

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-CIV-KAM

JANE DOE, )  
 )  
 PETITIONER, )  
 )  
 -v- )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 RESPONDENT. ) West Palm Beach, Florida  
 ) November 23, 2015  
 )  
 \_\_\_\_\_ )

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS

BEFORE THE HONORABLE KENNETH A. MARRA

UNITED STATES DISTRICT JUDGE

Appearances:

FOR THE PETITIONER Bradley J. Edwards, ESQ.,  
Brittany Henderson, ESQ., AND  
Paul G. Cassell, ESQ.  
Farmer Jaffe Weissing, et al.  
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1 (Call to the order of the Court.)

2 THE COURT: Good afternoon, please be seated.

3 MR. SANCHEZ: Good afternoon, Your Honor.

4 MR. LEE: Good afternoon, Your Honor.

5 THE COURT: We are here in the case of Doe versus  
6 United States, Case Number 08-80736-CIV-MARRA.

7 May I have counsel state their appearances.

8 MR. EDWARDS: Brad Edwards and Britney Henderson, as  
9 well as Paul Cassell on the telephone on behalf of the  
10 Petitioners.

11 THE COURT: Good afternoon.

12 MR. LEE: Good afternoon, Your Honor. May it please  
13 the Court. For the Respondents, Ed Sanchez and Dexter Lee,  
14 Assistant U.S. Attorneys. Good afternoon, Your Honor.

15 THE COURT: Thank you for being available on  
16 relatively short notice. I just thought we should get  
17 together and discuss where this case is going and how the  
18 parties thought we should proceed.

19 So Mr. Edwards why don't you tell me.

20 MR. EDWARDS: Sure. I don't mind taking the lead on  
21 that.

22 This is our plan, and I can tell you that Paul  
23 Cassell and I are being very careful in the way that we  
24 present what is going to be a 60-page summary judgment motion.  
25 We have set internally a deadline of filing, an artificial

1 deadline for ourselves, of December 15th. If Your Honor is  
2 okay with that, then that seems like it's going to fall in  
3 line. When I say we're being careful, we're being careful in  
4 how we're going to prepare and file the exhibits and what gets  
5 filed to make sure that we strictly comply with your prior  
6 orders in that regard.

7 That summary judgment, if granted, would take us,  
8 then, to the remedy stage, which I think is the next phase  
9 that would obviously be contested by parties in addition to  
10 the Government. If denied, then I would foresee requesting  
11 from Your Honor the ability to take several depositions,  
12 engage in some limited but additional discovery, and before  
13 requesting a jury trial, and I think that at least between my  
14 co-counsel and I, we envision getting this case resolved, if  
15 possible, by mid summer 2016. At least maybe that's overly  
16 optimistic, but that's my hope.

17 THE COURT: All right. Eight years later.

18 All right. So a 60-page summary judgment motion is  
19 going to take, I would think, the Government more than the  
20 normal 10 days to respond to that, especially if it's going to  
21 come on December 15th, and with the holidays.

22 MR. EDWARDS: And we're obviously going to work with  
23 them in that regard.

24 THE COURT: All right. So you just threw out a  
25 procedural issue that just stuck out as a jury trial. You

1 wanted to have a jury trial. I was wondering what would be  
2 the basis for a jury trial in this case? And not that we need  
3 to resolve that issue today, but is there any -- where do you  
4 see a right to a jury trial in this case? I guess we can deal  
5 with that down the road.

6 MR. EDWARDS: I think that's probably best.

7 THE COURT: Okay. All right. Mr. Lee, what do you  
8 foresee as how we should go forward with this case?

9 MR. LEE: Your Honor, we believe there's an issue  
10 about whether or not Jane Does 1 and 2 may have been complicit  
11 in the offenses, if you will. Specifically that they,  
12 themselves, procured additional young women for Mr. Epstein  
13 and were paid commissions or referral fees for it.

14 We're looking at a case that came out from the  
15 Eleventh Circuit, In Re Wellcare Health Plans, Incorporated,  
16 754 F.3d 1234, June of 2014. We believe that issue is  
17 relevant because they found, the Court of Appeals, that if  
18 someone was complicit in the actual offense, that they are not  
19 entitled to be a victim and can invoke no victim rights under  
20 the Victim Rights Act.

21 So what we would propose to do is within the next  
22 week or so, to propound some very short requests for  
23 admissions and interrogatories directed to that specific  
24 issue. When the Petitioners file their 60-page summary  
25 judgment motion, we would anticipate, assuming we can get a

1 short extension of time to respond, we would file our own  
2 response and potentially a cross motion for summary judgment,  
3 Your Honor.

