UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:08-cv-80736-KAM

JANE DOE 1 AND JANE DOE 2,

Petitioners,

v.

UNITED STATES,

Respondent.
_____/

JANE DOE 1 AND JANE DOE 2'S REPLY IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

Jane Doe 1 and Jane Doe 2 (also referred to as "the victims"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, now file this reply in support of their motion for partial summary judgment on the issue of the United States Government's violation of their rights under the Crime Victims' Rights Act (CVRA). In support, they state:

INTRODUCTION

The Court now has before it a lengthy consolidated statement of undisputed material facts and motion for partial summary judgment motion from the victims (DE 361) as well as responses to the facts (DE 407) and to the motion (DE 401-2) from the Government. Boiled down to its essence, however, this case remains a simple one. The Government cannot contest that it concealed from the victims a non-prosecution agreement (NPA) that it reached with a sex offender, Jeffrey Epstein, who had committed federal crimes against dozens of minor victims.

Whatever else the CVRA might mean, it must mean that the Government cannot keep the victims in the dark about its resolution of their criminal cases. Indeed, Congress passed the CVRA to address the problem that in case after case "victims, and their families, were ignored, cast aside, and treated as non-participants in a critical event in their lives. They *were kept in the dark* by prosecutors too busy to care enough . . . and by a court system that simply did not have place for them." 150 CONG. REC. 7296 (2004) (statement of Sen. Feinstein) (emphasis added).

At this juncture in the case, the Court can move this case towards final resolution by entering partial summary judgment in favor of the victims on their claims concerning the Government violating their CVRA rights. Undisputed facts show the Government's concealment of the NPA. And, in the particular circumstances of this case, that concealment clearly violated three provisions of the CVRA – "the reasonable right to confer with the attorney for the Government in the case," "the right to be treated with fairness and with respect for the victim's dignity and privacy," and "the right to reasonable, accurate, and timely notice of any public court proceeding." 18 U.S.C. § 3771(a)(5), (8), & (2). The Court should enter summary judgment on the existence of these violations and then set a briefing schedule on the issue of what remedy is appropriate for the violations.

UNDISPUTED FACTS SUPPORTING PARTIAL SUMMARY JUDGMENT FOR THE VICTIMS

The Court has before it an extensive list of facts that the victims would be prepared to prove if this matter proceeded to trial. *See* Victims' Mot. for Partial Summary Judgment (hereinafter "Victims' S.J. Mot."), DE 361 at 7-47 (listing 157 proposed undisputed facts). The Government has responded by contesting some facts, but not others. *See* Gov't Resp. to

Petitioners' Statement of Undisputed Material Facts (hereinafter "Gov't Fact Resp."), DE 407. To grant summary judgment, the Court need only rely on the facts that the Government does not – and cannot – reasonably contest, which are set out in the paragraphs that follow here:

It is undisputed that between about 1999 and 2007, Jeffrey Epstein sexually abused more than 30 minor girls, including petitioners Jane Doe 1 and Jane Doe 2, at his mansion in Palm Beach, Florida, located in the Southern District of Florida, and elsewhere in the United States and overseas. Victims' S.J. Mot., DE 361 at 8, ¶ 1. Because Epstein and his co-conspirators knowingly traveled in interstate and international commerce to sexually abuse Jane Doe 1, Jane Doe 2, and other similarly situated victims, they committed violations of not only Florida law *see, e.g.*, Fla. Stat. §§ 794.05, 796.04, 796.045, 39.201 & 777.04, but also federal law, including repeated violations of 18 U.S.C. §§ 1591, 2421, 2422, 2423, & 371. Victims' S.J. Mot., DE 361 at 8, ¶ 2. The U.S. Attorney's Office and the FBI agents with whom it was working identified Jane Doe 1, Jane Doe 2, and other victims as "victims" under the CVRA, even sending them notices of their rights under the CVRA. *Id.* at 9, ¶ 7; *id.* at 10-11, ¶ 13.

Ultimately, after extensive discussions between the Government and Epstein's team of lawyers, on September 24, 2007, Epstein and Government reached a formal non-prosecution agreement, embodied in the NPA, DE 361-62 (Ex. 62), whereby the federal prosecutors would defer federal prosecution in favor of a Florida state prosecution. Gov't Resp. to Petitioners' Statement of Undisputed Material Facts (hereinafter "Gov't Fact Resp."), DE 407 at 5, ¶ 38. The NPA gave Epstein a promise that he would not be prosecuted in the Southern District of Florida for a series of federal felony offenses involving his sexual abuse of more than 30 known minor girls and countless other unknown minors. Victims' S.J. Mot., DE 361 at 17, ¶ 38 (*citing*

Executed Non-Prosecution Agreement, Ex. 62). The NPA instead allowed Epstein to plead guilty to state felony offenses for solicitation of prostitution and procurement of minors for prostitution. *Id.* The NPA also contained an express confidentiality provision: "The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure." Ex. 62.

