alleged that Epstein's guilty plea to state charges was intended to be the consummation of a non-prosecution agreement that barred prosecution of federal offenses committed against them. They have further alleged that Epstein entered such a guilty plea on or about June 30, 2008. Please provide all documents, correspondence, and other information between the Government and state and local prosecutors and police agencies (including The Palm Beach Police Department and Palm Beach State Attorney's Office) regarding the Epstein investigation and ultimate Epstein plea.

21. In their pending summary judgment motion, the victims have alleged that correspondence in the possession of the Government will support their claims. Please provide all documents, correspondence, and other information between Government attorneys/officials (including both federal and state prosecutors) and attorneys for Jeffrey Epstein (or non-attorney acting on Epstein's behalf) relating to (1) negotiations involving the possible prosecution (and ultimately the non-prosecution) by federal or state agencies for sex offenses, including sex offenses committed against Jane Doe #1 and Jane Doe #2, (2) Epstein's entry of state guilty pleas for related sex offenses; (3) a non-prosecution agreement entered into between Epstein and the Government that barred his prosecution for offenses committed against Jane Doe #1 and Jane Doe #2; (4) the fulfillment of Epstein's and/or the Government's obligations under the non-prosecution agreement and/or the state guilty pleas Epstein entered; (5) any work release or other conditional release of Epstein from confinement; (6) any designation of Epstein as a sex offender or restrictions on him contacting victims of his offenses (including Jane Doe #1 and Jane Doe #2); and (7) any termination of supervision or parole of Epstein. This information should include unredacted e-mails, letters, and correspondence of any type between government prosecutors working on the case (including, but not limited to, federal prosecutors Alexander Acosta, Jeffrey H. Sloman, Matt Menchel, Andy Lourie, Ann Marie Villafana, Dexter Lee, and Bruce Reinhart and state prosecutors Dahlia Weiss, Lana Belolovek, and others involved in the Epstein investigation) and defense attorneys representing Epstein (including, but not limited to, Roy Black, Jay Lefkowitz, Jack Goldberger, Martin Weinberg, Gerald Lefcourt, Michael Tien, Guy Lewis, Lilly Ann Sanchez, Ken Starr, Alan Dershowitz) and agents acting in support of Epstein (including, but not limited to former President Bill Clinton and Andrew Albert Christian Edward

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(a/k/a Prince Andrew, Duke of York). This should also include letters of recommendation or similar communications submitted to any Government official vouching for or providing support for Jeffrey Epstein.

22. As you know, throughout their pending summary judgment motion, the victims have alleged that they were not properly notified of plea negotiations with Jeffrey Epstein and were denied their right to confer by the Government and that instead the Government gave Epstein generous concessions through the plea negotiations. Please provide any documents, correspondence and other information that reflects or discusses any consideration of any type that Epstein had previously provided or offered to provide to the Government (or any individual within the Government, in either his official or private capacity) or any person previously employed by the Government and involved in the Epstein investigation or prosecution. The documents, correspondence, and other information should include any information discussing:

(a) Any donation or offer to donate, directly or indirectly, either funds, services, or any other valuable consideration to any person or entity;
(b) Any offer to assist, directly or indirectly, any person to obtain employment, business opportunities, business clients, real estate, office properties;
(c) Any offer to assist the Government or law enforcement agencies in the investigation or prosecution of any federal or state criminal offense;
(d) Any consideration that Epstein had provided to Government or law enforcement agencies in the past; and
(e) Any other consideration of any type that Epstein offered to provide or had provided in the past that could provide a basis for the Government extending Epstein a more generous or lenient plea bargain or non-prosecution agreement than would be received by any other similarly situated child abuse suspect.

23. The Crime Victims' Rights Act, 18 U.S.C. § 3771(c)(1), requires the Government to use its "best efforts" to protect the rights of crime victims. Please provide all documents, correspondence, and other information that will assist Jane Doe #1 and Jane Doe #2 in protecting their rights under the CVRA, including all documents, correspondence, and other information that the Government previously identified as being helpful to the victims but refused to provide based on its legal interpretation (now rejected by the Court) that the CVRA did not apply to this case because no indictment was filed.

24. In the course of its investigation of Epstein and negotiations with Epstein, the Government (i.e., federal investigators and prosecutors) shared documents, correspondence, and information with other persons outside the federal government, including state and local prosecuting and law enforcement agencies, prosecuting and law enforcement agencies in other countries, Epstein's legal counsel, legal counsel for crime victims, and other entities. Please provide all documents, correspondence, and other information that the Government shared with any entity or person outside the federal government, including all correspondence (including e-mails) with those entities or persons.

25. After the victims had made extensive efforts to try and reach a stipulated set of facts in this case, in March 2011 the Government refused to negotiate about such facts. Accordingly, at that time the victims filed various motions to obtain evidence in this case and, at the same time,

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the victims voluntarily made all initial disclosures on their part that are required by Federal Rule of Civil Procedure 26(a)(1). Please provide all initial disclosures required by the Federal Rules of Civil Procedure, including all disclosures required by Rule 26(a)(1).

DEFINITIONS

For the purpose of construing the foregoing discvery requests, the following terms are defined:

The term "documents" means and includes, without limitation, all writings of any kind, including the originals and all non-identical copies or drafts, whether different from the original by reason of any notation made on such copy or draft or otherwise including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, e-mails, electronic computer files, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer print-outs, teletypes, facsimiles, invoices, work sheets and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural writs, records or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures; and electronic, mechanical or electric records or representations of any kind including, without limitation, tapes, cassettes and disc recordings, and writings and printed material of every kind.

The term "correspondence" means any tangible object that conveys information or memorializes information that was conveyed in tangible or oral form including, but not limited to, writings, letters, memoranda, reports, notes, e-mails, telephone logs, telephone billing information, telephone recordings, and interoffice communications.

The term “Epstein’s victims” means any person that the Government identified as a possible victim of a sex offense committed by Jeffrey Epstein, including Jane Doe #1, Jane Doe #2, all victims identified in attachment to the non-prosecution agreement entered into by Epstein, and another person that the Government investigated as a possible victim of Epstein’s sex offenses.

The term “Government” means the federal government, including all employees of and components of the United States Department of Justice (such as, the Office of the Attorney General, the Office of the Deputy Attorney General, the Criminal Divisions, the Office of Professional Responsibility, the Child Exploitation and Obscenity Section, the U.S. Attorney’s Offices for the Southern District and Middle District of Florida, and the Federal Bureau of Investigation) and other federal government agencies with law enforcement responsibilities related to the Epstein case (such as the Internal Revenue Service). This request for production seeks all documents, correspondence, and other information held by all of these entities, including all employees of and components of the Justice Department that worked on or were in any way involved the Epstein investigation and/or that possess information relevant to the victims’ claims.

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The term "including" means containing within the request, but not limiting the request.

The term "witness statement" means any document or other recording in any form (including oral form) reflecting, recording, or otherwise memorializing a statement made or information conveyed by a potential witness, including for example FBI 302's. The term includes information collected by any law enforcement, prosecuting or government agency, including all federal, state, and local law enforcement agencies located in Washington, D.C., or Florida.

NO GRAND JURY TRANSCRIPTS SOUGHT

If any of the foregoing requests cover grand jury transcripts, do not provide the grand jury transcript. If any of the foregoing requests include documents that quote directly from a grand jury transcript, please redact that particular quotation.

PRIVILEGE LOG

If you believe that any document, correspondence, or other information requested in this request is subject to a privilege and if you intend to assert that privilege, please provide a "privilege log" consistent with Local Rule 26.1(g), including a description a document that is consistent with Local Rule 26.1(g)(3)(B). Your privilege log should include the type of document, general subject matter of the document, date of the document, and author and addressee of the document or correspondence.

REDUCING UNDUE BURDEN

If you believe that complying with any of the foregoing requests would be unduly burdensome, please contact victims counsel – Bradley J. Edwards – to discuss ways to reduce any such burden.

DATED: October 3, 2011

Respectfully Submitted,

s/ Bradley J. Edwards
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Attorneys for Jane Doe #1 and Jane Doe #2

CERTIFICATE OF SERVICE

The foregoing document was served on October 3, 2011, on the following via US Mail and E-Mail Transmission:

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Respectfully Submitted,

S/ Bradley J. Edwards
Bradley J. Edwards
FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.

EFTA00179737

EXHIBIT 2

To

Brad Edwards Affidavit

EFTA00179738

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE #1 and JANE DOE #2,

Plaintiffs

v.

UNITED STATES,

Defendants

_____/

JANE DOE #1 AND JANE DOE #2'S SUPPLEMENTAL REQUEST FOR PRODUCTION TO THE GOVERNMENT REGARDING NEW INFORMATION CONCERNING INVESTIGATION OF HANDLING OF EPSTEIN NON-PROSECUTION AGREEMENT

COME NOW Jane Doe #1 and Jane Doe #2 ("the victims), by and through undersigned counsel, and request the defendant United States (hereinafter "the Government") to produce the original or best copy of the items listed herein below for inspection and/or copying, pursuant to the Court's Order (DE 99) directing discovery in this case, the Court's Order denying the Government's motion to dismiss and lifting stay of discovery (DE 189), and the Court's Omnibus Order (DE 190):

BACKGROUND

As the Government will recall, the victims have repeatedly asked the Government to stipulate to undisputed facts in this case. The Government has declined. Accordingly, the victims filed their Motion for Finding of Violations of the Crime Victims' Rights Act and Request for a Hearing on Appropriate Remedies (DE 48) (the victims' "summary judgment motion") along with a Motion to Have Their Facts Accepted Because of the Government's Failure to Contest Any of the Facts (DE 49).

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On September 26, 2011, the Court denied the victims' motion to have their facts accepted (DE 99 at 11). At the same time, however, the Court has ordered discovery to develop the factual record concerning the summary judgment motion (DE 99 at 11). The Court reserved ruling on the victims' motion for an order directing the Government not to suppress relevant evidence (DE 99 at 11).

On September 28, 2011, the victims requested that the Government voluntarily provide documents concerning this case. The Government declined to provide even a single document.

On October 3, 2011, the victims sent requests for production of documents relevant to this case.

On November 8, 2011, the same day that the production of this discovery was due, rather than produce a single item of discovery or stipulate to a single fact, the Government filed a motion to dismiss the victims' case. The Government also filed an accompanying motion for a stay in this case.

On November 8, 2011, the Government filed an ex parte, sealed motion to stay further discovery in this case. (DE 121). On November 9, 2011, the Court granted an ex parte, sealed order to stay. (DE 123).

On December 5, 2011, the victims filed a response to Government's motion to stay. The victims strenuously objected to the Government's approach, alleging specifically that "delay appears to be the Government's motivation for filing the motion to dismiss." DE 129 at 2. The victims went on to recount the fact that the Government had waited three years to file a motion to dismiss, concluding that "as a practical matter, the Government's motion has had the desired effect of delay: While its motion remains pending, the victims have been effectively denied any ability to obtain discovery from the Government." DE 129 at 2-3. The victims also filed a

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protection motion to compel (DE 130) asking that the Court direct the Government to produce the requested materials.