4 THE COURT: All right. Mr. Edwards, did you want to  
5 say something?

6 MR. EDWARDS: Yes.

7 Well, today is the first day that I've heard that  
8 the Government may attempt to argue that the victims were  
9 complicit in this and thus are disqualified, and I think that  
10 Your Honor has recognized all along that we represent not only  
11 Jane Doe 1 and 2, but all other similarly situated victims.  
12 There were numerous identified by the Government, some of  
13 which, in fact, many of which, because of the way that the  
14 crime and scheme was laid out from top to bottom, many of  
15 which were also recruiters. And so this additional, I will  
16 say, issue is going to likely lead to additional other issues,  
17 including what other victims can now be included; are there  
18 going to be additional Jane Does that may actually need to be  
19 joined by name, because they don't fall under the category of  
20 Jane Doe 1 and 2, to the extent that there's this latest  
21 argument gets any traction.

22 Like I said, today's the first day I've heard this,  
23 and so I have not read this case that's being cited, and I'm  
24 frankly surprised that now the victims who have been  
25 categorized as victims are now being considered something less

1 than that. But -- so that may change the timetable, I guess.

2 THE COURT: All right. Well, I guess we're not in a  
3 position to resolve that issue today.

4 MR. EDWARDS: We are not.

5 THE COURT: Okay. So Mr. Edwards, you mentioned if  
6 I deny your summary judgment motion, then you wanted to do  
7 some limited additional discovery in the nature of what? What  
8 are you foreseeing, again, looking down the road, if we get to  
9 that point.

10 MR. EDWARDS: So, for instance, if Your Honor were  
11 to determine that there was a genuine issue of material fact  
12 on the issue of did Jane Doe number 2 -- just taking her for  
13 example -- was she able to meaningfully confer with the  
14 Government? I would like to -- and the Government says, well,  
15 this is what we considered meaningfully conferring. It's she  
16 talked to X agent over here about something else. I would  
17 like to take the deposition of that agent, if that's something  
18 that they're going to rely upon. Or even the prosecutor,  
19 since it's actually the obligation is to give the victims the  
20 right to meaningfully confer with the prosecutor in the case.  
21 I'd just like to take the prosecutor's deposition to figure  
22 out what did you talk to her about, what did you not, so that  
23 we could hammer out whether that's meaningfully conferring  
24 under the statute.

25 THE COURT: So, again, if we get to the point where

1 a motion for summary judgment is denied, that's the extent of  
2 the additional discovery that you feel you would need to take,  
3 just the issue of what conferring the Government did with the  
4 victims in this case?

5 MR. EDWARDS: Yes, sir. That's all I can anticipate  
6 the right now.

7 THE COURT: Okay.

8 MR. EDWARDS: With this -- with the latest that I  
9 just heard, who knows.

10 THE COURT: Okay. From your standpoint.

11 MR. EDWARDS: Yes.

12 THE COURT: Mr. Lee, other than this limited  
13 discovery you just mentioned dealing with whether the Jane  
14 Does 1 and 2 were complicit in the underlying criminal conduct  
15 that Mr. Epstein was involved with, do you foresee any other  
16 additional discovery that you might need to take?

17 MR. LEE: No, Your Honor.

18 If I may comment briefly.

19 Your Honor, typically a CVRA action is part of a  
20 criminal proceeding in the normal course. Of course, there's  
21 really nothing normal about this case, but we all know that.  
22 But we don't believe that it is necessary or necessarily  
23 appropriate to ingraft the civil discovery rights onto this  
24 dispute. If there is a factual dispute that the Court finds  
25 would preclude a summary judgment motion, then the next step

1 is to go into an evidentiary hearing, much as would be held if  
2 there was a criminal case attached to this.

3 So we would object to any further discovery.

4 THE COURT: All right. But you just told me you  
5 wanted to take some discovery.

6 MR. LEE: Your Honor, you have already allowed them  
7 to do discovery, which is fine, and we have produced it. We  
8 want to exercise the same pre-summary judgment. But insofar  
9 as what goes on after summary judgment, in the event that it's  
10 denied, then it would go into -- straight into an evidentiary  
11 hearing.

12 THE COURT: All right. So, again, you don't --  
13 other than this limited discovery that you just mentioned, you  
14 don't foresee or think it would be appropriate to have any  
15 additional discovery beyond that?

16 MR. LEE: That's correct, Your Honor.

17 THE COURT: Okay.

18 MR. CASSELL: Your Honor, this is Paul Cassell. If  
19 I could just mention -- Brad mentioned the limited discovery  
20 we would need. There is also one matter that Mr. Edwards may  
21 want to discuss with you at sidebar that could potentially  
22 surface at some point.