In its response, the Government "admits that these provisions [in the NPA] were drafted without the knowledge or consent of the victims . . . ." Gov't Fact Resp., DE 407 at 6. Indeed, from the time the FBI began investigating Epstein under September 24, 2007 – when the NPA was concluded – the U.S. Attorney's Office never even told the victims that such an agreement was under consideration. Victims' S.J. Mot., DE 361, at 18-19, ¶ 43. Epstein's legal counsel were aware that the U.S. Attorney's Office was deliberately keeping the NPA secret from the victims and, indeed, has sought assurances to that effect. *Id.* at 19, ¶ 48.

After the NPA was signed, Epstein's counsel and the Office began negotiations about whether the victims would be told about the NPA. *Id.* at 19, ¶ 49. It was a deviation from the Government's standard practice to negotiate with defense counsel about the extent of crime victim notifications. *Id.* at 20, ¶ 50. To pressure the Office to agree to positions they wanted, Epstein's legal counsel began "a year-long assault on the prosecution and the prosecutors." *Id.* at 20, ¶ 51.

On about September 24, 2007, the U.S. Attorney's Office sent an e-mail to Jay Lefkowitz, one of Epstein's attorneys, stating that the Government and Epstein's counsel would negotiate about what information would be disclosed to the victims about the agreement:

> Thank you, Jay. I have forwarded your message only to [United States Attorney] Alex [Acosta], Andy, and Roland. I don't anticipate it going any further than that. When I receive the originals, I will sign and return one copy to you. The other will be placed in the case file, which will be kept confidential since it also contains identifying information about the girls.
>
> When we reach an agreement about the attorney representative for the girls, *we can discuss what I can tell him and the girls about the agreement.* I know that Andy promised Chief Reiter an update when a resolution was achieved.… Rolando is calling, but Rolando knows not to tell Chief Reiter about the money issue, just about what crimes Mr. Epstein is pleading guilty to and the amount of time that has been agreed to. *Rolando also is telling Chief Reiter not to disclose the outcome to anyone.*

Id. at 20, ¶ 52 (citing Ex. 66) (emphases added). And further, on September 25, 2007, the line prosecutor sent an e-mail to Lefkowitz stating: "And can we have a conference call to discuss what I may disclose to . . . the girls regarding the agreement." *Id.* at 20, ¶ 53 (citing Ex. 69).

On September 26, 2007, the line prosecutor sent an e-mail to Lefkowitz in which she stated: "Hi Jay – Can you give me a call at 561-[xxx-xxxx] this morning? I am meeting with the agents and want to give them their marching orders regarding what they can tell the girls." *Id.* at 21, ¶ 55.

On September 27, 2007, the line prosecutor informed Epstein's counsel of a concern. Specifically, "[t]he concern is, if all 40 girls decide they want to sue, they don't want to be in a situation where Mr. Epstein says this is getting too expensive, we won't pay anymore attorneys' fees." *Id.* at 22, ¶ 58 (*citing* Ex. 23).

On October 3, 2007, the U.S. Attorney's Office sent a proposed letter that would have gone to a special master for selecting an attorney representative for the victims under NPA's compensation procedure. (The NPA provided for compensation to the victims of Epstein's crimes, provided they agreed to forego civil suits against Epstein.) The letter described the facts of the Epstein case as follows: "Mr. Epstein, through his assistants, would recruit underage females to travel to his home in Palm Beach to engage in lewd conduct in exchange for money. Based upon the investigation, the United States has identified 40 young women who can be characterized as victims pursuant to 18 U.S.C. § 2255. Some of those women went to Mr. Epstein's home only once, some went there as many as 100 times or more. Some of the women's conduct was limited to performing a topless or nude massage while Mr. Epstein masturbated himself. For other women, the conduct escalated to full sexual intercourse." Victims' S.J. Mot., DE 361 at 22-23, ¶ 60.

On October 10, 2007, defense attorney Lefkowitz sent a letter to U.S. Attorney Acosta stating, in pertinent part: "Neither federal agents nor anyone from your Office should contact the identified individuals to inform them of the resolution of the case, including appointment of the attorney representative and the settlement process. Not only would that violate the confidentiality of the agreement, but Mr. Epstein also will have no control over what is communicated to the identified individuals at this most critical stage. We believe it is essential that we participate in crafting mutually acceptable communication to the identified individuals." The letter further proposed that the attorney representative for the victims be instructed that "[t]he details regarding the United States's investigation of this matter and its resolution with Mr. Epstein is confidential. You may not make public statements regarding this matter." *Id.* at 23, ¶ 61.