On January 24, 2012, the Government filed a reply in support of its motion to stay. DE 140. In that reply, the Government represented that it would voluntarily be providing information to the victims: "[T]he United States has agreed to provide some information to [the victims] even during the pendency of the stay and is undertaking a search for that information." DE 140 at 4. Contrary to that representation, however, over the next seventeen months, the Government did not provide *any* information to the victims.

A year after the Government's motion to dismiss, on December 6, 2012, the victims filed a Motion for a Prompt Ruling Denying the Government's Motion for a Stay (DE 179). The motion explained that it had been more than a year since the Government had filed its motion for a stay and that the Government's refusal to produce any information continues to effective block the victims from learning what happened during the Government's plea negotiations with the man who sexually abused them. The Government filed a response in opposition to that motion (DE 182).

On February 25, 2013, counsel for the victims sent a request to the Government that, in view of that fact that its requested stay had never been granted, it should begin fulfilling its court-ordered discovery obligations:

> The victims believe that in view of fact that it has been more than fifteen months since the Government filed its motion for a stay of discovery and yet the Court has not granted that motion, the Court's discovery order is in effect and controlling. Accordingly, the victims respectfully request that by March 8, 2013, the Government produce all of the materials which is covered by the victims' discovery requests. If the Government has not produced those materials by March 8, 2013, the victims may be forced to seek the intervention of the Court to order the Government to follow its obligations.
>
> If you would like to discuss this further, please feel free to set up a time where we can talk to you over the phone about all this. We are happy to work

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> with you to try and minimize any unnecessary burden from your discovery obligations.

E-mail from Paul G. Cassell & Bradley J. Edwards to Dexter Lee, et al., Counsel for the Government (February 25, 2013).

The Government ignored the e-mail and did not respond in any way.

Accordingly, in view of the Government recalcitrance and refusal to even discuss its discovery obligations, on March 14, 2013, the victims filed a motion to compel production of discovery materials. The Government did not respond to this motion.

On June 1, 2013, the Court denied the Government's motion to dismiss. DE 189. That denial also lifted stay of discovery proceedings. DE 189 at 14 ("The stay of discovery pending ruling on the Government's motion to dismiss entered on November 8, 2011 [DE# 123] is also lifted."). The Court also entered an Omnibus Order (DE 190) that, among other things, granted the victim motion to compel (DE 130).

SUPPLEMENTAL DISCOVERY REQUEST

The victims now request one specific item of supplemental discovery relating to information that, in large measure, has come into existence since they filed the first request for production of documents on October 3, 2011:

> Jane Doe #1 and Jane Doe #2 have asked the Government to investigate their allegations that the U.S. Attorney's Office for the Southern District of Florida entered into a non-prosecution agreement with Jeffrey Epstein for sexual offenses committed against them and other victims based on considerations apart from the merits of the criminal case and also that violations of criminal law, rules of ethics, Justice Department policies (including policies on crime victims' rights), and the Crime Victims Rights Act occurred during the negotiations leading up to and surrounding the entry of the non-prosecution agreement. Please provide any information that the Government has developed concerning or relating to those allegations and the handling of the negotiations and consummation of the non-prosecution agreement, including any information developed by the Justice Department's Office of Professional Responsibility (OPR), the Federal Bureau of Investigation or other federal investigative entity, and any grand jury investigating these (or releated) allegations, including any grand jury meeting in the Southern District of Florida, the Middle District of Florida, the District of

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New Jersey, and/or the District of Columbia. For this one discovery request only, please include all relevant grand jury transcripts and evidence collected by the grand jury.

DEFINITIONS

For the purpose of construing the foregoing discovery requests, the following terms are defined:

The term "documents" means and includes, without limitation, all writings of any kind, including the originals and all non-identical copies or drafts, whether different from the original by reason of any notation made on such copy or draft or otherwise including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, e-mails, electronic computer files, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer print-outs, teletypes, facsimiles, invoices, work sheets and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural writs, records or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures; and electronic, mechanical or electric records or representations of any kind including, without limitation, tapes, cassettes and disc recordings, and writings and printed material of every kind.

The term "correspondence" means any tangible object that conveys information or memorializes information that was conveyed in tangible or oral form including, but not limited to, writings, letters, memoranda, reports, notes, e-mails, telephone logs, telephone billing information, telephone recordings, and interoffice communications.

The term "Epstein's victims" means any person that the Government identified as a possible victim of a sex offense committed by Jeffrey Epstein, including Jane Doe #1, Jane Doe #2, all victims identified in attachment to the non-prosecution agreement entered into by Epstein, and another person that the Government investigated as a possible victim of Epstein's sex offenses.

The term "Government" means the federal government, including all employees of and components of the United States Department of Justice (such as, the Office of the Attorney General, the Office of the Deputy Attorney General, the Criminal Divisions, the Office of Professional Responsibility, the Child Exploitation and Obscenity Section, the U.S. Attorney's Offices for the Southern District and Middle District of Florida, and the Federal Bureau of Investigation) and other federal government agencies with law enforcement responsibilities related to the Epstein case (such as the Internal Revenue Service). This request for production seeks all documents, correspondence, and other information held by all of these entities, including all employees of and components of the Justice Department that worked on or were in any way involved the Epstein investigation and/or that possess information relevant to the victims' claims.

The term "including" means containing within the request, but not limiting the request.

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The term "witness statement" means any document or other recording in any form (including oral form) reflecting, recording, or otherwise memorializing a statement made or information conveyed by a potential witness, including for example FBI 302's. The term includes information collected by any law enforcement, prosecuting or government agency, including all federal, state, and local law enforcement agencies located in Washington, D.C., or Florida.

PRIVILEGE LOG

If you believe that any document, correspondence, or other information requested in this request is subject to a privilege and if you intend to assert that privilege, please provide a "privilege log" consistent with Local Rule 26.1(g), including a description a document that is consistent with Local Rule 26.1(g)(3)(B). Your privilege log should include the type of document, general subject matter of the document, date of the document, and author and addressee of the document or correspondence.

REDUCING UNDUE BURDEN

If you believe that complying with any of the foregoing requests would be unduly burdensome, please contact victims counsel – Bradley J. Edwards – to discuss ways to reduce any such burden.

DATED: June 24, 2013

Respectfully Submitted,

s/ Bradley J. Edwards
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Attorneys for Jane Doe #1 and Jane Doe #2

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EXHIBIT 3

To

Brad Edwards Affidavit

EFTA00179746

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE #1 and JANE DOE #2,

Plaintiffs

v.

UNITED STATES,

Defendants

_____/

JANE DOE #1 AND JANE DOE #2'S FIRST REQUEST FOR ADMISSIONS TO THE GOVERNMENT REGARDING QUESTIONS RELEVANT TO THEIR PENDING ACTION CONCERNING THE CRIME VICTIMS RIGHTS ACT

COME NOW Jane Doe #1 and Jane Doe #2 ("the victims"), by and through undersigned counsel, and request the defendant United States (hereinafter "the Government") to admit or deny the following facts:

BACKGROUND

As the Government will recall, the victims have asked the Government to stipulate to undisputed facts in this case. The Government has declined. Accordingly, the victims filed their Motion for Finding of Violations of the Crime Victims' Rights Act and Request for a Hearing on Appropriate Remedies (DE 48) (the victims' "summary judgment motion") along with a Motion to Have Their Facts Accepted Because of the Government's Failure to Contest Any of the Facts (DE 49).

On September 26, 2011, the Court denied the victims' motion to have their facts accepted (DE 99 at 11). At the same time, however, the Court has ordered discovery to develop the factual record concerning the summary judgment motion (DE 99 at 11). The Court reserved

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ruling on the victims' motion for an order directing the Government not to suppress relevant evidence (DE 99 at 11). The Court allowed the victims to propound requests for admission to the Government.

DISCOVERY REQUESTED

The numbered requests for admissions below should all be construed in light of the definitions of terms provided at the end of the requests. Where the request for admission has separate, lettered sub-parts, please admit or deny each separate sub-part:

1. The FBI and the U.S. Attorney's Office for the Southern District of Florida's investigation into Jeffrey Epstein developed a case for a federal prosecution against Epstein for many federal sex offenses.

UNITED STATES RESPONSE:

1. The government admits that the FBI and the U.S. Attorney's Office for the Southern District of Florida ("USAO") conducted an investigation into Jeffrey Epstein ("Epstein") and developed evidence and information in contemplation of a potential federal prosecution against Epstein for many federal sex offenses. Except as otherwise admitted above, the government denies Request No. 1.

*** The government's response is confined to Request No. 1 through Request No. 26 in the "Discovery Requested" section of the *Request for Admissions* and does not intend to respond to assertions in any other section of the *Request for Admissions* (including the "Background" section), none of which appear to separately state any matter calling for an admission. Nonetheless, the government denies the assertion that the government has declined the request of Jane Doe #1 and Jane Doe #2 to stipulate to undisputed facts in this case.**

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2. Regarding notifications provided to victims of Jeffrey Epstein's sexual abuse:

(a) The U.S. Attorney's Office negotiated with Jeffrey Epstein's defense attorneys concerning the notifications to be provided to victims of Epstein's abuse;

UNITED STATES RESPONSE:

2. (a) The government admits that, after Epstein's attorneys learned of the notification that the government planned to provide to Jane Doe #2, who claimed that she was not a victim, Epstein's attorneys contacted the USAO and objected to the procedures for notification and the legal bases therefor. The government further admits that the USAO considered those objections when evaluating what notification to provide to victims. Except as otherwise admitted above, the government denies Request No. 2(a).

(b) It is not standard practice for the U.S. Attorney's Office to negotiate with defense attorneys about the extent of notifications provided to crime victims;

UNITED STATES RESPONSE:

(b) Admitted.

(c) As a result of those negotiations or requests received from Epstein, the U.S. Attorney's Office stopped making notifications to some crime victims;

UNITED STATES RESPONSE:

(c) The government admits that, as a result of objections lodged by Epstein's attorneys, the government reevaluated the notifications that it had intended to provide to victims and, as a result of that reevaluation, the USAO altered the scope, nature, and timing of notifications that it had contemplated providing to victims. With regard to Jane Doe #2, the government further admits that, as a result of representations made by Jane Doe #2 that she was not a victim and objections lodged by Epstein's attorneys, the USAO stopped making notifications to Jane Doe #2. Except as otherwise admitted above, the government denies Request No. 2(c).

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(d) The language used in the notifications to Jane Doe #1 and Jane Doe #2 were affected by the negotiations with Epstein's defense lawyers;

UNITED STATES RESPONSE:

(d) The government admits that, after the USAO received objections to victim notifications from Epstein's counsel and reevaluated its victim notification obligations, the USAO altered the language that was ultimately contained in the July 9, 2008 notification letter to Jane Doe #1 in care of Bradley Edwards. Except as otherwise admitted above, the government denies Request No. 2(d).

(e) At least in part as a result of the negotiations, Jane Doe #1 and Jane Doe #2 were not told that the U.S. Attorney's Office had entered into a non-prosecution agreement with Epstein until after the agreement was executed.