23 THE COURT: All right. I guess Mr. Edwards knows  
24 what you're talking about.

25 MR. EDWARDS: Sure, sure.

1           So we do have outstanding discovery requests that  
2     have been objected to by the Government. We have circulated a  
3     motion to compel to the Government, as well as to let's call  
4     them outside third parties. And there has been some  
5     discussion as to how we may be able to resolve it without the  
6     need of filing a motion to compel and putting anything back  
7     into a court record.

8           So we're trying to work that out amongst ourselves  
9     first. And if we can't, I guess we'd ask Your Honor if you  
10    could -- if you would indulge such an issue being filed under  
11    seal, even though it may be not technically appropriate to  
12    file under seal, and see it in camera so that it doesn't  
13    become kind of a sideshow.

14           THE COURT: All right. Well, again, that's  
15    something that may be necessary and might be worked out among  
16    the parties; is that correct?

17           MR. EDWARDS: Hopefully.

18           THE COURT: Is that what you were referring to,  
19    Mr. Cassell?

20           MR. CASSELL: Yes.

21           THE COURT: Okay. Well, I don't think I need to  
22    learn anything more specific at this point. If it become  
23    necessary, we'll deal with it.

24           So is there anything else we should talk about  
25    today?

1 MR. EDWARDS: No, except that, like I said, the time  
2 table we were planning to file this summary judgment motion  
3 was -- let's say it's already in draft form -- December 15th.  
4 If there is going to be additional discovery that's going to  
5 be allowed, propounded from the Government to our victims, I  
6 would just ask that we have kind of a discovery cutoff so that  
7 we could see the discovery, respond to the discovery and then  
8 file our summary judgment motion. Because it may help to  
9 frame what the issues are in those motions. That seems --

10 THE COURT: Well, again, there's no deadline by  
11 which you're supposed to file anything at this point. That's  
12 one of the reasons why I had the hearing, to see if we should  
13 set some deadlines and a scheduling order going forward so  
14 that, you know, we don't -- it doesn't linger.

15 I would suggest maybe that the parties get together  
16 and see if you can come to an agreement on putting together a  
17 schedule for whatever needs to be done before summary  
18 judgment, and assuming if the summary judgment's denied, when  
19 can an evidentiary hearing be held.

20 I guess we should talk about this issue of a jury  
21 trial that was just raised. And, again, I haven't researched  
22 it. I don't know precisely what the rules are for something  
23 like this, but my inclination would be this is not a jury  
24 issue. This is something for me to decide whether it was --  
25 if it was in the criminal -- brought up in the criminal

1 context, I would think that the Judge would decide it. There  
2 wouldn't be any right to a jury trial. I don't know why,  
3 since this was filed as a separate civil proceeding, that that  
4 would change. But, again, I'm not prepared to make a ruling  
5 on that. I'm not saying that that's the ultimate outcome.  
6 I'm just giving you my initial impression.

7 And I'm just wondering if -- you know, if we're  
8 going -- if it's not going to be jury, then we can schedule  
9 something I think relatively quickly. I don't know how much  
10 is going to be needed beyond what's already undisputed in  
11 terms of factually what happened. I don't know what -- how  
12 much evidence would need to be taken at an evidentiary  
13 hearing.

14 Mr. Edwards, what do you think about if there was  
15 going to be an evidentiary hearing, jury or nonjury, I mean,  
16 how much time do you think it would take?

17 MR. EDWARDS: Well, it depends on, to me, what the  
18 Government's defenses are and whether -- and whether it's  
19 really going to come down into the nuance of what the  
20 Government did or did not say to victim A, and what they did  
21 or did not say to victim number 8, or number 9, or number 10.  
22 If it comes down -- if it really gets that specific, and it  
23 ultimately is going to require a determination that, yes,  
24 victim 2, 6 and 7's rights were violated in this regard, or --  
25 I don't think that it should, but it sounds like it could.

1 And we have been contacted by other victims who do wish to  
2 testify and present evidence, and Your Honor said that's okay.  
3 So I think that all that kind of plays in.

4 I would think that if it's not going to be a jury  
5 trial -- so absent picking juries and those things -- then a  
6 couple days, two, three days we could probably get it done, I  
7 would think no matter how many victims testify, just because  
8 it's very narrow, the scope, I would think, of the  
9 examination.