A short time before October 18, 2007, the U.S. Attorney met with defense attorney Lefkowitz in person for breakfast. Meanwhile, the victims had still not been notified of the NPA. *Id.* at 23, ¶ 62 (*citing* Ex. 77).[1]

On October 23, 2007, Lefkowitz sent a letter to U.S. Attorney Acosta, which stated: "I also want to thank you for the commitment you made to me during our October 12 meeting in which you . . . *assured me* that your Office would not . . . *contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter*." Victims' S.J. Mot., DE 361 at 23, ¶ 63.

After the NPA was signed, the Office described it "an express confidentiality provision." The NPA contained a provision that: "The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure." Gov't Fact. Resp., DE 407 at 8-9, ¶ 66.

On about October 26 or 27, 2007, after the initial plea agreement was signed, FBI agents contacted Jane Doe 1. FBI Special Agents E. Nesbitt Kuyrkendall and Jason Richards met in person with Jane Doe 1. The parties agree that the Special Agents explained to Jane Doe 1 that Epstein would plead guilty to state charges, that he would be required to register as a sex offender for life, and he had made certain concessions related to the payment of damages. Victims' S.J. Mot., DE 361 at 23, ¶ 63. It appears that the parties have a dispute over what else

[1] The Government's denial of the victims' proposed undisputed fact on this point only quibbles about the date of the breakfast meeting – which the Government concedes occurred on a Friday, leading to the later thank you note of October 18, 2007. Gov't Fact Resp. at 8, ¶ 62.

was said during this meeting. Jane Doe 1 has provided an affidavit in which she describes what happened as follows:

> During this meeting, the agents explained that Epstein was also being charged in State court and may plea to state charges related to some of his other victims. I knew the State charges had nothing to do with me. During this meeting, the Agents did not explain that an agreement had already been signed that precluded any prosecution of Epstein for federal charges against me. I did not get the opportunity to meet or confer with the prosecuting attorneys about any potential federal deal that related to me or the crimes committed against me.
>
> My understanding of the agents' explanation was that the federal investigation would continue. I also understood that my own case would move forward towards prosecution of Epstein.
>
> Confirming my understanding, in about January 2008, I received a letter from the FBI that told me that "this case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." My understanding of this letter was that my case was still being investigated and the FBI and prosecutors were moving forward on the Federal prosecution of Epstein for his crime against me.

Jane Doe 1 Decl., DE 361-26 at 1.

On the other hand, FBI Special Agent has given a brief account of the meeting:

> In October 2007, my co-case agent and I met with Jane Doe #1 at a Publix grocery store in Palm Beach Gardens. We were meeting with Jane Doe #1 to advise her of the main terms of the Non-Prosecution Agreement. Among other information I provided, I told Jane Doe #1 that an agreement had been reached, Mr. Epstein was going to plead guilty to two state charges, and there would not be a federal prosecution.

Nesbitt Kuyrkendall Second Decl., DE 403-18 at 2.

While the parties appear to have a dispute about exactly what was said at the meeting regarding the agreement, the Government has not offered any reason for questioning Jane Doe 1's statements that she understood that her case was moving forward toward possible prosecution – *i.e.*, that she did not have any understanding that a non-prosecution agreement had been signed. *See* Gov't Fact. Resp.. DE 407 at 9, ¶ 71 ("denying" victim's description of the meeting, but

citing only Agent Kuyrkendall's declaration recounting what he said, not what understanding Jane Doe 1 had).

The parties agree that, during the time period before Epstein's entry of his state guilty pleas (in late June 2008), in addition to Jane Doe 1, FBI agents talked to only two other victims out of the 34 identified victims about the "general terms" of the NPA, including specifically the provision providing a federal civil remedy to the victims. Victims' S.J. Mot., DE 361 at 26, ¶ 76.

After the meetings with the three victims, Epstein's defense team complained. *Id.* at 26, ¶ 77. No further notifications were made to victims after that. *See* Gov't Fact. Resp. at 10, ¶ 77. Specifically, the Government admits that it "did not inform the victims of the NPA, until after Epstein entered his plea . . . ." *Id.* at 10, ¶ 82.

On about January 10, 2008, the Government sent – and the victims' received – victim notification letters from the FBI advising them that "[t]his case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." Victims' S.J. Mot., DE 361, at 31, ¶ 94; Jane Doe 1 Decl., DE 361-26 at 1. The victim notification letters did not disclose that the federal investigation in the Southern District of Florida involving Jane Doe 1 and Jane Doe 2 were the subject of the NPA entered into by Epstein and the U.S. Attorney's Office previously, or that there had been any potentially binding resolution. Victims' S.J. Mot., DE 361 at 31-32, ¶ 94; *See* Gov't Fact. Resp., DE 407 at 12, ¶ 94.

In January 2008, Jane Doe 1 met with the line prosecutor and an attorney employed by the Child Exploitation and Obscenity Section of the U.S. Department of Justice. *See* Gov't Fact. Resp., DE 407 at 13, ¶ 97. During that meeting, Jane Doe 1 expressed her view that Epstein

should be prosecuted. *Id.* at 12-13, ¶ 96. The federal attorneys did not disclose to Jane Doe 1 at this meeting that they had already negotiated a NPA with Epstein. Victims' S.J. Mot., DE 361 at 32, ¶ 97.