UNITED STATES RESPONSE:

(e) The government admits that, at least in part as a result of objections lodged by Epstein's lawyers to victim notifications, the USAO reevaluated its obligations to provide notifications to victims, and Jane Doe #1 was thus not told that the USAO had entered into a non-prosecution agreement with Epstein until after the agreement was signed. The government further admits that Jane Doe #2 was not told that the USAO had entered into a non-prosecution agreement with Epstein until after the agreement was signed, but denies that the USAO did not inform Jane Doe #2 as a result of any negotiations involving Epstein or any objections lodged by Epstein's lawyers; the USAO did not consider Jane Doe #2 a victim after she informed the USAO and the FBI that she was not a victim of any offense committed by Epstein, and, as a result, the USAO did not consider informing Jane Doe #2 about the non-prosecution agreement. Except as otherwise admitted above, the government denies Request No. 2(e).

3. Because of a confidentiality provision in the non-prosecution agreement signed by the U.S. Attorney's Office, it would have been a breach of the agreement for the U.S. Attorney's Office to inform Jane Doe #1 and Jane Doe #2 of the existence of the terms of that non-prosecution agreement barring prosecution of certain sex offenses.

UNITED STATES RESPONSE:

3. Denied.

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4. During its negotiations with Jeffrey Epstein's defense attorneys, the U.S. Attorney's Office was aware that publicly disclosing the non-prosecution agreement with Jeffrey Epstein would likely have led to public criticism of the agreement.

UNITED STATES RESPONSE:

4. Denied.

5. During negotiations with Jeffrey Epstein regarding the non-prosecution agreement, it was the position of at least one experienced attorney within the U.S. Attorney's Office that the Crime Victims' Rights Act required notifications to the victims in this case.

UNITED STATES RESPONSE:

5. The government admits that, during the negotiations with Jeffrey Epstein regarding the non-prosecution agreement, at least one experienced attorney within the USAO subscribed to the position that the CVRA required notifications to the victims in this case and that position was communicated to Epstein's counsel. To the extent that Request No. 5 seeks admissions regarding the positions held by attorneys within the USAO that were not communicated to non-government personnel regarding whether or not the CVRA ultimately required notifications to the victims in this case, the government objects to Request No. 5 as violative of the deliberative process privilege.

6. The Justice Department possesses documents, correspondence or other information reflecting contacts with the Department between May 2007 and September 2008 on behalf of Jeffrey Epstein by:

UNITED STATES RESPONSE:

(a) President Bill Clinton; **Denied.**

(b) Andrew Albert Christian Edward (a/k/a Prince Andrew, Duke of York); **Denied.**

(c) Harvard Law Professor Alan Dershowitz; **Admitted**

(d) Ken Starr; **Admitted.**

(e) Lillian Sanchez;

Admitted to the extent that the reference to "Lillian Sanchez" was meant to refer to Lilly Ann Sanchez.

(f) Jay Lefkowitz; **Admitted** and

(g) Roy Black. **Admitted**

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7. On about January 10, 2008, when Jane Doe #1 and Jane Doe #2 were sent letters advising them that "this case is currently under investigation," the U.S. Attorney's Office had already entered into a non-prosecution agreement with Jeffrey Epstein.

UNITED STATES RESPONSE:

7. **The government admits that, on about January 10, 2008, when Jane Doe #1 and Jane Doe #2 were sent letters advising them that "this case is currently under investigation," the U.S. Attorney's Office had already signed a non-prosecution agreement with Jeffrey Epstein, but that, on that date, the non-prosecution agreement nonetheless remained in a state of some flux and was subject to being set aside as Epstein was challenging the propriety of the non-prosecution agreement and seeking further review from the Department of Justice.**

8. In September 2007 when the U.S. Attorney's entered into the non-prosecution agreement with Epstein, it did not inform FBI agents of the details of the disposition of the case in the way that it ordinarily informed them of dispositions of other cases.

UNITED STATES RESPONSE: Denied

9. With regard to the non-prosecution agreement between Epstein and the Government:

(a) Epstein insisted on, and the U.S. Attorney's Office agreed to, a provision in the non-prosecution agreement that made the agreement secret;

UNITED STATES RESPONSE:

(a) The government admits that, at Epstein's insistence, the USAO agreed to a provision in the non-prosecution agreement that provided as follows: "The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure." Except as otherwise admitted above, the government denies Request No. 9(a).

(b) In particular, the agreement stated: "The parties anticipate that this agreement will not be made part of any public record;"

UNITED STATES RESPONSE: Admitted

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(c) By entering into such a confidentiality agreement, the U.S. Attorney's Office put itself in a position that conferring with the crime victims (including Jane Doe #1 and Jane Doe #2) about the non-prosecution agreement would violate certain terms of the agreement;

UNITED STATES RESPONSE: Denied

(d) Even notifying the victims about the agreement would have violated the confidentiality provision; and

UNITED STATES RESPONSE: Denied

(e) From September 24, 2007 through June 2008, the U.S Attorney's Office did not notify Jane Doe #1 and Jane Doe #2 of the existence of the non-prosecution agreement.

UNITED STATES RESPONSE:

(e) The government admits that, during the period from September 24, 2007 through June 2008, the USAO did not notify Jane Doe #2 of the existence of the non-prosecution agreement. The government further admits that, although FBI agents notified Jane Doe #1 of the existence and substance of the agreement at the request of the USAO on or about October 27, 2007, no employee of the USAO personally notified Jane Doe #1 of the existence of the non-prosecution agreement during the period from September 24, 2007 through June 2008. Except as otherwise admitted above, the government denies Request No. 9(e).

10. With regard to contact between the Government and the victims:

(a) On about October 26, 2007, FBI agents met with Jane Doe #1;

UNITED STATES RESPONSE:

10. (a) Admitted. Because Request No. 10 appears directed solely to the communications between FBI agents and Jane Doe #1 during their meeting on or about October 26, 2007, the government responses to Requests No. 10(b) through 10(g) address only that meeting.

(b) The agents explained that Epstein would plead guilty to state charges involving another victim, he would be required to register as a sex offender, and he had made certain concessions related to the payment of damages to the victims, including Jane Doe #1;

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UNITED STATES RESPONSE:

(b) The government admits that, on or about October 26, 2007, FBI agents explained to Jane Doe #1 that Epstein would plead guilty to state charges for procuring minors to engage in prostitution; that Epstein would be required to register as a sex offender; that Jane Doe #1 would be entitled to seek damages from Epstein; and that, if she desired, Jane Doe #1 would be entitled to use the services of an attorney at no expense to her in seeking those damages from Epstein. The government denies that the FBI agents explained that the state charges "involv[ed] another victim."

(c) During this meeting, the agents did not explain that an agreement had already been signed that precluded any prosecution of Epstein for federal crimes committed against Jane Doe #1;

UNITED STATES RESPONSE:

(c) The government denies that the FBI agents did not explain to Jane Doe #1 that an agreement had already been signed; denies that the FBI agents did not explain to Jane Doe #1 that the agreement resolved the investigation of the federal case involving Jane Doe #1; and denies that the FBI agents did not explain to Jane Doe #1 other terms of that agreement Except as otherwise admitted above, the government denies Request No. 10(c).

(d) The agents could not have revealed this part of the non-prosecution agreement without violating the terms of the non-prosecution agreement;

UNITED STATES RESPONSE: Denied

(e) The agents themselves had not been informed of the existence of the provision in the non-prosecution agreement barring Epstein's prosecution for various federal crimes or sex offenses at that time;

UNITED STATES RESPONSE: Denied

(f) Because the non-prosecution agreement had already been reached with Epstein, the agents made no attempt to secure Jane Doe #1's view on the proposed resolution of the case; and

UNITED STATES RESPONSE: Denied

(g) The agents never explained that the non-prosecution agreement would ultimately bring to an end the federal investigation in the case.

UNITED STATES RESPONSE: Denied

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11. On about November 29, 2007, the U.S. Attorney's Office sent a draft of a crime victim notification letter to Jay Lefkowitz, defense counsel for Jeffrey Epstein. The notification letter would have explained: "I am writing to inform you that the federal investigation of Jeffrey Epstein has been completed, and Mr. Epstein and the U.S. Attorney's Office have reached an agreement containing the following terms . . . ." Because of concerns from Epstein's attorneys, the U.S. Attorney's Office never sent the proposed victim notification letter to the victims.

UNITED STATES RESPONSE:

11. The government admits that, on or about November 28, 2007, A. Marie Villafaña of the USAO sent a draft of a crime victim notification letter to Jay Lefkowitz, counsel for Jeffrey Epstein, and that the draft notification letter stated, in part: "I am writing to inform you that the federal investigation of Jeffrey Epstein has been completed, and Mr. Epstein and the U.S. Attorney's Office have reached an agreement containing the following terms . . . ." The government further admits that, in part as a result of objections lodged by Epstein's lawyers, the USAO reevaluated its obligations to provide notifications to victims, and, as a result of that reevaluation and other considerations and developments, the USAO never sent victims the draft notification letter that was sent to Jay Lefkowitz on or about November 28, 2007. Except as otherwise admitted above, the government denies Request No. 11.

12. On July 3, 2008, when Bradley J. Edwards was working on a letter to the U.S. Attorney's Office concerning the need to federally prosecute Epstein for sex offenses committed against Jane Doe #1 and Jane Doe #2, the U.S. Attorney's Office had already entered into a binding non-prosecution agreement with Jeffrey Epstein.

UNITED STATES RESPONSE:

12. The government admits that, prior to July 3, 2008, the USAO had already entered a binding non-prosecution agreement with Jeffrey Epstein. The government is without knowledge of precisely when "Bradley J. Edwards was working on a letter to the U.S. Attorney's Office concerning the need to federally prosecute Epstein for sex offenses committed against Jane Doe #1 and Jane Doe #2," and, accordingly, the government denies the assertion that Edwards worked on that letter on July 3, 2008. Except as otherwise admitted above, the government denies Request No. 12.

13. When Jeffrey Epstein pled guilty to state charges on June 30, 2008,

(a) Jane Doe #1 and Jane Doe #2 had not been informed by the U.S. Attorney's Office of the existence of the non-prosecution agreement.

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UNITED STATES RESPONSE:

13. (a) The government admits that, when Epstein pled guilty to state charges on June 30, 2008, Jane Doe #2 had not been informed by the USAO of the existence of the non-prosecution agreement. The government further admits that, although the USAO, through FBI agents, had notified Jane Doe #1 of the existence of the non-prosecution agreement prior to Epstein's June 30, 2008 guilty plea, no employee of the USAO had personally notified Jane Doe #1 at that time of the existence of the non-prosecution agreement. Except as otherwise admitted above, the government denies Request No. 13(a).

(b) The U.S. Attorney's Office had not conferred with either Jane Doe #1 or Jane Doe #2 about the non-prosecution agreement;

UNITED STATES RESPONSE:

(b) The government denies that, by the time of Epstein's June 30, 2008 guilty plea, an attorney for the government working at the USAO had not already conferred with Jane Doe #1 and Jane Doe #2 about their opinions regarding how the federal investigation and potential prosecution of Epstein should proceed. The government admits that the USAO had not conferred with Jane Doe #2 about the non-prosecution agreement prior to Epstein's June 30, 2008 guilty plea. The government further admits that, although the USAO had communicated with Jane Doe #1 about the non-prosecution agreement through FBI agents prior to Epstein's June 30, 2008 guilty plea, no employee of the USAO had personally conferred with Jane Doe #1 about the non-prosecution agreement prior to Epstein's guilty plea. Except as otherwise admitted above, the government denies Request No. 13(b).