10 THE COURT: That's what I would think, too, it would  
11 be very narrow.

12 So Mr. Lee?

13 MR. LEE: Yes, Your Honor.

14 And in so far as the jury trial, we believe there is  
15 no entitlement to a jury trial. It's based upon the Seventh  
16 Amendment. And this goes a little way back the last time I  
17 briefed this issue. It's basically whether, at the time of  
18 the founding of the Republic and common law, whether or not  
19 somebody was entitled to a jury trial at that time. This  
20 cause of action and this statute did not exist at that time,  
21 so therefore we submit that there is no right to a jury trial.

22 THE COURT: All right. Well, again, we don't need  
23 to decide that today. I was just -- since it was mentioned, I  
24 thought I would just raise that as an issue we're going to  
25 have to resolve at some point.

1 MR. LEE: Yes, sir.

2 THE COURT: So maybe that's something that should be  
3 briefed before we set a date for resolution one way or the  
4 other.

5 MR. EDWARDS: I think also that we would work with  
6 opposing counsel, send them what we have in terms of why we  
7 think it should be, and perhaps we could agree on that.

8 THE COURT: All right. So can I ask both sides to  
9 maybe get together and see if you can come up with some type  
10 of a proposed schedule going forward on whatever needs to be  
11 done, and if you can't agree on things you can tell me your  
12 respective positions, and then I can possibly set a -- an  
13 order going forward.

14 MR. EDWARDS: Absolutely.

15 Thank you, Your Honor.

16 MR. LEE: Yes, Your Honor, of course.

17 THE COURT: All right. Anything else we should or  
18 need to discuss today?

19 MR. LEE: Nothing for the Respondents. Thank you,  
20 Your Honor.

21 MR. EDWARDS: And nothing from the Petitioners.  
22 Thank you, Your Honor.

23 THE COURT: Mr. Cassell, anything else?

24 MR. CASSELL: No, Mr. Edwards capably conveyed our  
25 positions.

1 THE COURT: All right. Thank you, again, for being  
2 available on short notice, and we'll wait to hear back from  
3 both sides.

4 How much time do you think you need to put something  
5 together? A couple weeks?

6 MR. EDWARDS: I would say we could -- yeah, two or  
7 three weeks I think we'll put it together and we'll submit it.

8 MR. LEE: We agree.

9 THE COURT: Thank you. Take care.

10 (Proceedings concluded.)

11 \* \* \* \* \*

12 CERTIFICATE

13 I, Stephen W. Franklin, Registered Merit Reporter, and  
14 Certified Realtime Reporter, certify that the foregoing is a  
15 correct transcript from the record of proceedings in the  
16 above-entitled matter.