On March 19, 2008, the line prosecutor sent a lengthy email to a prospective pro bono attorney for one of Epstein's victims, who had been subpoenaed to appear at a deposition. The email listed the attorneys representing Epstein, the targets of the investigation, and recounted in detail the investigation that had been conducted to that point. The email did not reveal the fact that Epstein had signed the NPA in September 2007. *Id.* at 32-33, ¶ 98.

On May 30, 2008, Jane Doe 5, who was recognized as an Epstein victim by the U.S. Attorney's Office, received a letter from the FBI advising her that "[t]his case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation." The referenced letter made no disclosure about the NPA. *Id.* at 33, ¶ 99.

In mid-June 2008, attorney Brad Edwards contacted the line prosecutor handling the case to inform her that he represented Jane Doe 1. On June 27, 2008, Brad Edwards further informed the line prosecutor that that he also represented Jane Doe 2. Edwards asked to meet with the prosecutor to provide information about Epstein, hoping to secure a significant federal indictment against Epstein, consistent with his clients' desires. *Id.* at 33, ¶ 101. The prosecutor and Edwards discussed the possibility of federal charges being filed in the future, and the prosecutor did not mention the NPA. Gov't Fact. Resp., DE 407 at 14, ¶ 101. At the end of the call, the line prosecutor asked Mr. Edwards to send any information that he wanted considered

by the Office in determining whether to file federal charges. Victims' S.J. Mot., DE 361, at 34, ¶ 102. Again, the prosecutor did not mention the NPA. Gov't Fact. Resp., DE 407 at 14, ¶ 101.[2]

On June 19, 2008, Mr. Edwards sent an email to the line prosecutor requesting to "meet . . . and discuss [his] plans." Victims' S.J. Mot., DE 361 at 34, ¶ 103.

On June 23, 2008, the line prosecutor sent an email to Epstein's defense counsel stating that the Deputy Attorney General had completed his review of the Epstein matter and "determined that federal prosecution of Mr. Epstein's case [wa]s appropriate. Accordingly, Mr. Epstein ha[d] until the close of business on Monday, June 30, 2008, to comply with the terms and conditions of the agreement between the United States and Mr. Epstein." *Id.* at 34-35, ¶ 105.

On about June 27, 2008, the U.S. Attorney's Office called Mr. Edwards to provide notice to his victims/clients regarding the impending June 30 hearing. *Id.* at 35, ¶ 107. During the call, the Government did not inform Mr. Edwards of the NPA. *See* Gov't Fact. Resp., DE 407 at 10, ¶ 82.

On June 30, 2008, Epstein plead guilty to the state charges that day, triggering the NPA. Victims' S.J. Mot., DE 361, at 36, ¶ 112. On and before June 30, 2008, the Government and Epstein's attorneys corresponded extensively (often multiple times on any given day) regarding Epstein's entry of his guilty plea. Victims' S.J. Mot., DE 361 at 35, ¶ 106. On or before June 30, 2008, the Office prepared a draft victim notification to be sent to the victims—a letter that it intended to show to both Epstein and his attorney Jack Goldberger, as reflected by a place for the

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[2] As an exhibit to their response to the Government's summary judgment motion, the victims have filed a detailed affidavit from the victims' attorney, Bradley J. Edwards, about the nature of the calls that he had with the line prosecutor. *See* Edwards Aff. of Aug. 11, 2017, at ¶¶ 11-25. If the Government fails to dispute that affidavit, of course that affidavit would provide additional evidence supporting summary judgment for the victims.

initials of both Epstein and Goldberger on the document. The notification was designed to inform the victims of the provisions of deferral of federal prosecution in favor of state charges. The notification letter began by describing Epstein's guilty plea in the past tense: "On June 30, 2008, Jeffrey Epstein … entered a plea of guilty to violations of Florida statutes forbidding the solicitation of minors to engage in prostitution and felony solicitation of prostitution." Later, a substantively identical letter was prepared for Epstein's and defense attorney Guy Lewis' review. *Id.* at 36, ¶ 110 (*citing* Exs. 103 & 104).

On June 30, 2008, the U.S. Attorney's Office sent an email to Epstein's attorney Jack Goldberger: "Jack: The FBI has received several calls regarding the Non-Prosecution Agreement. I do not know whether the title of the document was disclosed when the Agreement was filed under seal, but the FBI and our office are declining comment if asked." *Id.* at 36, ¶ 111 (*citing* Ex. 99).

