

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 OF AMERICA,

Defendant.

_____ /

NOTICE OF SUPPLEMENTAL AUTHORITY OF THE
UNITED STATES SUPREME COURT

In two decisions last term, the Supreme Court constitutionalized the right to competent counsel in plea negotiations by ruling that the Sixth Amendment right to effective assistance of counsel “extends to the plea bargaining process” and that defendants are entitled to “the effective assistance of competent counsel” during plea negotiations. *Lafler v. Cooper*, 132 S. Ct. 1376, 1384 (2012); *Missouri v. Frye*, 132 S. Ct. 1399, 1407-09 (2012). Under *Lafler* and *Frye*, counsel have an ongoing obligation to provide effective representation in plea bargaining and to engage in communications with the client and the prosecutor to discharge that obligation. The limited intervenor lawyers and limited intervenor Jeffrey Epstein submit *Lafler* and *Frye* in support of their motions for protective orders and their objections to disclosure and use of plea negotiations by Jane Doe 1 and Jane Doe 2.

The limited intervenors also submit *Lafler* and *Frye* in direct support of their arguments that the Court should recognize a common-law privilege in this case under Rule 501 in part because plea negotiations are an integral part of our criminal justice system. This was expressly recognized by the

Supreme Court in *Lafler* and *Frye* when it found that “plea bargains are . . . central to the administration of the criminal justice system” because ours is “a system of pleas, not a system of trials”:

Ninety-four percent of state convictions are the result of guilty pleas. The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours “is for the most part a system of pleas, not a system of trials,” it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process.

Lafler, 132 S. Ct. at 1388; *Frye*, 132 S. Ct. at 1407.

We certify that on April 18, 2012, the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

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