17 Dated this 7th day of DECEMBER, 2015.

18  
19 /s/Stephen W. Franklin

20 Stephen W. Franklin, RMR, CRR  
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| MR. CASSELL: [3]<br>8/17 9/19 13/23<br>MR. EDWARDS: [18]<br>MR. LEE: [11]<br>MR. SANCHEZ: [1]<br>2/2<br>THE COURT: [30]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | addition [1] 3/9<br>additional [10]<br>admissions [1] 4/23<br>after [1] 8/9<br>afternoon [6]<br>again [9]<br>agent [2] 6/16 6/17<br>agree [3] 13/7 13/11<br>14/8<br>agreement [1] 10/16<br>al [1] 1/16<br>allowed [2] 8/6 10/5<br>along [1] 5/10<br>already [3] 8/6 10/3<br>11/10<br>also [3] 5/15 8/20 13/5<br>Amendment [1] 12/16<br>AMERICA [1] 1/6<br>among [1] 9/15<br>amongst [1] 9/8<br>Andrews [1] 1/17<br>anticipate [2] 4/25 7/5<br>any [6]<br>anything [6]<br>aol.com [1] 1/23<br>Appeals [1] 4/17<br>appearances [2] 1/14<br>2/7<br>appropriate [3] 7/23<br>8/14 9/11<br>argue [1] 5/8<br>argument [1] 5/21<br>artificial [1] 2/25<br>ask [3] 9/9 10/6 13/8<br>Assistant [1] 2/14<br>assuming [2] 4/25 10/18<br>attached [1] 8/2<br>attempt [1] 5/8<br>Attorney's [1] 1/19<br>Attorneys [1] 2/14<br>AUSA [2] 1/18 1/19<br>available [2] 2/15 14/2<br>Avenue [1] 1/17 | Brittany [1] 1/15<br>brought [1] 10/25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 10/10<br>deadlines [1] 10/13<br>deal [2] 4/4 9/23<br>dealing [1] 7/13<br>December [4] 3/1 3/21<br>10/3 14/17<br>December 15th [3] 3/1<br>3/21 10/3<br>decide [3] 10/24 11/1<br>12/23<br>defenses [1] 11/18<br>denied [4] 3/10 7/1 8/10<br>10/18<br>deny [1] 6/6<br>depends [1] 11/17<br>deposition [2] 6/17 6/21<br>depositions [1] 3/11<br>determination [1] 11/23<br>determine [1] 6/11<br>Dexter [2] 1/18 2/13<br>directed [1] 4/23<br>discovery [17]<br>discuss [3] 2/17 8/21<br>13/18<br>discussion [1] 9/5<br>dispute [2] 7/24 7/24<br>disqualified [1] 5/9<br>DISTRICT [3] 1/1 1/1<br>1/12<br>DOE [5]<br>Does [3] 4/10 5/18 7/14<br>doesn't [2] 9/12 10/14<br>don't [14]<br>done [3] 10/17 12/6<br>13/11<br>down [4] 4/5 6/8 11/19<br>11/22<br>draft [1] 10/3 | F<br>F.3d [1] 4/16<br>fact [2] 5/13 6/11<br>factual [1] 7/24<br>factually [1] 11/11<br>fall [2] 3/2 5/19<br>far [1] 12/14<br>Farmer [1] 1/16<br>feel [1] 7/2<br>fees [1] 4/13<br>figure [1] 6/21<br>file [7]<br>filed [3] 3/5 9/10 11/3<br>filing [2] 2/25 9/6<br>finds [1] 7/24<br>fine [1] 8/7<br>first [3] 5/7 5/22 9/9<br>FL [2] 1/17 1/20<br>FLORIDA [3] 1/1 1/7<br>1/23<br>foregoing [1] 14/14<br>foresee [4] 3/10 4/8 7/15<br>8/14<br>foreseeing [1] 6/8<br>form [1] 10/3<br>Fort [1] 1/17<br>forward [4] 4/8 10/13<br>13/10 13/13<br>found [1] 4/17<br>founding [1] 12/18<br>frame [1] 10/9<br>Franklin [4] 1/21 14/13<br>14/19 14/20<br>frankly [1] 5/24<br>further [1] 8/3 |
| -<br>-v [1] 1/5<br>/<br>/s/Stephen [1] 14/19<br>0<br>08-80736-CIV-KAM [1]<br>1/2<br>1<br>10 [2] 3/20 11/21<br>1234 [1] 4/16<br>15th [3] 3/1 3/21 10/3<br>2<br>2014 [1] 4/16<br>2015 [2] 1/8 14/17<br>2016 [1] 3/15<br>23 [1] 1/8<br>3<br>33132 [1] 1/20<br>33301 [1] 1/17<br>33401 [1] 1/23<br>3768 [1] 1/22<br>4<br>425 [1] 1/17<br>4th [1] 1/20<br>5<br>514-3768 [1] 1/22<br>561 [1] 1/22<br>6<br>60-page [3] 2/24 3/18<br>4/24<br>7<br>7's [1] 11/24<br>701 [1] 1/22<br>754 [1] 4/16<br>7th [1] 14/17<br>9<br>99 [1] 1/20<br>A<br>ability [1] 3/11<br>able [2] 6/13 9/5<br>above [1] 14/16<br>above-entitled [1] 14/16<br>absent [1] 12/5<br>Absolutely [1] 13/14<br>Act [1] 4/20<br>action [2] 7/19 12/20<br>actual [1] 4/18<br>actually [2] 