On July 1, 2008, the day following Epstein's plea, the line prosecutor emailed the Assistant State Attorney a copy of the NPA for "filing with the Court under seal." *Id.* at 38, ¶ 117.[3]

On July 3, 2008, as specifically directed by the U.S. Attorney's Office, Mr. Edwards sent a letter to the Office communicating the wishes of Jane Doe 1, Jane Doe 2, and Jane Doe 5 that federal charges be filed against Epstein: "We urge the Attorney General and our United States

[3] With regard to this particular paragraph, the Government has "denied" it, alleging that the paragraph is an opinion and conclusion, not an assertion of fact. But that denial is incorrect and, in any event, the email underlying this assertion cannot be controverted. *See* Victims' S.J. Mot., DE 361, at 38, ¶ 117 (*citing* Ex. 108).

Attorney to consider the fundamental import of the vigorous enforcement of our Federal laws. We urge you to move forward with the traditional indictments and criminal prosecution commensurate with the crimes Mr. Epstein has committed, and we further urge you to take the steps necessary to protect our children from this very dangerous sexual predator." *Id.* at 38, ¶ 118. When Mr. Edwards wrote his July 3, 2008 letter, he was still unaware that a NPA had been reached with Epstein and that there was any federal resolution of the case. *Id.* at 38, ¶ 119.[4]

On July 7, 2008, the line prosecutor corresponded by email with Epstein's counsel, seeking his signed agreement concerning a notification letter to the victims before beginning the distribution of that letter. Gov't Fact Resp., DE 407 at 17, ¶ 120.

On July 7, 2008, Jane Doe 1 filed an emergency petition for enforcement of her rights under the CVRA. Victims' S.J. Mot., DE 361 at 40, ¶ 126.

On July 8, 2008, the line prosecutor sent a letter to Epstein's counsel stating that the victims would be informed about the civil compensation provision of the NPA the next day:

> In accordance with the terms of the Non-Prosecution Agreement, on June 30, 2008, the United States Attorney's Office provided you with a list of thirty-one individuals "whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein." . . . In deference to your vacation, we allowed you a week to provide us with any objections or requested modifications of the list and/or the Notification language. Yesterday, I contacted you via telephone and e-mail, but received no response. Accordingly, the United States hereby notifies you that it will distribute the victim notifications tomorrow, July 9, 2008, to each of the thirty-two identified victims, either directly or via their counsel.

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[4] The Government has denied this sentence, asserting that it is "an opinion and conclusion, not an assertion of fact." But Mr. Edwards' state of mind at that time is a fact, not on opinion, and the Government offers no basis for challenging that state of mind. Indeed, elsewhere the Government admits that it "did not inform the victims of the NPA, until after Epstein entered his plea . . . ." *Id.* at 10, ¶ 82.

Id. at 40, ¶ 127 (*citing* Ex. 101).

On July 9, 2008, defense attorney Jack Goldberger sent a letter to the line prosecutor raising concerns about the notifications, and suggesting modifications to the notification letter. Epstein's counsel also objected to the victim notification letters containing certain information about the NPA. *Id.* at 40, ¶ 128 (*citing* Ex. 113).

Later on July 9, 2008, the line prosecutor sent a response back to Goldberger:

> Without such an express Acknowledgment by Mr. Epstein that the notice contains the substance of that Agreement, I believe that the victims will have justification to petition for the entire agreement, which is contrary to the confidentiality clause that the parties have signed.

Id. at 41, ¶ 129.

On July 9, 2008, the U.S. Attorney's Office sent victim notification letters to Jane Doe 1 and Jane Doe 5, via their attorney, Mr. Edwards, and to other identified victims of Epstein. That notification contained a written explanation of some of the civil compensation provisions of the NPA. The notification did not provide the full terms of the NPA. For example, the notification did not disclose the NPA or the immunity for "other potential co-conspirators" of Epstein. *Id.* at 41, ¶ 130 (*citing* Exs. 115 & 116).

On July 10, 2008, Epstein's counsel continued to protest victim notification as evidenced by Goldberger's email to the line prosecutor stating, "we respectfully request a reasonable opportunity to review and comment on a draft of the modified notification letter you intend to mail before you send it." *Id.* at 41, ¶ 131.

On July 11, 2008, the Court held a hearing on Jane Doe 1's petition and, with the stipulation of the Government, added Jane Doe 2 as a petitioner because she was a recognized

crime "victim." The Court unsealed a declaration that the line prosecutor had filed in response to the petition, and because the declaration contained one paragraph of the NPA, that paragraph became unsealed. The line prosecutor sent an email to Goldberger informing him of the unsealing of that one paragraph. *Id.* at 41-42, ¶ 132.

On August 7, 2008, the line prosecutor emailed one of Epstein's defense attorneys, Roy Black, notice of the motion to disclose the NPA to the victims and wrote that the Government intended "to oppose the motion based upon the confidentiality provision." *Id.* at 42, ¶ 135.

On August 10, 2008, Jane Doe 1 and Jane Doe 2 filed a motion seeking release of the NPA. *Id.* at 42, ¶ 136.