(c) Epstein's defense attorneys were aware that the U.S. Attorney's Office had not conferred with Jane Doe #1 and Jane Doe #2 about the agreement; and

UNITED STATES RESPONSE:

(c) Although the government was aware that Jane Doe #2 had been represented by counsel paid for by Epstein, the government is unaware of the extent of Epstein's defense attorneys' awareness of the USAO's communications with Jane Doe #1 and Jane Doe #2 about the agreement, as described in the responses to Requests No. 13(a) and 13(b), and therefore can neither deny nor admit Request No. 13(c). Except as otherwise admitted above and in the responses to Requests No. 13(a) and 13(b), the government denies Request No. 13(c).

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(d) Epstein's defense attorneys had negotiated for a confidentiality provision in the non-prosecution agreement that barred conferring with victims about the agreement.

UNITED STATES RESPONSE:

(d) The government admits that Epstein's attorneys negotiated with the USAO for a provision in the non-prosecution agreement that ultimately provided as follows: "The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure." Except as otherwise admitted above, the government denies Request No. 13(d).

14. When Epstein was pleading guilty to the state charges discussed in the non-prosecution agreement, both the U.S. Attorney's Office and Epstein's defense attorneys were working to keep the existence of the non-prosecution agreement confidential.

UNITED STATES RESPONSE:

14. The government admits that, when Epstein was pleading guilty to the state charges discussed in the non-prosecution agreement, the USAO and Epstein's defense attorneys sought to keep the document memorializing the non-prosecution agreement confidential, but denies that they sought at that time to keep the existence of the non-prosecution agreement confidential. Except as otherwise admitted above, the government denies Request No. 14.

15. Defense attorney Bruce E. Reinhart:

(a) learned confidential, non-public information about the Epstein matter;

UNITED STATES RESPONSE:

15. (a) The government admits that, while Bruce E. Reinhart was an Assistant U.S. Attorney, he learned confidential, non-public information about the Epstein matter.

(b) discussed the Epstein matter with an attorney working on the case for the U.S. Attorney's Office; and

UNITED STATES RESPONSE:

(b) The government admits that, while Bruce E. Reinhart was an Assistant U.S. Attorney, he discussed the Epstein matter with another Assistant U.S. Attorney working on the Epstein matter.

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(c) was involved in decision-making with regard to the Epstein matter.

UNITED STATES RESPONSE: Denied

16. The Government possesses information (including telephone logs and emails) reflecting contacts between Bruce E. Reinhart and persons/entities affiliated with Jeffrey Epstein (including Jeffrey Epstein, the Florida Science Foundation, Jack Goldberger, Harvard Law Professor Alan Dershowitz, Roy Black, Ken Starr, Lily Ann Sanchez) before Reinhart left the employment of the U.S. Attorney's Office.

UNITED STATES RESPONSE: Admitted.

17. The Government possesses information (including telephone logs or emails) reflecting contacts between Bruce E. Reinhart and persons working at or for the Department of Justice or United States Attorney's Office that related to Jeffrey Epstein or the investigation into Jeffrey Epstein and other potential co-conspirators of Jeffrey Epstein.

UNITED STATES RESPONSE: Admitted.

18. The government possesses, or has knowledge or information (including telephone logs or photographs or emails) reflecting improper communication or influence made or attempted with the Government, on Jeffrey Epstein's behalf by:

(a) Guy Lewis

UNITED STATES RESPONSE: Denied.

(b) LilyAnn Sanchez **UNITED STATES RESPONSE: Denied.**

19. The government possesses, or has knowledge or information (including telephone logs, photographs, emails or statement(s) of other credible sources) about a personal or business relationship between Jeffrey Epstein and U.S. Attorneys and/or Assistant US Attorneys.

UNITED STATES RESPONSE:

19. To the extent that Request No. 19 is directed to the business or personal relationships of the 93 U.S. Attorneys and over 5,400 Assistant U.S. Attorneys serving across this country, or the countless individuals who have formerly served as U.S. Attorneys and Assistant U.S. Attorneys throughout this nation, the government objects to Request No. 19 as overly broad and burdensome and not calculated to lead to or involve information relevant to the instant matter.

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The government denies possessing or having any knowledge or information about a personal or business relationship between Jeffrey Epstein and either the U.S. Attorney or any Assistant U.S. Attorney serving in the Southern District of Florida. Except as otherwise admitted above, the government denies Request No. 19.

20. The government possesses, or has knowledge or information (including telephone logs, photographs, emails or statement(s) of other credible sources) about a personal or business relationship between Jeffrey Epstein and **Matthew Menchel**.

UNITED STATES RESPONSE: Admitted.

21. The government possesses, or has knowledge or information (including telephone logs, photographs, emails or statement(s) of other credible sources) about a personal or business relationship between Jeffrey Epstein and **Alex Acosta**.

UNITED STATES RESPONSE: Denied

22. The Justice Department's Office of Professional Responsibility and/or other Government entities have collected information about:

(a) Bruce Reinhart's possible involvement in the Epstein matter;

UNITED STATES RESPONSE: Admitted

(b) Other government attorney's possible improper behavior in the Epstein matter; and

UNITED STATES RESPONSE: Admitted

(c) A conflict of interest regarding the U.S. Attorney's Office for the Southern District of Florida handling issues relating to the Epstein matter.

UNITED STATES RESPONSE: Admitted

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23. The non-prosecution agreement signed by the U.S. Attorney's Office and Jeffrey Epstein currently blocks the U.S. Attorney's Office from prosecuting sex offenses committed by Epstein against Jane Doe #1 and Jane Doe #2 in the Southern District of Florida.

UNITED STATES RESPONSE:

23. The government admits that the non-prosecution agreement signed by the USAO and Jeffrey Epstein currently blocks the USAO from prosecuting sex offenses committed by Epstein against Jane Doe #1 and Jane Doe #2 in the Southern District of Florida from in or around 2001 through in or around September 2007, provided that those offenses are set out on pages 1 and 2 of the non-prosecution agreement, were the subject of the joint investigation by the FBI and the USAO, or arose from the federal grand jury investigation. Except as otherwise admitted above, the government denies Request No. 23.

24. The Justice Department possesses information that Epstein, himself or through his attorney's or acquaintances, has provided or offered to provide to the federal government (or an individual within the Government, in his official or private capacity) valuable consideration.

UNITED STATES RESPONSE:

24. Admitted; Jeffrey Epstein provided valuable consideration to the federal government through the non-prosecution agreement he entered with the USAO.

25. The Justice Department's Office of Professional Responsibility's investigation/inquiry into alleged misconduct relating to the negotiation and consummation of the Epstein non-prosecution agreement has relevance to issues pending in this case.

UNITED STATES RESPONSE: Denied

26. The Government possesses evidence, not covered by grand jury secrecy rules, that reveals that districts outside the Southern District of Florida share jurisdiction and venue with the Southern District of Florida over potential federal criminal charges based on the alleged sexual acts committed by Epstein against Jane Doe #1 and/or Jane Doe #2.

UNITED STATES RESPONSE:

26. The government objects to Request No. 26 because it seeks information protected from disclosure by the law enforcement investigative privilege.

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DEFINITIONS

For the purpose of construing the foregoing discovery requests, the following terms are defined:

The term "documents" means and includes, without limitation, all writings of any kind, including the originals and all non-identical copies or drafts, whether different from the original by reason of any notation made on such copy or draft or otherwise including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, e-mails, electronic computer files, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice communications, offers, notations of any sort of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer print-outs, teletypes, facsimiles, invoices, work sheets and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural writs, records or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures; and electronic, mechanical or electric records or representations of any kind including, without limitation, tapes, cassettes and disc recordings, and writings and printed material of every kind.

The term "correspondence" means any tangible object that conveys information or memorializes information that was conveyed in tangible or oral form including, but not limited to, writings, letters, memoranda, reports, notes, e-mails, telephone logs, telephone billing information, telephone recordings, and interoffice communications.

The term “Epstein’s victims” means any person that the Government identified as a possible victim of a sex offense committed by Jeffrey Epstein, including Jane Doe #1, Jane Doe #2, all victims identified in attachment to the non-prosecution agreement entered into by Epstein, and another person that the Government investigated as a possible victim of Epstein’s sex offenses.

The term “Government” means the federal government, including all employees of and components of the United States Department of Justice (such as, the Office of the Attorney General, the Office of the Deputy Attorney General, the Criminal Divisions, the Office of Professional Responsibility, the Child Exploitation and Obscenity Section, the U.S. Attorney’s Offices for the Southern District and Middle District of Florida, and the Federal Bureau of Investigation) and other federal government agencies with law enforcement responsibilities related to the Epstein case (such as the Internal Revenue Service). This request for production seeks all documents, correspondence, and other information held by all of these entities, including all employees of and components of the Justice Department that worked on or were in any way involved the Epstein investigation and/or that possess information relevant to the victims’ claims.

The term “including” means containing within the request, but not limiting the request.

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The term "U.S. Attorney's Office" means the U.S. Attorney's Office for the Southern District of Florida and includes all branch offices within the Southern District of Florida.

PRIVILEGE LOG

If you believe that any request for admission is subject to a privilege and if you intend to assert that privilege, please provide a "privilege log" consistent with Local Rule 26.1(g), including a description a document that is consistent with Local Rule 26.1(g)(3)(B). Your privilege log should include a specific identification of the privilege being asserted and the basis for the privilege.

DATED: December 1, 2011

Respectfully Submitted,

s/ Bradley J. Edwards
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CERTIFICATE OF SERVICE

The foregoing document was served on December 1, 2011, on the following persons via US Mail and electronic mail to:
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EFTA00179763

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 MOTION TO COMPEL PRODUCTION OF DOCUMENTS THAT ARE NOT PRIVILEGED

EFTA00179764

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to move this Court to turn over to them numerous documents that to which the Government has asserted various privileges. All of the Government's assertions of privilege are not well founded, for the reasons described in this pleading, and the Court should provide all of the documents to the victims.[1] The factual support for the arguments found in this memorandum is contained, inter alia, in the attached affidavit of Bradley J. Edwards, Esq. The victims have also concurrently filed itemized objections to the Government's privilege log.

I. General Responses to All Assertions of Privilege.

Inadequate Privilege Log – The great bulk of the Government's privilege assertions do not comply with the Court's requirement that the privilege log must "clearly identify[] each document[] by author(s), addressee(s), recipient(s), date, and general subject matter . . . ." DE 190 at 2. As a result of the Government's failures, it is impossible to even begin to determine which of the Government's assertions of privilege are valid.

