

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 OPPOSITION TO PETITIONERS' MOTION FOR
ORDINARY BRIEFING SCHEDULE AND ORDINARY PAGE LIMITS

Respondent, by and through its undersigned counsel, files its Opposition to Petitioners' Motion for Ordinary Briefing Schedule and Ordinary Page Limits to Respond to Government's Privilege Assertions, and state:

Petitioners' motion for ordinary briefing schedule and ordinary page limits should be denied because the procedures the Court set forth in its Omnibus Order (D.E. 190) provide an adequate opportunity for petitioners to challenge the government's invocation of privilege. Instead of directing the government to only file a Privilege Log, the Court also directed the government to file those documents withheld on a claim of privilege with the Court for in camera inspection. D.E. 190 at 2. Thus, in adjudicating the government's claim of privilege, the Court will have the petitioners' objection, the government's response, and the document for which the privilege is being claimed.

Petitioners go to great lengths to preview what they claim are "problems" with the government's assertions of privilege. D.E. 218 at 3-7. They claim the government cannot invoke an attorney-client privilege in the context of the CVRA petition because "it owes a

fiduciary duty to the crime victims to use its ‘best efforts.’” D.E. 218 at 4. Assuming a fiduciary relationship between crime victims and the government even exists, the common law fiduciary exception to the attorney-client privilege does not extend to the federal government because any trust obligation to crime victims is based on statute, rather than common law.

United States v. Jicarilla Apache Nation, 131 S.Ct. 2313 (2011)(Fiduciary exception to attorney-client privilege does not extend to federal government in its capacity as trustee of Indian funds).

Similarly, the deliberative process privilege has been properly invoked by the government. Petitioners provide no authority for their assertion that the deliberative process privilege cannot be invoked in an action under the CVRA, D.E. 218 at 4. As to the work product doctrine, petitioners claim the privilege does not apply because “[m]any of the documents at issue here were not prepared in anticipation of litigation about the CVRA.” D.E. 218 at 5. Petitioners appear to believe that the work product doctrine only covers materials prepared in anticipation of the litigation in which the documents are actually being sought. This is incorrect. In describing Fed.R.Civ.P. 26(b)(3), the Supreme Court observed that, “the literal language of the Rule protects materials prepared for *any* litigation or trial as long as they were prepared by or for a party to the subsequent litigation.” Federal Trade Commission v. Grolier, Inc., 462 U.S. 19, 25 (1983)(emphasis in original). If government attorneys prepared documents containing mental impressions, theories, opinions, or conclusions, in anticipation of a criminal prosecution of Jeffrey Epstein, those work product materials would be protected from disclosure in this case also.

Petitioners' motion for ordinary briefing schedule and ordinary page limits should be denied.

DATED: August 19, 2013

Respectfully submitted,

WILFREDO 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 19, 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