On August 11, 2008, Roy Black wrote back to the line prosecutor, thanking the Government for "agreeing to oppose any disclosure of the 9/24/07 agreement." *Id.* at 42, ¶ 138.

Between August 11 and 14, 2008, the line prosecutor attempted to obtain a copy of the NPA that Epstein's counsel had filed in state court. After receiving a copy, on August 14, 2008, the line prosecutor wrote to Lefkowitz: "I can no longer argue that the Court shouldn't force us to produce the agreement because we have already provided the victims with the relevant portion when I now understand from you that I have NOT provided them with the relevant portion." *Id.* at 43, ¶ 139.

Further communications ensued between the line prosecutor and Epstein's counsel about what exactly was contained in the NPA—specifically, whether a December modification to the agreement was part of the NPA. The notification to the victims about the civil restitution provisions had quoted from the December language. *Id.* at 43, ¶ 140.

On August 14, 2008, the line prosecutor emailed Epstein's counsel stating that the court has "ordered us to make the Agreement available to the plaintiffs." *Id.* at 43, ¶ 141.

On August 15, 2008, the line prosecutor sent a letter to Epstein's counsel confirming that recent correspondence was intended "solely to determine what Mr. Epstein considered to be the terms of the Non-Prosecution Agreement" so that the Government would know exactly what needed to be produced to the victims in this CVRA case. *Id.* at 43, ¶ 142.

On August 18, 2008, Lefkowitz wrote the line prosecutor that Epstein objected to disclosure of the terms of the NPA, but that Epstein would "cooperate with the government to reach an agreement as to substance of the notification to be sent to the government's list of individuals. Based on the Agreement, the information contained in the notification should be limited to (1) the language provided in the Agreement dealing with civil restitution (paragraphs 7-10) and (2) the contact information of the selected attorney representative. We object to the inclusion of additional information about the investigation of Mr. Epstein, the terms of the Agreement other than paragraphs 7-10 and the identity of other identified individuals." *Id.* at 43-44, ¶ 143.

Jane Doe 2 were not informed of the contents of the NPA until August 28, 2008, when the line prosecutor provided a copy to Mr. Edwards. *Id.* at 44, ¶ 146.

On September 2, 2008, nearly a year after the NPA was signed, the line prosecutor sent an email to Epstein's counsel stating, "I will start sending out the victim notifications today. In accordance with your request, I have changed the language regarding the victims' right to receive a copy of the Agreement." *Id.* at 44-45, ¶ 147.

On September 17, 2008, the line prosecutor sent an email to State Attorney Barry Krischer, explaining that the NPA "contain[ed] a confidentiality provision that require[ed] us to inform Mr. Epstein's counsel before making any disclosure." *Id.* at 46, ¶ 153.

On September 18, 2008, attorney Katherine Ezell representing some of Epstein's victims emailed the line prosecutor, asking whether the NPA was "blessed" by Judge Marra. The line prosecutor emailed back: "As far as I know, Judge Marra has not ever seen the agreement or these notification letters.… I don't know if the sentencing judge ever reviewed it. The letters were reviewed by my office and Jay Lefkowitz and Roy Black before they went out." *Id.* at 46, ¶ 154.

In 2010, Jane Doe 1 met with the new U.S. Attorney, Wilfredo Ferrer. She explained to him how the NPA had been concealed from her. *Id.* at 46, ¶ 154.

At no time while it negotiated and executed the NPA did the Government notify the victims that Epstein's guilty plea would prevent his prosecutions for crimes against them. *Id.* at 47, ¶ 157.

PARTIAL SUMMARY JUDGMENT FOR THE VICTIMS IS APPROPRIATE BASED ON THE UNDISPUTED FACTS

In light of the foregoing undisputed material facts, partial summary judgment for the victims is appropriate – specifically summary judgment on the issue of whether the Government violated their CVRA rights. The Court is well aware of the applicable summary judgment standard, which requires that there be no disputed issues that are genuine or material for the moving party to be entitled to judgment as a matter of law. *See, e.g.*, *Joseph v. Napolitano*, 839 F. Supp. 2d 1324, 1333 (S.D. Fla. 2012). If the evidence offered by the nonmoving party is

merely colorable or is not significantly probative, summary judgment is proper. *See Sainz v. Cabarceno Enterprises, Inc.*, No. 14-20608-CIV, 2015 WL 12551061, at *1 (S.D. Fla. 2015) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). The undisputed facts recited above plainly establish that the Government—with the knowledge of, and at the urging of Epstein—violated the CVRA rights of Jane Doe 1, Jane Doe 2, and other similarly-situated victims. The Government did so by deliberately concealing from them the NPA barring the prosecution of Jeffrey Epstein and his co-conspirators for the federal offenses they committed against them.

