

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,

Respondent.

RESPONDENT'S REPLY TO PETITIONERS' RESPONSE TO GOVERNMENT'S
MOTION FOR LEAVE TO FILE RELEVANCE OBJECTIONS TO PETITIONERS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Respondent, by and through its undersigned counsel, files its Reply to Petitioners' Response to Government's Motion for Leave to File Relevance Objections to Petitioners' First Request for Production to The Government, and states:

I. THE GOVERNMENT'S RELEVANCE OBJECTIONS ARE TIMELY

The government's motion for leave to file relevance objections is timely. The government is entitled to note its objections to the relevance of documents sought in the first request for production. The Court's Omnibus Order gave clear direction that the government was to produce all responsive documents within thirty (30) days of the entry date of the Order. D.E. 190 at 2. Further, a privilege log was to be filed in the public court file, and all responsive documents which the government maintained were protected by privilege, were to be submitted to the court for *in camera* inspection by filing such documents under seal. D.E. 190, ¶ 3(c)(i) and (ii).

Petitioners chide the government for not objecting sooner, since the documents have

already been collected, and any burden from retrieving irrelevant documents has already been suffered by the government. If the Federal Rules of Civil Procedure applied, the normal procedure would have been to file for a protective order. However, the Omnibus Order plainly contemplated the production of documents with expedition, and only permitted the filing of a privilege log.

The government simply wants to put its relevance objections in the record, so its position that these categories of documents have no relevance to the determination of the issues before this Court is clear, so that the Court need not further examine the myriad of privilege objections raised concerning such irrelevant documents, and so that any further burdens and costs concerning the production of such utterly irrelevant documents need not be unnecessarily incurred by the government. Any lack of such objection would likely be argued by petitioners as a waiver if the government were to raise it later.

II. THE GOVERNMENT MAY MAKE CATEGORICAL RELEVANCE OBJECTIONS

The government need not make document-by-document relevance objections, when the entire category of documents being requested is irrelevant. The solicitude shown by petitioners for the Court's time, and for their own, does not appear to extend to the government. The government is not obligated to go through every document in the FBI file on Epstein, to demonstrate its lack of relevance, when neither the strength nor weakness of the FBI's investigation and the government's case has any bearing on the CVRA lawsuit. If no document in the FBI investigative file can be relevant, then the government is not required to go through every document.

The relevance objections to Requests for Production Nos. 1, 10, 16, 18,19, and 25, are categorical because the entire category of documents being sought is irrelevant. Petitioners use

the example of their production request seeking documents regarding misleading of the FBI by the U.S. Attorney's Office. D.E. 220 at 4-5. The premise of their argument is that the victims were misled when talking to FBI agents. Petitioners claim that the misleading done by the FBI agents may have been prompted by the U.S. Attorney's Office misleading the agents. This distinction is irrelevant. Whether or not the FBI may have been misled in some way by members of the U.S. Attorney's Office is irrelevant to the CVRA analysis, for any misleading communications would have been intra-governmental communications occurring as part of an intra-governmental relationship rather than communications or contacts between the government and a victim. Moreover, if the victims were indeed misled by the FBI agents, then it would matter little whether it was prompted by (1) the FBI's own mistaken beliefs; (2) the FBI's mistaken beliefs prompted by the U.S. Attorney's Office; or (3) some other basis causing the alleged misleading.

Petitioners' request for documents showing an improper relationship between Epstein and the federal prosecutors is similarly irrelevant. D.E. 220 at 6-7. The nature and extent of the government's duties under the CVRA are not expanded or contracted depending on the existence or nature of any relationship, improper or otherwise, that may have existed between the defendant and any prosecutor. Nor is the type of remedy to be afforded, if the Court finds that a violation of the CVRA did occur, depend on the existence of an improper relationship between Epstein and the prosecutors.

"District courts have great discretion over discovery matters and this court will not reverse a discovery ruling absent a finding of an abuse of discretion to the prejudice of a party." Borden, Inc. v. Florida East Coast Railway Company, 772 F.2d 750, 756-57 (11th Cir. 1985)(citations omitted). The government respectfully requests this Court to exercise its

discretion to permit it to file its relevance objections to the petitioners' first request for production.

DATED: August 15, 2013

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney
Fla. Bar No. 0936693
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139
E-mail: dexter.lee@usdoj.gov

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney

SERVICE LIST

Jane Does 1 and 2 v. United States,
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida
Bradley J. Edwards, Esq.,
Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
(954) 524-2820
Fax: (954) 524-2822
E-mail: brad@pathtojustice.com

Paul G. Cassell
S.J. Quinney College of Law at the
University of Utah
332 S. 1400 E.
Salt Lake City, Utah 84112
(801) 585-5202
Fax: (801) 585-6833
E-mail: casselp@law.utah.edu

Attorneys for Jane Doe # 1 and Jane Doe # 2

Roy Black
Jackie Perczek
Black, Srebnick, Kornspan & Stumpf, P.A.
201 South Biscayne Boulevard
Suite 1300
Miami, Florida 33131
(305) 371-6421
Fax: (305) 358-2006
E-mail: rblack@royblack.com
jperczek@royblack.com

Attorneys for Intervenors