5/18 6/19 | B<br>back [3] 9/6 12/16 14/2<br>based [1] 12/15<br>basically [1] 12/17<br>basis [1] 4/2<br>Beach [2] 1/7 1/23<br>because [5]<br>become [2] 9/13 9/22<br>before [4] 1/11 3/12<br>10/17 13/3<br>behalf [1] 2/9<br>being [8]<br>believe [4] 4/9 4/16 7/22<br>12/14<br>best [1] 4/6<br>between [1] 3/13<br>beyond [2] 8/15 11/10<br>both [2] 13/8 14/3<br>bottom [1] 5/14<br>Brad [2] 2/8 8/19<br>Bradley [1] 1/15<br>briefed [2] 12/17 13/3<br>briefly [1] 7/18<br>Britney [1] 2/8                                                                                                                                                                                                                                                                                                                                                                                                  | C<br>came [1] 4/14<br>camera [1] 9/12<br>can't [2] 9/9 13/11<br>capably [1] 13/24<br>care [1] 14/9<br>careful [3] 2/23 3/3 3/3<br>case [14]<br>Cassell [6]<br>categorized [1] 5/25<br>category [1] 5/19<br>cause [1] 12/20<br>CERTIFICATE [1]<br>14/12<br>Certified [1] 14/14<br>certify [1] 14/14<br>change [2] 6/1 11/4<br>Circuit [1] 4/15<br>circulated [1] 9/2<br>cited [1] 5/23<br>CIV [2] 1/2 2/6<br>civil [2] 7/23 11/3<br>Clematis [1] 1/22<br>co [1] 3/14<br>co-counsel [1] 3/14<br>comes [1] 11/22<br>comment [1] 7/18<br>commissions [1] 4/13<br>common [1] 12/18<br>compel [2] 9/3 9/6<br>complicit [4] 4/10 4/18<br>5/9 7/14<br>comply [1] 3/5<br>concluded [1] 14/10<br>conduct [1] 7/14<br>confer [2] 6/13 6/20<br>CONFERENCE [1]<br>1/10<br>conferring [3] 6/15 6/23<br>7/3<br>considered [2] 5/25 6/15<br>contacted [1] 12/1<br>contested [1] 3/9<br>context [1] 11/1<br>conveyed [1] 13/24<br>correct [3] 8/16 9/16<br>14/15<br>counsel [3] 2/7 3/14 13/6<br>couple [2] 12/6 14/5<br>course [3] 7/20 7/20<br>13/16<br>court [7]<br>CPE [1] 1/21<br>crime [1] 5/14<br>criminal [5]<br>cross [1] 5/2<br>CRR [2] 1/21 14/20<br>cutoff [1] 10/6<br>CVRA [1] 7/19 | E<br>E-mail [1] 1/23<br>Ed [2] 1/19 2/13<br>Edwards [9]<br>Eight [1] 3/17<br>Eleventh [1] 4/15<br>else [4] 6/16 9/24 13/17<br>13/23<br>engage [1] 3/12<br>entitled [3] 4/19 12/19<br>14/16<br>entitlement [1] 12/15<br>envision [1] 3/14<br>Epstein [2] 4/12 7/15<br>especially [1] 3/20<br>ESQ [3] 1/15 1/15 1/16<br>et [1] 1/16<br>even [2] 6/18 9/11<br>event [1] 8/9<br>evidence [2] 11/12 12/2<br>evidentiary [5]<br>examination [1] 12/9<br>example [1] 6/13<br>except [1] 10/1<br>exercise [1] 8/8<br>exhibits [1] 3/4<br>exist [1] 12/20<br>extension [1] 5/1<br>extent [2] 5/20 7/1                                                                                                                                                                         | G<br>genuine [1] 6/11<br>gets [3] 3/4 5/21 11/22<br>getting [1] 3/14<br>give [1] 6/19<br>giving [1] 11/6<br>goes [2] 8/9 12/16<br>going [23]<br>Good [6]<br>Government [11]<br>Government's [1] 11/18<br>granted [1] 3/7<br>guess [6]<br>H<br>hammer [1] 6/23<br>happened [1] 11/11<br>haven't [1] 10/21<br>Health [1] 4/15<br>hear [1] 14/2<br>heard [3] 5/7 5/22 7/9<br>hearing [6]<br>held [2] 8/1 10/19<br>help [1] 10/8<br>Henderson [2] 1/15 2/8<br>here [2] 2/5 6/16<br>holidays [1] 3/21<br>Honor [22]<br>HONORABLE [1] 1/11<br>hope [1] 3/16<br>Hopefully [1] 9/17                                                                                                          |