The victims have already discussed many of these issues in connection with their contemporaneously-filed Response in Opposition to the Government's Motion for Summary Judgment. In the interests of brevity, the victims simply adopt in full all of the arguments they advanced there in opposition to the Government's summary judgment motion in support of their summary judgment motion here.[5]

A few additional points in support of the victims' partial summary judgment motion are appropriate to respond to recent arguments by the Government:

A. Partial Summary Judgment is Appropriate on the Victims' Claim that the Government Violated their CVRA Right to Confer.

Partial summary judgment is appropriate because there can be no real debate that the Government violated the victims' right to confer. Under the CVRA, identified crime victims are granted "the reasonable right to confer with the attorney for the Government in the case." 18

[5] The victims also adopt the information provided in the contemporaneously-filed Edwards Aff. of August 11, 2017, to the extent that the Government does not contest the information provided there.

U.S.C. § 3771(a)(5). In some cases, there might be a debate about how much conferring is "reasonable" for the prosecutor to undertake. But here, no such debate is possible for the straightforward reason that the Government simply concealed that it was planning to enter into an agreement blocking the federal prosecution of Epstein from more than 30 of Epstein's identified victims.

Whatever other rights the CVRA extends to crime victims, it surely extends the simple right to know when the Government is entering into a deal with a sex offender blocking his prosecution for crimes committed against them. The Government appears to argue that because it had provided contact information (such as telephone numbers) to the victims, it had satisfied the CVRA's "reasonable right to confer." DE 401-2 at 9. But as the facts recounted above made clear, the Government assiduously concealed from the victims the one thing that they would have wanted to confer about – the agreement *barring prosecution of federal crimes committed against them*. Congress designed the CVRA to address the problem that in case after case "victims, and their families, were ignored, cast aside, and treated as non-participants in a critical event in their lives. They were *kept in the dark* by prosecutors too busy to care enough . . . and by a court system that simply did not have place for them." 150 CONG. REC. 7296 (2004) (statement of Sen. Feinstein) (emphasis added).

A clear illustration of how the Government violated the right to confer comes from the line prosecutor's calls with attorney Brad Edwards. As noted above, it is undisputed that Edwards asked to meet with the prosecutor to provide information about Epstein, hoping to secure a significant federal indictment against Epstein, consistent with his clients' desires. The prosecutor and Edwards discussed the possibility of federal charges being filed in the future, and

the AUSA did not mention the NPA. At the end of the call, the line prosecutor asked Mr. Edwards to send any information that he wanted considered by the Office in determining whether to file federal charges. The prosecutor did not mention the NPA. Indeed, several days after Epstein's plea – which triggered the NPA – as directed by the prosecutor, Mr. Edwards sent a letter to the Office communicating the wishes of Jane Doe 1, Jane Doe 2, and Jane Doe 5 that federal charges be filed against Epstein. When Mr. Edwards wrote his letter, he was still unaware than a NPA had been reached with Epstein and that there was any federal resolution of the case. *See supra* (collecting citations for these undisputed facts).[6]

If the CVRA's "reasonable right to confer" is ever going to mean anything, it has to mean that the Government's actions in this case violated that the victims' right. If the Government can notify the victims of their "victim" status, tell them to be "patient" while their case is being investigated, and tell them to send in information about why the case should be prosecuted – all the while assiduously concealing that it has signed a secret agreement barring such prosecution – the CVRA's right to confer means nothing at all. The Court would be approving deliberate Government action to keep victims "in the dark" about the what is happening to their case.

To be clear, the victims agree that the CVRA does not "impair the prosecutorial discretion of the Attorney General . . . ." 18 U.S.C. § 3771(d)(6). But contrary to the Government's suggestion, this provision does not give prosecutors carte blanche to ignore the

[6] As noted above, as an exhibit to their response to the Government's summary judgment motion, the victims have filed a detailed affidavit from the victims' attorney, Bradley J. Edwards, about the nature of the calls that he had with the line prosecutor and the circumstances leading up to him drafting his letter. *See* Edwards Aff. of Aug. 11, 2017, at ¶¶ 11-25. If the Government fails to dispute that affidavit, of course that affidavit would provide additional evidence supporting summary judgment for the victims.

CVRA. The Government seems to be suggesting that if, as a matter of "prosecutorial discretion," it decides that it would be useful to keep victims in the dark about how their case is being handled, then it has discretion to do so. The CVRA's protection of "prosecutorial discretion" does not extend so far as to allow the Government to decide which parts of the CVRA it will comply with and which parts it will ignore. This Court has a duty to construe the CVRA so that all the parts of the statute are harmonized with one another. *See Colautti v. Franklin*, 439 U.S. 379, 392 (1979) (it is an "elementary canon of construction that a statute should not be interpreted so as to render one part inoperative."). The CVRA's recognition of "prosecutorial discretion" means recognition of the Government's right to determine what charges to file and what charges not to file – not what important aspects of the resolution of a case the Government can conceal from victims. *See* BLACK'S LAW DICTIONARY 499 (8th ed. 2004) (defining "prosecutorial discretion" as "[a] prosecutor's power to choose from the options available in criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court"). In the context of this case, for example, the Government was free to make the final decision on whether or not to prosecute Epstein. But as this Court has previously held, the CVRA extends to victims a right to "the full unfettered exercise of their conferral rights at a time that will enable the victims to exercise those rights meaningfully." DE 189 at 9. Recognizing a right to confer about the Government's disposition of the case is "not an infringement … on the government's independent prosecutorial discretion; instead, it is only a requirement that the government confer in some reasonable way with the victims *before* ultimately exercising its broad discretion." *In re Dean*, 527 F.3d 391, 395 (5th Cir. 2008) (internal citations omitted) (emphasis added).

