

**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
COURT-ORDERED DISCOVERY AND FOR A PROMPT RULING ON THE MOTION**

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to file this motion to compel production of court-ordered discovery and for a prompt ruling on this motion.

As the Court is aware, the victims filed this case alleging Government violations of the CVRA in July 2008. Through more than four-and-a-half years of litigation, however, the Government has refused to reach a stipulated set of facts regarding how it treated the victims. Accordingly, nearly two years ago, on March 21, 2011 the victims filed a motion to have their detailed recitation of the facts accepted because of the Government's failure to contest their facts (DE 49). On September 26, 2011, the Court denied that motion on the ground that the victims would instead be allowed some discovery to develop a factual record (DE 99 at 11). The court specifically ruled that it would "permit [the victims] the opportunity to conduct limited discovery in the form of document requests and requests for admissions from the U.S. Attorney's Office.:" *Id.*

As specifically authorized in the Court's order, the victims then sent limited discovery requests to the Government. On November 8, 2011, the same day that the production of 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.¹

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.

A year and a day later, 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 effectively 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).

¹ In an effort to keep the public for learning what it was doing, the Government asked that all of these motions be placed under seal. The victims can see no basis for sealing virtually all of the Government's pleadings. The victims' responses to the Government's sealed pleadings have been left in the public Court file. In an effort to make the proceedings in this case more accessible to the public, on February 7, 2012, the victims filed a motion requesting an order from the Court directing the Government to file redacted pleadings in the public court file (DE 150). That motion remains pending.

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 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's recalcitrance and refusal to even discuss its discovery obligations, the victims must resort to the Court to direct the Government to comply with the discovery obligations that it ordered in September 2011 – approximately one-and-a-half years ago. Despite the Court's clear order that the Government would have to respond to discovery requests from the victims, the Government has yet to produce even a single item of discovery. This delay makes it impossible for the victims to proceed with their case. It is also possible that evidence subject to the victims' discovery requests is being lost, destroyed, or otherwise dissipated. Regardless, there is no reason to allow the Government to continue to ignore court-ordered discovery obligations indefinitely. Since the Government waited until the

last minute to file its Motion to Dismiss instead of properly fulfilling its obligations to respond to discovery, the Government presumably acted in good-faith and already gathered all of the documents requested and prepared responses in preparation of complying with the Court's Order. Therefore, the responses should take no additional time to prepare and provide to the victims. Accordingly, the victims request that the Court order the Government to produce the requested discovery. An order to that effect is attached to this motion.

The victims respectfully request that the Court rule on this motion quickly so that they can receive the rights that Congress promised them in the Crime Victims' Rights Act. In the CVRA, Congress directed that crime victims have "[t]he right to proceedings free from unreasonable delay" and the courts must "take up and decide any motion asserting a victim's right *forthwith*." 18 U.S.C. § 3771(a)(7) & (d)(3) (emphasis added). The victims respectfully suggest that the Government's stall tactics are improperly interfering with those rights. The Court should reject those tactics and allow discovery to proceed.

Accordingly, for all these reasons, the Court should promptly enter an order directing the Government to produce the discovery requested by the victims.

DATED: March 14, 2013

Respectfully Submitted,
s/ Bradley J. Edwards

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CERTIFICATE OF SERVICE

The foregoing document was served on March 14, 2013, on the following using the Court's CM/ECF system:

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