Failure to Prove Factual Underpinnings of Privilege Claim – Most of the Government's privilege assertions rest on factual underpinnings (e.g., an attorney-client relationship is at issue, a deliberative process is at issue) that have not been proven by any materials in the record. Accordingly, these assertions of privilege are inadequate. *See Bogle* [redacted] *McClure*, 332 F.3d 347, 1358 (11th Cir. 2003); *Brown* [redacted] *City of Margate*, 842 F.Supp. 515, 520

[1] Should the Court allow the Government to assert privilege with regard to any of the materials, the victims would then be free to argue that, as a remedy for the Government's assertion of privilege, the Court should preclude the Government from denying the claims by the victims that would have been supported by the withheld information. *See, e.g., Attorney General of the U.S.* [redacted] *Irish People, Inc.*, 684 F.2d 928, 951 (D.C. Cir. 1982).

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(S.D. Fla. 1993) (government failed to prove attorney-client relationship), *aff'd*, 56 F.3d 1390 (11th Cir. 1995).

Waiver of Confidentiality – Some of the Government's assertions of privilege fail because it is clear that any confidentiality was waived by the presence of persons outside the confidential relationship. For example, some of the assertions of attorney-client privilege involve documents and correspondence sent to person outside of any attorney-client relationship.

Government's Fiduciary Duty to Crime Victims Bars Privilege - The Government cannot invoke privilege in the context of a Crime Victims' Rights Act petition because it owes a fiduciary duty to the crime victims to use "best efforts," 18 U.S.C. § 3771(c)(1), to protect their rights. *See Solis v. Food Employers Labor Relations Ass'n*, 644 F.3d 221, 226-27 (4th Cir. 2011) (noting that the attorney-client privilege does not apply "in the context of fiduciary relationships" and that "[t]his principle has been applied to fiduciary relationships beyond the traditional trust context"); *see also In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 919-21 (8th Cir. 1997) (government attorneys have duty to report wrongdoing).

Communications Facilitating Crime-Fraud-Misconduct Not Covered – Any privilege would be subject to a crime-fraud-misconduct exception. *See In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985) (applying exception to attorney-client privilege); *Cox v. Administrator U.S. Steel & Carnie*, 17 F.3d 1386, 1422 (11th Cir. 1994) (applying exception to work product claim). Such an exception applies to the facts of this case.

Factual Materials Not Covered – Any privilege would only cover materials reflecting the confidential relationship, not factual materials. *See, e.g., EPA v. Mink*, 410 U.S. 73, 87-88 (1973) ("memoranda consisting only of compiled factual material . . . and severable from its

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context would generally be available for discovery by private parties in litigation with the Government."). Many of the materials at issue are factual materials.

Documents Not Prepared in Anticipation of CVRA Litigation – The work product doctrine (as well as the investigative privilege) only applies to documents prepared by an attorney in anticipation of litigation, not to documents prepared in the ordinary course of business, pursuant to regulatory requirement, or for other non-litigation purposes. *Solis v. Food Employers Labor Relations Ass'n*, 644 F.3d 221, 231 (4th Cir. 2011). Many of the documents at issue here were not prepared in anticipation of litigation, and certainly not litigation about the Crime Victims' Rights Act. *See, e.g., Southern Union Co. v. Southwest Gas Corp.*, 205 F.R.D. 542, 549 (D. Ariz. 2002) (documents not protected by work product because not prepared in connection with case at hand).

II. Specific Responses to Specific Assertions of Privilege.

A. Attorney-Client Privilege.

Ordinary Governmental Communications Not Covered – A general attorney-client privilege does not exist for ordinary governmental communications. *See In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 916-21 (8th Cir. 1997).

Only communications concerning legal services covered – Any attorney-client privilege would be limited to communications made for purposes of facilitating the rendition of legal services to the Government client. *See, e.g., Diamond v. City of Mobile*, 86 F.R.D. 324 (D. Ala. 1978) (attorney-client privilege did not bar disclosure of statements made to the city attorney while conducting the internal investigation where the purpose of the investigation was

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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 RENEWED MOTION FOR AN ORDER DIRECTING THE U.S. ATTORNEY'S OFFICE NOT TO WITHHOLD RELEVANT EVIDENCE

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to renew their Motion for an Order Directing the U.S. Attorney's Office Not to Withhold Relevant Evidence (DE 50). The Court has previously reserved ruling on this motion. DE 99 at 11. In light of the Governments' recent decision to assert that thousands of pages of documents are privileged – and to produce a privilege log in a manner and format that makes it impossible to understand what kinds of documents have been produced, or even whether the Government has responded to each request at all – the Court should now grant the motion. By granting the motion, the Court would simplify and expedite these proceedings and largely or entirely avoid the need for a document-by-document review of the Government's privilege assertions and the victims' responses to them.

BACKGROUND

As the Court is aware from the victims' previous filing of this motion (*see* DE 50 at 1-3), in discussions with the U.S. Attorney's Office about this case, counsel for Jane Doe #1 and Jane

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Doe #2 inquired about whether the Office would voluntarily provide to the victims information in its possession that was material and favorable to the victims' case. Victims' counsel pointed out that, if they were criminal defense attorneys representing criminals, the Office would promptly turn over all information in its possession that was helpful to these criminals under *Brady v. Maryland*, 373 U.S. 83 (1963), and related decisions. Victims' counsel asked the Office to extend to the victims the same assistance that it would provide to criminal defendants – i.e., to voluntarily provide to the victims information in its possession that was favorable to the victims' CVRA case.

In response, victims' counsel were informed by the Office that it could – and would – withhold from the victims such information, apparently on the theory that the CVRA does not apply to this case or on the theory that victims lack due process rights under the CVRA. Accordingly, on March 21, 2011, the victims filed a motion asking the Court to enter an order directing the Government to produce information in its possession favorable to them. DE 50. The Government filed a response in opposition. DE 59. The victims filed a reply. DE 76. After a hearing on this and related motions, on September 26, 2011, the Court agreed to allow factual development through discovery by the victims. DE 99 at 11. The Court allowed the victims to file requests for admission and for production of documents (and potentially other discovery requests as well). *Id.* The Court then noted: "Because the Court will allow this limited factual development, it is unnecessary to decide here whether the CVRA or the Federal Rules of Civil Procedure provide discovery rights in this context. The Court therefore reserves ruling on [the victims'] motion [for an order directing the Government not to withhold relevant evidence]." *Id.*

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On October 3, 2011, the victims filed requests for production with the Government. On November 7, 2011, rather than produce even a single page of discovery, the Government filed a motion to dismiss the victims' petition. DE 119. On that same day, the Government filed a motion to stay discovery. DE 121. The victims filed a response, arguing that the Government's motion was a stall tactic. DE 129. The victims also filed a motion to compel production of all of their discovery requests. DE 130. The Government filed a reply, arguing that it was not stalling. Indeed, the Government told the Court that "the United States has agreed to provide some information to [the victims] even during the pendency of the stay [of discovery] and is undertaking a search for that information." DE 140 at 4. Contrary to that representation, however, over the next seventeen months, the Government did not produce any information to the victims.

Ultimately, after some additional motions and rulings, on June 19, 2013, the Court denied the Government's motion to dismiss and lifted any stay of discovery. DE 189. That same day, the Court entered an order granting the victims' motion to compel and directing the Government to produce (1) all correspondence between it and Epstein; (2) all communications between the Government and outside entities; and (3) every other document requested by the victims. DE 190 at 2. With respect to the third item, the Court allowed the Government to assert privilege by producing the items in question for in camera inspection and filing a contemporaneous privilege log. *Id.* The Court required that the privilege log must "*clearly* identify[] each document[] by author(s), addressee(s), recipient(s), date, and general subject matter . . . ." DE 190 at 2 (emphasis added).

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On July 19 and July 27, 2013, the Government made its production in this case. With regard to item (1) – correspondence with Epstein, the Government withheld the correspondence pending a ruling from the Eleventh Circuit on Epstein's motion to stay production of these materials. With regard to the other items, the Government produced 14,825 pages of documents to the Court for in camera inspection, but turned over only 1,357 pages to the victims. Thus, the Government asserted privilege to more than 90% of the documents in question. The documents that the Government produced were almost worthless to the victims, as they included such things that the victims' own letters to the Government (Bates 0001-04), court pleadings filed by the victims themselves or other victims, by Epstein, or by news media organizations (*e.g.,* Bates 00142-88, 00229-31, 281-311, 00668-69), public court rulings on Epstein related matters (*e.g.*, Bates 0008-10, 0012-14. 0036-86, 00190-228), public newspaper articles (e.g., Bates 0011, 0030, 0032-33), and similar materials already available to the victims. It also included roughly four hundred pages of notices sent to the various other victims in this case – notices that were substantively indistinguishable from the notices the victims themselves had already received. Almost without exception, the documents the Government produced do not go to the disputed issues in this case.

On the other hand, the Government asserted privilege on 13,468 pages of materials. While many of these pages also do not appear to go to the disputed issues in this case, buried among the documents appear to be some highly pertinent materials. The Government has asserted privilege, for example, with regard to its internal discussions about notifications to crime victims. The Government has also asserted privilege with regard to an investigation by the Office of Professional Responsibility (OPR) regarding the handling of the Epstein case and the

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treatment of the victims. It is, however, difficult to say for certain which documents are important, because rather than comply with the Court's privilege log requirement, the Government provided only a truncated log that did not fully describe the documents at issue, much less "clearly" identify the subject matter of the documents and the parties who received them.[1] The Government has also failed to identify which documents it is producing go to which document production requests.

DISCUSSION

The victims have previously explained at length why the Court should enter an order directing the Government not to withhold relevant documents. DE 50; *see also* DE 59 (Gov't Response); DE 76 (victim's reply). The Court reserved ruling on that motion for an uncertain amount of time. The victims will not repeat their previously-advanced arguments here, but simply incorporate them by reference and respectfully suggest that now would be a propitious point in this case for the Court to take up the motion again – and to grant the motion. Doing so would save the Court and the victims considerable amount of time by narrowing (or even eliminating entirely) the number of privilege issues that would need to be resolved.

In addition, the victims wish to advance three new arguments in support of their motion for such an order based on new developments in this case since they filed their motion. First and most important, the Government's response to the Court's discovery order is so fundamentally inadequate that the Court should simply not allow further litigation but provide the documents to the victims by granting their motion. Second, the Court should also grant the victims' motion

[1] Further factual information that may be relevant to this motion is found in the contemporaneously-filed Affidavit of Bradley J. Edwards, attached to Jane Doe #1 and Jane Doe #2's Motion to Compel Production of Documents That Are Not Privileged.

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because the Government's fiduciary obligations to the victims to use its "best efforts" to protect their rights conflict with its privilege assertions. Specifically, assertion of any privilege is inconsistent with the fiduciary duties that flow from that statutory "best efforts" requirement. Third, the Government's recent admissions and privilege log make clear that significant "*Brady*" material exists. Accordingly, the Court should no longer reserve ruling on the victims' motion but instead should simply order these highly relevant materials to be produced now, just as it would order the Government to produce highly relevant materials to criminal defendants.

I. THE COURT SHOULD SIMPLY PRODUCE THE DOCUMENTS TO THE VICTIMS BECAUSE OF THE GROSS INADEQUACIES OF THE GOVERNMENT'S PRIVILEGE ASSERTIONS.

The Government has grossly violated the Court's order to provide an appropriate privilege log in connection with the disputed documents. In light of that stark failure, the Court should simply grant the victims' pending motion regarding suppression of evidence and produce the disputed documents to them.

