

**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 REQUESTING AN ORDER
DIRECTING THE GOVERNMENT TO FILE REDACTED PLEADINGS IN THE
PUBLIC COURT FILE**

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as “the victims”), by and through undersigned counsel, to file this motion for an order directing the Government to file in the public court file redacted versions of its (1) Sealed Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, (2) Sealed Motion to Stay Discovery, and (3) Sealed Reply in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction. There is not even an arguable basis for keeping the vast majority of these pleadings under seal. Sealing all of these pleadings interferes with counsel’s ability to prepare a response, in addition to denying the public the right to know how the Government is interpreting the CVRA in this case. The Government cannot carry its burden of showing a need to seal *all* of these pleadings. Accordingly, the Government should file a redacted pleading in the public court file that redacts only information for which there is a basis for confidentiality – i.e., information that specifically discloses grand jury material.

FACTUAL BACKGROUND

As the Court is aware, on November 8, 2011 -- the very day that the Government was due to produce discovery in this case -- it instead filed a Sealed Motion to Dismiss for purported lack of subject matter jurisdiction, accompanied by a Sealed Motion to Stay further production of any discovery. The reason the Government cited for placing these documents under seal is that they contained grand jury material protected from disclosure by Fed. R. Crim. P. 6(e).

On December 5, 2011, the victims filed responses to these pleadings. The vast bulk of the issues did not pertain to grand jury information. Accordingly, the victims filed lengthy responses to the Government's motions in the public court file. DE #127, 128, 129, 130. The victims also filed short, sealed responses regarding issues that touched on the confidential grand jury information. *See Victims' Sealed Pleadings* (docketed Dec. 7, 2011).

The Government obtained three extensions of time to file its reply. On January 27, 2012, the Government filed -- under seal -- a 35-page reply memorandum in support of its motion to dismiss. The memorandum argued that, even if the victims' were able to prove a deliberate and concerted conspiracy between the Government and Jeffrey Epstein to violate their rights, the federal courts are powerless to provide any remedy.

DISCUSSION

The Government has improperly filed all its recent pleadings in this matter under seal. The Government ignores the fundamental fact that "there exists a presumption of openness in all legal proceedings." *United States v. Ignasiak*, ---F.3d---, 2012 WL 149314 at *15 (11th Cir. 2012) (unsealing documents filed in a criminal case) (*citing United States v. Ochoa-Vasquez*,

428 F.3d 1015, 1029-30 (11th Cir. 2005)). The Government has not provided – and cannot provide – any justification for sealing the vast bulk of its recent pleadings.

The Eleventh Circuit and Supreme Court have made clear that district courts should be particularly reluctant to seal documents “involv[ing] public concerns that are at the heart of the interest protected by the right of access: ‘the citizen’s desire to keep a watchful eye on the workings of public agencies . . . [and] the operation of government.’” *Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1246 (11th Cir. 2007) (ordering unsealing of documents) (*quoting Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)). The issues being litigated in this case involve matters of the highest public interest – namely, whether crime victims whose CVRA rights have been deliberately violated¹ by the Government and a criminal offender can obtain any remedy in federal courts. The Government’s position is that they cannot. The Government should not be permitted to conceal this fact through the expedient of filing every page of its pleadings under seal.

This Court has already rebuffed one Government attempt to keep from the public information about this case. At a hearing on July 11, 2008, the Government attempted to keep a response under seal in this case. This Court ordered the response filed publicly:

I don’t see that there is any real public necessity to keep the response sealed in view of what we discussed already on the record and the victim’s ability to disclose those provisions of their own choosing, if they wish. So, in view of the

¹ While the Government obscures this fact in its reply, the victims have alleged a deliberate conspiracy between the Government and Epstein to deny Jane Doe #1 and Jane Doe #2 their congressionally-mandated CVRA rights. Accordingly, the Court must assume the truth of all victims’ allegations in ruling on the Government’s motion to dismiss. See Jane Doe #1 and Jane Doe #2’s Response to Government’s Sealed Motion to Dismiss for Lack of Subject Matter Jurisdiction (DE #127) at 3 (*citing Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010)).

public policy that matters filed in court proceedings should be open to the public and sealing should only occur in circumstances that justify the need to restrict public access, I'm going to deny the motion to seal the response and allow that to be viewed.

Tr. at 31-32.

Keeping the pleadings under seal also unduly burdens counsel for the victims. Just as the Government has been conferring with prosecutors throughout the country on this case, victims' counsel have been conferring with leading experts on crime victims' rights in academia, private practice, and in public interest organizations. Because the Government's pleadings are filed under seal, counsel for Jane Doe #1 and Jane Doe #2 is unable to share these pleadings with these other experts. This constitutes an entirely unnecessary hindrance to effective advocacy in this case.

The Government may claim that its sealing is justified by the fact that they touch on grand jury materials, which are kept confidential under Fed. R. Crim. P. 6(e). But the grand jury information directly involved in the Government's pleadings is, at most, only a few isolated sentences. The Government can simply redact sentences that specifically disclose grand jury material, while making the rest of its pleadings publicly available.

The Government is opposed to this motion.

CONCLUSION

The Court should order the Government to file redacted copies of all of its sealed pleadings in this case in the public court file, with redactions limited to information for which there is a basis for confidentiality – i.e., information that specifically discloses grand jury material.

DATED: February 7, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The foregoing document was served on February 7, 2012, on the following using the Court's CM/ECF system:

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