|          |                                                                                                                                                                                                                                                                                                                                                                                                                            |          |                                                                                                                                                                             |          |                                                                                              |          |                                                                                                                                                                                                                                                                                                                                                     |          |                                                                                           |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |          |                                                                                                                                                                                                             |          |                                                                                                                                                                                                                                                                  |          |                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>I</b> | maybe [4] 3/15 10/15<br>13/2 13/9<br>me [5]<br>mean [1] 11/15<br>meaningfully [4] 6/13<br>6/15 6/20 6/23<br>mention [1] 8/19<br>mentioned [5]<br>Merit [1] 14/13<br>Miami [1] 1/20<br>mid [1] 3/15<br>might [2] 7/16 9/15<br>mind [1] 2/20<br>motion [11]<br>motions [1] 10/9<br>Mr. [14]<br>Mr. Cassell [2] 9/19<br>13/23<br>Mr. Edwards [7]<br>Mr. Epstein [2] 4/12<br>7/15<br>Mr. Lee [3] 4/7 7/12<br>12/12<br>much [5] | <b>J</b> | Jaffe [1] 1/16<br>JANE [7]<br>joined [1] 5/19<br>JUDGE [2] 1/12 11/1<br>judgment [13]<br>judgment's [1] 10/18<br>June [1] 4/16<br>juries [1] 12/5<br>jury [15]<br>just [18] | <b>K</b> | KAM [1] 1/2<br>KENNETH [1] 1/11<br>kind [3] 9/13 10/6 12/3<br>know [7]<br>knows [2] 7/9 8/23 | <b>L</b> | laid [1] 5/14<br>last [1] 12/16<br>later [1] 3/17<br>latest [2] 5/20 7/8<br>Lauderdale [1] 1/17<br>law [1] 12/18<br>lead [2] 2/20 5/16<br>learn [1] 9/22<br>least [2] 3/13 3/15<br>Lee [5]<br>less [1] 5/25<br>let's [2] 9/3 10/3<br>likely [1] 5/16<br>limited [5]<br>line [1] 3/3<br>linger [1] 10/14<br>little [1] 12/16<br>looking [2] 4/14 6/8 | <b>M</b> | mail [1] 1/23<br>MARRA [2] 1/11 2/6<br>material [1] 6/11<br>matter [3] 8/20 12/7<br>14/16 | <b>N</b> | name [1] 5/19<br>narrow [2] 12/8 12/11<br>nature [1] 6/7<br>necessarily [1] 7/22<br>necessary [3] 7/22 9/15<br>9/23<br>need [11]<br>needed [1] 11/10<br>needs [2] 10/17 13/10<br>next [3] 3/8 4/21 7/25<br>no [9]<br>nonjury [1] 11/15<br>normal [3] 3/20 7/20<br>7/21<br>North [1] 1/17<br>Northeast [1] 1/20<br>nothing [3] 7/21 13/19<br>13/21<br>notice [2] 2/16 14/2<br>November [1] 1/8<br>nuance [1] 11/19<br>number [5]<br>Number<br>08-80736-CIV-MARRA<br>[1] 2/6<br>number 10 [1] 11/21<br>number 2 [1] 6/12<br>number 8 [1] 11/21<br>number 9 [1] 11/21<br>numerous [1] 5/12 | <b>O</b> | object [1] 8/3<br>objected [1] 9/2<br>obligation [1] 6/19<br>obviously [2] 3/9 3/22<br>offense [1] 4/18<br>offenses [1] 4/11<br>Office [1] 1/19<br>Official [1] 1/22<br>okay [8]<br>one [3] 8/20 10/12 13/3 | <b>P</b> | only [1] 5/10<br>opposing [1] 13/6<br>optimistic [1] 3/16<br>order [3] 2/1 10/13<br>13/13<br>orders [1] 3/6<br>our [5]<br>ourselves [2] 3/1 9/8<br>outcome [1] 11/5<br>outside [1] 9/4<br>outstanding [1] 9/1<br>over [1] 6/16<br>overly [1] 3/15<br>own [1] 5/1 | <b>Q</b> | quickly [1] 11/9 | <b>R</b> | raise [1] 12/24<br>raised [1] 10/21<br>Re [1] 4/15<br>read [1] 5/23<br>really [3] 7/21 11/19<br>11/22<br>Realtime [1] 14/14<br>reasons [1] 10/12<br>recognized [1] 5/10<br>record [2] 9/7 14/15<br>recruiters [1] 5/15<br>referral [1] 4/13<br>referring [1] 9/18<br>regard [3] 3/6 3/23<br>11/24<br>Registered [1] 14/13<br>relatively [2] 2/16 11/9<br>relevant [1] 4/17<br>rely [1] 6/18<br>remedy [1] 3/8<br>Reporter [4] 1/21 1/22<br>14/13 14/14<br>represent [1] 5/10<br>Republic [1] 12/18<br>requesting [2] 3/10 3/13<br>requests [2] 4/22 9/1<br>require [1] 11/23<br>researched [1] 10/21<br>resolution [1] 13/3<br>resolve [4] 4/3 6/3 9/5<br>12/25<br>resolved [1] 3/14<br>respective [1] 13/12<br>respond [3] 3/20 5/1<br>10/7<br>RESPONDENT [2] 1/7<br>1/18<br>Respondents [2] 2/13<br>13/19<br>response [1] 5/2<br>right [19]<br>rights [4] 4/19 4/20 7/23<br>11/24<br>RMR [2] 1/21 14/20<br>road [2] 4/5 6/8<br>rules [1] 10/22<br>ruling [1] 11/4 | 13/12<br>Seventh [1] 12/15<br>several [1] 3/11<br>SFranklinUSDC [1]<br>1/23<br>short [4] 2/16 4/22 5/1<br>14/2<br>should [10]<br>sidebar [1] 8/21<br>sides [2] 13/8 14/3<br>sideshow [1] 9/13<br>similarly [1] 5/11<br>since [3] 6/19 11/3 12/23<br>sir [2] 7/5 13/1<br>situated [1] 5/11<br>somebody [1] 12/19<br>someone [1] 4/18<br>something [10]<br>sounds [1] 11/25<br>SOUTHERN [1] 1/1<br>specific [3] 4/23 9/22<br>11/22<br>Specifically [1] 4/11<br>stage [1] 3/8<br>standpoint [1] 7/10<br>state [1] 2/7<br>STATES [5]<br>STATUS [1] 1/10<br>statute [2] 6/24 12/20<br>step [1] 7/25<br>Stephen [4] 1/21 14/13<br>14/19 14/20<br>straight [1] 8/10<br>Street [2] 1/20 1/22<br>strictly [1] 3/5<br>stuck [1] 3/25<br>submit [2] 12/21 14/7<br>such [1] 9/10<br>suggest [1] 10/15<br>Suite [1] 1/17<br>summary [14]<br>summer [1] 3/15<br>supposed [1] 10/11<br>sure [4] 2/20 3/5 8/25<br>8/25<br>surface [1] 8/22<br>surprised [1] 5/24 | <b>T</b> | table [1] 10/2<br>take [10]<br>taken [1] 11/12<br>taking [2] 2/20 6/12<br>talk [3] 6/22 9/24 10/20<br>talked [1] 6/16<br>talking [1] 8/24<br>technically [1] 9/11<br>telephone [1] 2/9<br>tell [3] 2/19 2/22 13/11<br>terms [2] 11/11 13/6<br>testify [2] 12/2 12/7<br>Thank [6]<br>that's [16]<br>themselves [1] 4/12<br>there's [4] 4/9 5/20 7/20<br>10/10<br>therefore [1] 12/21<br>they're [1] 6/18 |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
| <p><b>T</b></p> <p>things [2] 12/5 13/11<br/> think [21]<br/> third [1] 9/4<br/> those [2] 10/9 12/5<br/> though [1] 9/11<br/> thought [3] 2/16 2/18 12/24<br/> three [2] 12/6 14/7<br/> threw [1] 3/24<br/> thus [1] 5/9<br/> timetable [1] 6/1<br/> today [6]<br/> today's [1] 5/22<br/> together [6]<br/> told [1] 8/4<br/> too [1] 12/10<br/> top [1] 5/14<br/> traction [1] 5/21<br/> transcript [2] 1/10 14/15<br/> trial [12]<br/> trying [1] 9/8<br/> two [2] 12/6 14/6<br/> type [1] 13/9<br/> typically [1] 7/19</p> | <p>within [1] 4/21<br/> without [1] 9/5<br/> women [1] 4/12<br/> wondering [2] 4/1 11/7<br/> work [3] 3/22 9/8 13/5<br/> worked [1] 9/15<br/> wouldn't [1] 11/2</p> <p><b>Y</b></p> <p>yeah [1] 14/6<br/> years [1] 3/17<br/> yes [8]<br/> you're [2] 8/24 10/11<br/> young [1] 4/12</p> |  |  |  |
| <p><b>U</b></p> <p>U.S [1] 2/14<br/> ultimate [1] 11/5<br/> ultimately [1] 11/23<br/> under [5]<br/> underlying [1] 7/14<br/> undisputed [1] 11/10<br/> UNITED [5]<br/> upon [2] 6/18 12/15<br/> us [1] 3/7</p>                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                          |  |  |  |
| <p><b>V</b></p> <p>versus [1] 2/5<br/> very [4] 2/23 4/22 12/8 12/11<br/> victim [6]<br/> victims [10]<br/> violated [1] 11/24</p>                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                          |  |  |  |
| <p><b>W</b></p> <p>wait [1] 14/2<br/> want [3] 5/4 8/8 8/21<br/> wanted [3] 4/1 6/6 8/5<br/> we'd [1] 9/9<br/> we'll [4] 9/23 14/2 14/7 14/7<br/> we're [9]<br/> week [1] 4/22<br/> weeks [2] 14/5 14/7<br/> Weissing [1] 1/16<br/> well [10]<br/> Wellcare [1] 4/15<br/> West [2] 1/7 1/23<br/> what's [1] 11/10<br/> whatever [2] 10/17 13/10<br/> where [3] 2/17 4/3 6/25<br/> whether [8]<br/> why [4] 2/19 10/12 11/2 13/6<br/> wish [1] 12/1</p>                                                                         |                                                                                                                                                                                                                                                                                          |  |  |  |