As the Court is well aware, it has denied repeated efforts by the Government to block the victims from receiving relevant information about this case. In its most recent order (DE 190), the Court directed the Government to either produce "all other responsive documents in response to all outstanding requests for production of document" to the victims or "file and serve, in the public portion of the court file, a privilege log *clearly* identifying each document[] [withheld] by author(s), addressee(s), recipient(s), date, and general subject matter . . . ." DE 190 at 2 (emphasis added). Government then made its production. But rather than provide helpful information to the victims, the Government instead has provided information that was essentially irrelevant to the disputed issues. *See* Affidavit of Bradley J. Edwards at 5.

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More important with regard to this motion, the Government has not begun to comply in a meaningful way with a discovery process that would permit the victims to obtain information relevant to their claims. Of course, the purpose of a privilege log "is to provide a party whose discovery is constrained by a claim of privilege . . . with information to sufficient to evaluate such a claim and to resist if it seems unjustified." *Tuite v. Henry*, 98 F.3d 1411, 1416 (D.C. Cir. 1996). Reinforcing that command, this Court required the Government's privilege log to "clearly" indicate what materials were covered. The Government has not begun to provide the victims with sufficient information to resist claims of privilege.

One of the most basic problems with the Government's action is that it is not identified which of the "privileged" documents apply to which of the victims' document production requests. Instead, the Government has simply taken more than 13,000 pages of documents, Bates stamped them in no particular order (or at least no order that the victims can discern), and then asserted that they are all privileged for various reasons. The resulting "log" is wholly inadequate for multiple reasons, the most basic of which is that it does not signal to the victims which produced documents respond to which requests. To gather the documents to respond to the Requests for Production (RFPs),[2] presumably the Government had to perform query searches in electronic databases or actual searches in paper files.[3] Each search would have then produced certain documents. But rather than disclose documents on a search-by-search basis, the Government has simply taken the all documents it gathered, apparently dropped them on the

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[2] The victims' First and Second Requests for Production are included as attachments to the Affidavit of Bradley J. Edwards, which is (in turn) an attachment to the victims' contemporaneously-filed Motion to Compel Production of Documents That Are Not Privileged.

[3] *See, e.g.*, Jane Doe #1 and Jane Doe #2's First RFP, ¶ 16(d) (requesting emails and other documents in which certain particular words appear).

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floor into a random pile, and then provided a "log" of documents in no order whatsoever – and without indicating which documents are being produced in answer to each question. The resulting mishmash of thousands of documents places the victims in the impossible position of trying to determine what the documents mean without any context whatsoever.

Compounding this problem and creating a critical additional problem, this lump and dump technique makes it impossible to verify that the Government has actually performed each of the searches required to make each of the responses. Indeed, it would be entirely possible that the Government could have failed to search for, or to produce, any documents whatsoever on certain requests and the victims would have no way to know one way or the other.

Perhaps in theory these problems might be mitigated if the Government had produced (as the Court required) a privilege log "clearly" describing the subject matters and other particulars of the documents produced. But as the Court can confirm with just a casual glance at the privilege log, many of the documents have been described generically or not at all, leaving the victims to wonder what many of the documents really are.

The upshot of the "lump and dump" approach is that the victims cannot even begin to understand what has been produced with regard to their particular discovery requests. As an illustration, consider the victims' request for production of documents about former prosecutor Bruce Reinhart's knowledge of information about the Epstein prosecution immediate before he left to become employed by Epstein. *See* Jane Doe #1 and Jane Doe #2's First Request for Production, ¶ 15 (seeking this information); ¶ 21 (requesting information collected by OPR on this subject). The victims know that the Government has information responsive to this request, because in answering the victims' First Request for Admissions, the Government admitted that it

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possessed information reflecting contacts between Reinhart and persons working at the Justice Department that related to the Epstein investigation. *See* Government's Answers to Jane Doe #1 and Jane Doe #2's First Request for Admissions (RFA's), ¶¶ 15-17.[4] It further admitted that OPR collected information about Reinhart's possibly improper behavior. *See* Gov't's Answers to RFA's, ¶ 22(a). Yet there is no way to tell which documents (among the more than 13,000 pages of documents) are responsive to RFP 15 because the Government has not indicated which of its documents apply to which RFP. Nor has the Government given the victims sufficient information to make this determination on their own. Indeed, the Government's privilege log does not even contain the word "Reinhart" anywhere in it. So it is simply impossible to tell which documents apply to the Reinhart issue.

As another illustration, consider the victims' request for information about former prosecutor Matthew Menchel's personal/business relationship with Jeffrey Epstein. *See, e.g.,* Victims' First RFP's at ¶ 16(f). Here again, the victims know that the Government possesses such information, because it admitted to having such information in answer to the victims' request for admissions – information collected by its own internal affairs unit, OPR. *See* Gov't's Answers to RFA's, ¶ 20. Yet once again, it is impossible for the victims to even tell which documents (if any) the Government has turned over to the Court that pertain to this issue, because the Government has not explained which documents apply to this request and none of

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[4] The victims' Request for Admissions and the Government's answers thereto are included as an attachment to the Affidavit of Bradley J. Edwards, which is (in turn) an attachment to the victims' contemporaneously-filed Motion to Compel Production of Documents That Are Not Privileged.

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the privilege log entries provide any description that indicates they cover documents regarding such a personal or business relationship.[5]

As yet another illustration, consider the victims' request for information about the OPR investigation into the possible mishandling of the Epstein prosecution and victim notifications. Here again, the victims have very specifically requested such information. *See* Victims' First RFP's at ¶ 17. The Government has admitted that OPR collected information about possible improper behavior by prosecutors in the Epstein matter. Gov't's Answers to RFA's, ¶ 22. Yet it is simply impossible to tell where the information that the Government collected appears among thousands of pages of documents it has produced.[6]

As a fourth and final illustration, the victims requested information about why the U.S. Attorney's Office for the Southern District of Florida (USAO-SDFL) was "conflicted out" of considering issues relating to the Epstein matter, as well as any information that developed about that conflict after the Epstein matter was referred to another district (e.g., the Middle District of Florida). *See* Victims' First RFP's at ¶ 18; Victims' Second FRP's at ¶ 1. The victims know that the USAO-SDFL was in fact conflicted out of some decisions, so presumably the USAO-MDFL evaluated something as a result. Yet apart from a few preliminary emails within the

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[5] Menchel is, of course, revealed in the privilege log at several points as on the e-mails chains involved in the plea bargain discussions surrounding the Epstein prosecution. But none of the vague descriptions in the privilege log appear even remotely related to a personal or business relationship. Moreover, given that many of the privilege log entries do not even include dates, it is not even possible to look for materials that might follow the date on which Menchel left the U.S. Attorney's Office.

[6] The Court will notice that some pages in the Government's privilege log do deal with the OPR investigation. *See* Gov't Supp. Privilege Log at 12-14. But so far as the victims can discern, the documents covered there are simply e-mails *about* the OPR investigation, rather than the underlying substantive information collected during the OPR (or OPR-triggered) investigation.

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Justice Department regarding whether the recusal should occur, *see* Gov't First Privilege Log at pp. 22-23, nothing in the privilege log indicates that the Government has produced even a single document in response to the request for information about what happened as a result of the recusal. Indeed, so far as the victims can tell, the Government may even be staking out the remarkable position that there is not even one single document in the Middle District of Florida that is responsive to the victims' requests, because (so far as the victims can tell) nothing has been provided from the Middle District of Florida.

These are but four clear and illustrative examples, which the victims could multiply dozens of times. The victims respectfully ask the Court to require the Government, in its response to this motion, to indicate where (if anywhere) in the privilege log documents pertaining to these four issues appear, so that the Court can then judge for itself whether the victims have been given sufficient information to respond to the Government's claims of privilege.

Again, our point in this pleading is not to try and debate the Government on its privilege assertions. The more basic point in this pleading is that the victims cannot even begin to fairly challenge many of the Government's assertions because they do not know which (if any) of the documents at issue pertain to their discovery requests. The Government's privilege assertions are simply broken beyond repair. In view of this gross failure by the Government, the Court should simply provide the documents it has received to the victims by granting the victims' Motion for an Order to the Government not to Withhold Relevant Evidence. At an absolute minimum, to solve the problem that the Government has not indicated which documents apply to

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which requests, the Government should be required to provide a listing of documents on a request-by-request basis.

II. THE COURT SHOULD ORDER THE GOVERNMENT TO PRODUCE THE REQUESTED DOCUMENTS BECAUSE THE CVRA'S BEST EFFORTS REQUIREMENT CREATES A FIDUCIARY EXCEPTION TO ALL PRIVILEGES.

In their 2011 motion, the victims explained that the CVRA obligates government prosecutors to "make their *best efforts* to see that crime victims are . . . accorded[] their rights" under the CVRA. DE 50 at 3-5 (*citing* 18 U.S.C. § 3771(c)(1)); *see also* DE 76 at 2-6. In light of the Government's recent assertion of privilege, the Government's failure is now even more apparent. The Government's invocation of a privilege to block disclosure of documents is simply inconsistent with the Government's statutorily-mandated best efforts obligation.

Controlling circuit precedent supports the conclusion that the Government fiduciary duty bars an assertion of privilege, even in the context of the well-established and absolute attorney-client privilege. In *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970), the Court of Appeals with jurisdiction over this Court[7] held that an attorney-client privilege can give way when "the client asserting the privilege is an entity which in the performance of its functions acts wholly or partly in *the interests of others*, and those others . . . seek access to the subject matter of the communications." *Id.* at 1101 (emphasis added). In *Garner*, the Court refused to allow the management of a corporation to invoke attorney-client privilege in the context of a shareholder derivative action, noting that beneficiaries of its actions with the stockholders. *Id.* Since that

[7] *See Knight v. Thompson*, ---F.3d---, 2013 WL 3843803 at *5 n.5 (11th Cir. 2013) (*citing Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (11th Circuit adopts as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981)).

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ruling, many courts (including this Court) have applied the "*Garner* doctrine" or "fiduciary exception doctrine" in settings outside the shareholder derivative context. *See, e.g., Solis v. Food Employers Labor Relations Ass'n,* 644 F.3d 221, 227-28 (4th Cir. 2011) (applying *Garner* principles to bar assertions of privilege to communications by ERISA fiduciary and plan attorneys in suit concerning alleged mismanagement of plan assets); *Maltby v. Absolut Spirits Co., Inc.*, 2009 WL 800142 at *4 (S.D. Fla. 2009) ("Defendant maintains that this Court should not apply the fiduciary exception here because the Eleventh Circuit has never applied the fiduciary exception in the context of an ERISA case. Defendant provides no legal or factual explanation of why this Court should not apply this doctrine, however."); *Nellis v. Air Line Pilots Ass'n*, 144 F.R.D. 68, 71 (E.D. Va. 1992) (holding that the *Garner* doctrine applies because unions owe a fiduciary duty to their members). The "*Garner* doctrine" or "fiduciary exception" has also been applied to bar the federal government from asserting privilege against those whose interests it must protect, such as Indian tribes. *See, e.g., Osage Nation and/or Tribe of Indians of Oklahoma v. United States*, 66 Fed. Cl. 244 (2005); *Cobell v. Norton*, 212 F.R.D. 24 (D.D.C. 2002). For instance, in *Osage Nation*, the Government argued against application of the fiduciary exception in the context of a case alleging mismanagement of Indian trust funds, contending that the federal agencies are "often charged with protecting competing interests, including some potentially adverse to a Tribe's interest." *Id.* at 247. The district court rejected these arguments, finding the claim "that the government's sovereign interests somehow negate or offset its obligations as trustee to be unpersuasive." *Id.* at 248.

