

**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 OF AMERICA,
defendant.**

**ORDER DENYING INTERVENORS' MOTION TO STAY PENDING APPEAL
AND IMPOSING TEMPORARY SEVEN (7) DAY STAY PENDING APPELLATE
REVIEW OF ORDER DENYING MOTION FOR STAY**

THIS CAUSE is before the court on the motion of Intervenor Roy Black, Martin Weinberg, Jay Lefkowitz and Jeffrey Epstein, for a stay of this court's order entered June 18, 2013 compelling disclosure of communications between intervenors and federal prosecutors in the Southern District of Florida [DE 193], together with petitioners' response in opposition to the request for stay [DE 198].

Intervenor appeal the June 18, 2013 order contesting this court's determination that the communications in question are not shielded from compelled disclosure in this Crime Victims Rights Act ("CVRA") proceeding by principles of work product privilege; grand jury secrecy; restrictions on the admissibility of statements made during plea discussions under circumstances prescribed by Fed. R. Evid. 410, or the crafting of a new common law privilege under Fed. R. Evid. 501. Intervenor ask the court to stay this order pending the outcome of an interlocutory appeal contemporaneously lodged by Intervenor Roy Black, Jeffrey Epstein and Martin Weinberg [DE 194, 195 and 196] .

The granting of a motion to stay pending appeal is an extraordinary remedy granted only on a showing of a “probable likelihood of success on the merits on appeal,” or upon a lesser showing of a “‘substantial case on the merits’ when ‘the balance of the equities weighs heavily in favor of granting the stay.’”¹ *United States v. Hamilton*, 963 F.2d 322 (11th Cir. 1992), citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)(quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981), *cert. den.*, 460 U.S. 1042 (1983).

In this case, intervenors have neither demonstrated a probable likelihood of success on the merits on appeal,² *see e.g. In re MSTG, Inc.*, 675 F.3d 1337 (7th Cir. 2012) (rejecting request for recognition of new privilege for settlement discussions; finding need for confidence and trust alone insufficient reason to create a new privilege, and noting that Congress, in enacting Fed. R. Civ. Evid. 408, governing admissibility of statements made during “compromise negotiations,” did not take additional step of protecting settlement negotiations from discovery); *In re Qwest Communications International, Inc.*, 450 F.3d 1179 (10th Cir. 2006) (noting circuit courts’ near

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Absent being able to establish the likelihood of success on the merits, a movant for emergency stay relief must show that the “equities” – measured by whether movant will suffer irreparable damage absent a stay; whether the nonmoving party will suffer no substantial harm from issuance of a stay and whether the public interest will be served by issuing the stay – all tip strongly in his or her favor. *Robles Antonio v. Barrios Bello*, 2004 WL 1895123 (11th Cir. 2004), citing *Garcia - Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986). Intervenors fail to make this alternative lesser showing as well.

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There is also a substantial question as to whether the denial of a motion for protective order against compelled disclosure of allegedly privileged communications is immediately appealable under the *Perlman* doctrine, which derives from the criminal grand jury context, *Perlman v United States*, 247 U.S. 7 (1918), as urged by intervenors as the jurisdictional premise for their interlocutory appeal. *See e.g. United States v. Copar Pumice Co., Inc.*, 714 F.3d 1197, 1206-1209 (10th Cir., May 6, 2013) (questioning limited scope and vitality of *Perlman* following *Mohawk Industries v. Carpenter*, 558 U.S. 100, 130 S. Ct. 599, 175 L. Ed.2d 458 (2009) (class of collaterally appealable orders does not extend to disclosure orders adverse to attorney-client privilege) and cases cited *infra*.

unanimous rejection of selective waiver concept as applied to attorney-client and work-product privileges), nor that the balance of equities weighs heavily in favor of granting a stay.

It is therefore **ORDERED AND ADJUDGED**:

1. The Intervenor's motion to stay the court's June 18, 2013 order pending interlocutory appeal [DE 193] is **DENIED**.

2. However, this court shall temporarily stay its June 18, 2013 compelling disclosure of communications between intervenors and federal prosecutors for a period of seven (7) days from entry of this order, up through and including **Monday, July 15, 2013**, in order to permit intervenors an opportunity to renew their request for stay relief before the Eleventh Circuit Court of Appeals. If intervenors apply for a stay in the Court of Appeals on or before July 15, 2013, the temporary stay imposed by this order shall remain in effect pending the Eleventh Circuit's disposition of the application for stay.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 6th day of July, 2013.



Kenneth A. Marra
United States District Judge

cc. All counsel