The situation here is parallel to situations such as a union being challenged by its members or the Government is being challenged an Indiana tribe. In this case, of course, a U.S.

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Attorney's Office is being challenged by recognized crime victims, who are arguing that the Office violated its statutory obligation to act in their "best interests." Accordingly, under *Garner*, an attorney-client privilege is not appropriate, provided the victims to show "good cause" why the privilege should not be invoked. *Id.* at 1104. Here, there is ample good cause. *See generally* Affidavit of Bradley J. Edwards, Esq. (filed concurrently with this motion as an attachment to the Victims' Motion to Compel Production of Documents that Are Not Privileged) (explaining why good cause exists for production of documents requested). As a result, the Court should not allow the Government to invoke privilege but should instead simply grant the victims' motion for an order not allowing the Government to withhold relevant evidence and turn the disputed materials over to the victims.

III. THE VICTIMS HAVE A DUE PROCESS RIGHT UNDER THEIR CVRA "RIGHT TO BE TREATED WITH FAIRNESS."

In their 2011 motion, the victims also argued that they were entitled to receive favorable evidence in the Government's possession for the same reason that criminal defendants receive such information: fundamental considerations of fairness require that the Government not deliberately withhold relevant information contrary to its position in court. DE 50 at pp. 5-9 (*citing Brady v. Maryland*, 373 U.S. 83, 87 (1963), and arguing that they are entitled to "*Brady*" information contradicting the Government's position no less than criminal defendants). In light of the Government's recently-filed privilege log, the need for the Court to grant the victims' motion has become even more apparent.

The Government's privilege log indicates that it is withholding significant information that is critical to the victims' arguments. For example, the Government is withholding

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information about its discussions concerning how to notify crime victims. *See, e.g.,* page 16 of first privilege log (DE 212-1) regarding Box #2 P-010526 to P-010641. And the Government is withholding information about its own internal investigation into the potential wrongdoing in this case. *See, e.g.,* page 13 of supplemental privilege log (DE 216-1) regarding Suppl. Box 3 P-013940 to P-013942.

As we understand the Government's position on this issue, it does not contend that it does not have important evidence for the victims' case. Nor does the Government argue that it would be difficult to identify that material. Instead, the Government's argument has been that *Brady* obligations are confined to criminal cases against criminal defendants. DE 59 at 5-6.

But the case law is not so narrow as the Government believes. The victims have recently identified several cases in which courts have applied *Brady* outside of the criminal context. In *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), the Sixth Circuit applied *Brady* in the context of a denaturalization and extradition case. In *United States v. Edwards,* 777 F.Supp.2d 985 (E.D.N.C. 2011), the district court applied *Brady* to civil commitment proceedings for sexual offenders. And in *EEOC v. Los Alamos Constructors, Inc.*, 382 F.Supp. 1373, 1374 (D.N.M. 1974), the district court applied *Brady* to an employment discrimination action.

The issue of *Brady* obligations in a CVRA action appears to be one of first impression. Thus, more important than case law is the fact that the victims here can rely on specific statute – the CVRA – that gives them a right to be "treated with fairness." 18 U.S.C. § 3771(a)(8). Being treated with fairness means (at a minimum) treated someone with due process. As one of the CVRA's co-sponsors (Senator Kyl) explained, "The broad rights articulated in this section [§ 3771(a)(8)] are meant to be rights themselves and are not intended to just be aspirational. One of

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these rights is the right to be treated with fairness. Of course, fairness includes the notion of *due process*. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct Government agencies and employees, whether they are in executive or judiciary branches, to treat victims of crime with the respect they deserve." 150 Cong. Rec. S4269 (Apr. 22, 2004) (emphasis added).

In the context of this particular case, it is simply inconsistent with the "due process" requirements of the CVRA to allow the Government to withhold documents that will help the victims prove their case. The Court should accordingly enter an order, paralleling its "Standing Discovery Order" in criminal cases, directing the Government to provide favorable evidence to the victims. *See* Local Rule 88.10. The Standing Discovery Order typically provides: "The government shall reveal to the defendant(s) and permit inspection and copying of all information and material known to the government which may be favorable to the defendant on the issues of guilty or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Agurs*, 427 U.S. 97 (1976)." The Court should adopt that language to the case at hand here.

Interesting, the Standing Discovery Order – and associated local rule 88.10(O) – contains a broad, commonsense provision which the Government has plainly violated in this case. The Order provides: "The parties shall make every possible effort in good faith to stipulate to all facts or points of law the truth or existence of which is not contested and the early resolution of which will expedite the trial." For more than five years, the victims have been trying to get the Government to stipulate to undisputed facts, precisely as the Court's rules envision. The Government, however, has refused to do so. Accordingly, the Court should enter an order

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requiring the Government to produce evidence which it well knows is relevant and material to the victims' case. And because the Court has in its possession thousands of pages of documents that fit that description, the Court should simply turn that information over to the victims.

CONCLUSION

The Court should enter an order directing the Government not to withhold material evidence in this case and should provide to the victims the materials it has received for in camera review. In addition, to solve the problem that the Government has not indicated which documents apply to which requests, the Government should be required to provide such a responsive document.

DATED: August 16, 2013

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on August 16, 2013, on the following using the Court's CM/ECF system:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

JANE DOE #1 AND JANE DOE #2,

Petitioners,

vs.

UNITED STATES,

Respondent.
_____/

RESPONDENT'S OPPOSITION TO PETITIONERS' RENEWED MOTION FOR AN ORDER DIRECTING THE U.S. ATTORNEY'S OFFICE NOT TO WITHHOLD RELEVANT EVIDENCE

Respondent, by and through its undersigned counsel, files its Opposition to Petitioners' Renewed Motion for an Order Directing the U.S. Attorney's Office Not to Withhold Relevant Evidence, and states:

I. INTRODUCTION

In its Omnibus Order of June 18, 2013, this Court directed that petitioners should have thirty days after service of the government's privilege log to file a motion to compel contesting any asserted privilege claim. D.E. 190 at 2. Any such motion to compel was limited to seven pages. Id. Within fifteen days, the government was permitted to file its response, which was also limited to seven pages. D.E. 190 at 3.

Petitioners' response to the government's filing of its privilege log has been the filing of the following: (1) the government's privilege log with its objections annotated (D.E. 224-1); (2) a motion to compel production of documents that are not privileged, numbering eight pages D.E. 225; (3) a twenty-four page, single-spaced affidavit of petitioners' counsel, addressing the

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various privileges asserted by the government, D.E. 225-1; and (4) a renewed motion for an order directing the U.S. Attorney's Office not to withhold relevant evidence, numbering seventeen pages, D.E. 226. The renewed motion also challenges the government's assertions of privilege.

I. THE GOVERNMENT HAS PROPERLY INVOKED APPLICABLE PRIVILEGES

Petitioners argue that this Court should summarily dismiss the privileges invoked by the government because of the "gross inadequacies" in the privilege assertions. D.E. 226 at 6-7. Their argument is baseless because the privilege log does clearly indicate what documents for which a privilege is being claimed. Further, the Court also has the actual document for in camera review to determine if the privilege is valid.

Petitioners go so far as to complain that the government has not identified in the privilege log which documents respond to which requests. Id. at 7. They do not explain how the validity of a privilege is contingent upon which request for production the document is responsive to. In request for production no. 18, petitioners requested documents "regarding potential conflicts of interest that the Justice Department discussed or determined existed for the USAO SDFL … ." The government's privilege log clearly references e-mails between Assistant General Counsel Richard Sudder, Executive Office for United States Attorneys, and First Assistant U.S. Attorney Benjamin Greenberg, "regarding Formal Notice of Office-wide Recusal of Southern District of Florida, dated August 24 and August 29, 2011." D.E. 212-1 at 22. Further, the privilege log detailed emails between Peter Mason, Executive Office for United States Attorneys, and Assistant U.S. Attorney Dexter Lee, "seeking advice regarding office-wide recusal, dated December 16 and 17, 2010, with attached letter from Paul Cassell to Wifredo A. Ferrer, dated December 10, 2010." D.E. 212-1 at 23.

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The subjects of the e-mails, office-wide recusal and "seeking advice regarding office-wide recusal," were stated in the privilege log. The attorney-client privilege was invoked for these documents, along with the deliberative process and work product privileges for a subset of these documents. Since petitioners requested these documents, they should be able to discern what document request they pertain to. Moreover, the purpose of the e-mails, seeking advice regarding office-wide recusal, was stated in the privilege log. This is sufficient factual detail to permit petitioners and the Court to determine whether the attorney-client privilege applies.

Petitioners' claim that the government has failed to produce relevant documents is based on fallacious assumptions. They use as an example of a failure to produce documents the request for documents regarding former Assistant U.S. Attorney Bruce Reinhart. D.E. 226 at 8-9. "The victims know that the Government has information responsive to this request, because in answering the victims' First Request for Admissions, the Government admitted that it possessed information reflecting contacts between Reinhart and persons working at the Justice Department that related to the Epstein investigation." Id. Continuing, petitioners state, "It further admitted that OPR collected information about Reinhart's possibly improper behavior." They then argue that "there is no way to tell which documents (among the more than 13,000 pages of documents) are responsive to RFP 15 because the Government has not indicated which of its documents apply to which RFP."[1] Id. at 9.

The fallacy in petitioners' reasoning is the assumption that the basis for the government's response to the request for admission was a document, rather than personal observation. If it was based on the latter, there would be no document to produce. Petitioners make the same fallacious assumption in the case of former Assistant U.S. Attorney Matt Menchel. D.E. 226 at 9-10. The admission in Request for Admission No. 20 need not have been based upon a

[1] The RFP which seeks documents pertaining to Reinhart is actually number 16, rather than 15.

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document.

Petitioners admit that the government has included documents from the Office of Professional Responsibility (OPR) in its privilege logs. D.E. 226 at 10 n.6. The government has properly invoked the attorney-client, work product, and deliberative process privileges for many of the OPR documents. D.E. 216-1 at 12-14. In Sandra T.E. v. South Berwyn School District 100, 600 F.3d 612 (7th Cir. 2010), the Seventh Circuit reversed a district court's finding that the attorney-client and work product privileges did not apply to notes of witness interviews, and memoranda prepared from those interviews, by a law firm retained by a school district. A teacher in the school district was charged with sexually molesting numerous students over several years. Id. at 615. A civil lawsuit was filed against the school district and the principal. The school district hired Sidley Austin LLP to conduct an internal investigation and provide legal advice to the school board. Sidley Austin was not the school district's litigation counsel in the civil lawsuit. Attorneys from Sidley Austin interviewed current and former school district employees, as well as third-party witnesses. The attorneys took handwritten notes and later drafted memos summarizing the interviews. Id.

During discovery in the civil litigation, the plaintiffs sought documents in Sidley Austin's possession regarding its investigation. The law firm invoked the attorney-client and work product privileges as to its notes and internal memoranda relating to the employee witness interviews, as well as other legal memoranda. The district court rejected the privilege claims, finding that Sidley Austin had been hired to provide investigative services, not legal services. Id.

The appellate court found, based on the engagement letter between Sidley Austin and the school district, that the law firm had been hired to "investigate the response of the school administration to allegations of sexual abuse of students," and "provide legal services in

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connection with the specific representation." Id. at 619. The Seventh Circuit found this letter brought the case squarely within Upjohn Co. v. United States, 449 U.S. 383 (1981), "which explained that factual investigations performed by attorneys *as attorneys* fall comfortably within the protection of the attorney-client privilege." 600 F.3d at 619(emphasis in original). Despite the fact that Sidley Austin was not the school district's litigation counsel, the appellate court found that Sidley's investigation of the factual circumstances surrounding the abuse was an integral part of the package of legal services for which it was hired and a necessary prerequisite to the provision of legal advice about how the school district should respond. Id. at 620. The Court also found the witness interview notes and memoranda were entitled to protection under the work product privilege because they were prepared "with an eye toward" the pending litigation. Id. at 622

In this case, OPR is charged with the responsibility of investigating allegations of misconduct committed by DOJ attorneys. 28 C.F.R. § 0.39a(a)(1). The counsel heading OPR reports to the Attorney General. 28 C.F.R. § 0.39a. One of OPR's functions is to "[r]eceive, review, investigate and refer for appropriate action." § 0.39a(a)(2). In discharging this function, OPR attorneys interviewed DOJ attorneys regarding the allegations of misconduct lodged by petitioners' counsel, took notes, and prepared memoranda, just like the law firm retained by the South Berwyn School District. The documents generated by these investigative actions are covered by the work product privilege because notes and memoranda prepared by OPR attorneys are created with an eye toward potential litigation. Under § 0.39a(a)(3), OPR Counsel shall, "[r]eport to the responsible Department official the results of inquiries and investigations arising under paragraphs (a)(1) and (2) of this section, and, when appropriate, make recommendations for disciplinary and other corrective action."

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In their fourth example, petitioners claim they "know that the USAO-SDFL was in fact conflicted out of some decisions, so presumably the USAO-MDFL evaluated something as a result." D.E. 226 at 10-11. They contend that, other than a few preliminary emails within the DOJ regarding whether the recusal should occur, "nothing in the privilege log indicates that the Government has produced even a single document in response to the request for information about what happened as a result of the recusal."

Petitioners appear to believe that, because the USAO-SDFL was recused from the Epstein case, the USAO-MDFL "evaluated something as a result." In U.S. v. Weyhrauch, 544 F.3d 969 (9th Cir. 2008), the Ninth Circuit noted that, "the General Counsel's Office of the EOUSA coordinates office-wide recusals, obtains necessary approvals and helps arrange the transfer of responsibility to another office … ." Id. at 973-74. Office-wide recusals are frequently based upon a finding that a reasonable person could question the impartiality of a particular U.S. Attorney's Office, such as when the Office is prosecuting a crime where the victim is an employee in that U.S. Attorney's Office, or a defendant is a close family member of a U.S. Attorney's Office employee. Petitioners seem to believe that the recusal of the USAO-SDFL was based on a finding that misconduct had occurred in the Epstein case, which is incorrect. Further, the transfer of responsibility to the USAO-MDFL was not a charter for it to investigate the USAO-SDFL. Instead, the USAO-MDFL assumed responsibility for the Epstein case, and exercises its own independent judgment and discretion in deciding what action to take, if any.

II. THE FIDUCIARY EXCEPTION TO THE ATTORNEY-CLIENT PRIVILEGE DOES NOT APPLY IN THIS CASE

Petitioners argue that government should be ordered to produce the requested documents because there is a fiduciary exception to all privilege. This wholesale attempt to overcome the

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government's claims of privilege should be rejected because it lacks any legal basis.

The premise of petitioners' argument is that the CVRA provides that government prosecutors are to "make their best efforts to see that crime victims are accorded their rights." 18 U.S.C. § 3771(c)(1). They provide no legal authority for the contention that the CVRA creates a fiduciary obligation between the government and crime victims. Instead, petitioners attempt to engraft such a duty from other cases, involving duties owed by a corporation to its shareholders, Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970), and the relationship between the federal government and Indian tribes. None of those cases are apposite.

In United States v. Jicarilla Apache Nation, 131 S.Ct. 2313 (2011), the Supreme Court reversed the Court of Federal Claims' finding that the government was required to produce documents in litigation involving the Jicarilla Apache Nation. The Tribe had instituted a breach of trust action against the United States, claiming the government had mismanaged funds held in trust for the Tribe. The Tribe sought various documents in discovery, which included materials for which the government claimed were protected by the attorney-client privilege. The Court of Federal Claims applied the fiduciary exception to the attorney-client privilege, applied in the context of common law trust, and found the documents were not privileged. 131 S.Ct. at 2319.

The Supreme Court reversed, finding the government is not a private trustee, and the trust defined between the government and the Tribe was governed by statutes, rather than the common law. Id. at 2323. Further, the United States did not obtain legal advice as a "mere representative" of the Tribe, nor was the Tribe the "real client" for whom that advice was intended. Id. at 2326. Assuming any fiduciary relationship exists between the government and a crime victim, such relationship would be based on the CVRA, not the common law. Further, the government would be managing any trust relationship as a sovereign function, pursuant to

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the plenary authority of Congress, not as a private trustee.

In Jicarilla, the Supreme Court distinguished Garner:

> The United States has a sovereign interest in the administration of Indian trusts distinct from the private interests of those who may benefit from its administration. Courts apply the fiduciary exception on the ground that "management does not manage for itself." *Garner*, 430 F.2d at 1101; *Wachtel*, 482 F.3d at 232 ("[O]f cental importance in both *Garner* and *Riggs* was the fiduciary's lack of a legitimate personal interest in the legal advice obtained"). But the Government is never in that position. While one purpose of the Indian trust relationship is to benefit the tribes, the Government has its own independent interest in the implementation of federal Indian policy. For that reason, when the Government seeks legal advice related to the administration of tribal trusts, it established an attorney-client relationship related to its sovereign interest in the execution of federal law. In other words, the Government seeks legal advice in a "personal" rather than a fiduciary capacity. See *Riggs*, 355 A.2d at 711.

131 S.Ct. at 2327-28. In this case, the government had its own independent interest in the exercise and implementation of its sovereign authority to prosecute an individual for violating federal law. Therefore, the fiduciary exception does not apply.[2]

III. PETITIONERS HAVE NO DUE PROCESS RIGHTS UNDER THE CVRA

Petitioners argue that they have a due process right to documents in the government's possession. D.E. 226 at 14-17. The basis for a due process right, according to petitioners, is the CVRA's provision that crime victims have a right "to be treated with fairness." 18 U.S.C. § 3771(a)(8).

In making this due process argument, petitioners dispense with any analysis of whether the CVRA creates any protected liberty or property interest, sufficient to trigger the due process clause. "The necessary first step in evaluating any procedural due process claim is determining

[2] The two cases cited by petitioners in support of a fiduciary exception due to the government's relationship with Indian tribes, Osage Nation and/or Tribe of Indians of Oklahoma v. United States, 66 Fed. Cl. 244 (2005), and Cobell v. Norton, 212 F.R.D. 24 (D.D.C. 2002), are of dubious vitality in light of Jicarilla Apache Nation.

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whether a constitutionally protected interest has been implicated." Tefel v. Reno, 180 F.3d 1286, 1299 (11th Cir. 1999), citing Economic Dev. Corp. v. Stierheim, 782 F.2d 952, 954-55 (11th Cir. 1986)("in assessing a claim based on an alleged denial of procedural due process a court must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest. Absent such a deprivation, there can be no denial of due process.").

There is no life, liberty, or property interest implicated in the CVRA, and courts are hesitant to find that a substantive due process right has been created. See Collins v. City of Harker Heights, Texas, 503 U.S. 115, 125 (1992)("As a general matter, the Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open ended. (citation omitted). The doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field."). Without a protected life, liberty, or property interest, petitioners cannot invoke the due process clause as a basis for compelling the government to disclose documents to them.

Petitioners' reliance upon Brady v. Maryland, 373 U.S. 83 (1963), is similarly unavailing. Petitioners are not charged with any crime, nor are they in the position of having their liberty deprived at the hands of the government, such as the case with a defendant charged with committing a crime. Petitioners rely upon three cases, which they claim demonstrate the application of Brady outside the criminal context. D.E. 226 at 15. In Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993), the Sixth Circuit observed:

> We believe Brady should be extended to cover denaturalization and extradition cases where the government seeks denaturalization or extradition based on proof of alleged criminal activities of the party proceeded against. If the government had sought to denaturalize Demjanjuk only on the basis of his misrepresentation at the time he sought admission to the United

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> States and subsequently when he applied for citizenship, it would have been only a civil action.

Id. at 353. Demjanjuk has no application to this case since the government does not seek to deprive petitioners of their United States citizenship, or anything else. The Sixth Circuit found Brady should apply because of two factors. First, the government was seeking to denaturalize Demjanjuk. Second, it was seeking to do so on the ground that Demjanjuk engaged in criminal activities. The appellate court's specific focus on the government's reliance upon Demjanjuk's participation in criminal activities, demonstrates that was the legal basis for its finding that Brady applied. Their reference to the denaturalization case being "only a civil action," if the government had relied solely upon Demjanjuk's misrepresentations, suggests that seeking to denaturalize, without an allegation of criminal activity, would not be a sufficient basis for applying Brady.

Similarly, in U.S. v. Edwards, 777 F.Supp.2d 985 (E.D.N.C. 2011), the government was seeking to civilly commit Edwards for being a "sexually dangerous person" under 18 U.S.C. § 4248(a). The district court found that Edwards had a liberty interest in avoiding detention and civil commitment. Id. at 990. Consequently, the due process clause was implicated because the government was seeking to deprive Edwards of a liberty interest in avoiding detention. In this case, the government does not seek to deprive petitioners of anything.

The third case cited by petitioners is EEOC v. Los Alamos Constructors, Inc., 382 F.Supp. 1373 (D.N.M. 1974). The district court's analysis of the due process issue is contained in one sentence in the following footnote: "Brady v. Maryland (1963) 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215, orders that exculpatory information must be furnished a defendant in a criminal case. A defendant in a civil case brought by the government should be afforded no less due process of law." Id. at 1383 n.5. This is no authority for petitioner's due process argument

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since there is no analysis of whether a protected life, liberty, or property interest is implicated by the government's actions. Moreover, by its own terms, this district court decision is inapplicable because petitioners are not defendants in a civil case brought by the government.

CONCLUSION

Petitioners' renewed motion should be denied. The privilege log provided by the government adequately describes the documents for which privileges are being asserted. Further, there is no fiduciary exception to the attorney-client privilege invoked by the government, nor is there any due process right to documents provided in the CVRA.

DATED: September 3, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
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Jane Does 1 and 2 v. United States,
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

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