The Government's conduct here was particularly egregious, because it repeatedly found time to confer with the attorneys for the Epstein – the man who had sexually abused the victims. And yet the Government did not extend the same opportunity to the victims, even though they had a congressionally-protected right to confer. Indeed, the Government here stepped over the line from mere passive failure to disclose to affirmative acts of concealment, such as sending letters to the victims counseling "patience" and asking victims' counsel to write a letter to the Government explaining why the case should be prosecuted – even though the Government was in the process of entering into an agreement barring that very prosecution.

The Court should grant summary judgment on the victims' claim that the Government violated their right to confer.

B. Partial Summary Judgment is Appropriate on the Victims' Argument that Government Violated their CVRA Right to Be Treated with Fairness.

Partial summary judgment is also appropriate because the Government indisputably violated the victims' "right to be treated with fairness and with respect for the victim's dignity and privacy." 18 U.S.C. § 3771(a)(8). Entirely apart from whether the victims had any right to confer with prosecutors, at a bare minimum they had a right to be treated fairly – i.e., a right not to be deceived – by the Government. Yet here the Government deliberately misled the victims about what was happening in their case, concealing from them the NPA's negotiation and consummation – until it was too late for the victims to do raise any objection. As with the violation of the right to confer, the undisputed facts demonstrate that the Government violated the victims' right to fair treatment at multiple points in the process, including before the NPA

was signed, after the NPA was signed, when Epstein was entering his State guilty pleas, and after Epstein entered his State guilty pleas.

While the Government tries gamely to defend its actions, DE 401-2 at 15-20, the undisputed facts show that in January (and later) 2008, well after the NPA had been signed, the Government sent the victims (and, in some cases, their attorneys) deceptive information that the case "is currently under investigation" and that "[t]his can be a lengthy process and we request your continued patience while we conduct a thorough investigation." Victims' S.J. Mot., DE 361 at 31, ¶ 94; Jane Doe 1 Decl., DE 361-26 at 1. The victim notification letters did not disclose that the federal investigation in the Southern District of Florida involving Jane Doe 1 and Jane Doe 2 were the subject of the NPA entered into by Epstein and the U.S. Attorney's Office previously, or that there had been any potentially binding resolution. Victims' S.J. Mot., DE 361 at 31-32, ¶ 94; *See* Gov't Fact. Resp. at 12, ¶ 94.

The Government claims it had no duty to disclose the NPA. *See* DE 401-2 at 16. But the Government's concealment would be tortious and actionable if committed during the course of a business transaction. The *Restatement (Second) of Torts* explains the traditional American legal principles surrounding the tort of misrepresentation through non-disclosure during a business transaction:

> One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,
>
> (a) matters known to him that the other is entitled to know because of a fiduciary or other similar relation of trust and confidence between them; and
>
> (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading; and
>
> (c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so; and

> (d) the falsity of a representation not made with the expectation that it would be acted upon, if he subsequently learns that the other is about to act in reliance upon it in a transaction with him; and
>
> (e) facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.

RESTATEMENT (SECOND) OF TORTS § 551(2) (1977).

While fitting into only one of the five enumerated subsections would be enough to show that the Government committed a tort against the victims by concealing the NPA (assuming that the discussions with the victims are analogous to a "business transaction"), remarkably the Government's actions satisfy all five circumstances. First, Government had disclosure obligations because it stands in a "fiduciary or other similar relation of trust and confidence" to crime victims, because Congress has directed that prosecutors must exercise their "best efforts" to protect victims' rights during the criminal justice process. *See* 18 U.S.C. § 3771(c)(1).

Second, during the course of the case, government prosecutors learned information that made their earlier statements to the victims misleading. For example, when the prosecutors met with Jane Doe 1 at the end of January, she expressed her view that Epstein should be prosecuted. Gov't Fact. Resp. at 12-13 ¶ 96. Whatever the FBI agents had told Jane Doe 1 earlier in October, at the end of January the Government indisputably became aware that Jane Doe 1 thought that federal prosecution of her case was still possible. Yet the federal attorneys did not disclose to Jane Doe 1 at this meeting that they had already negotiated a NPA with Epstein. Victims' S.J. Mot., DE 361, at 32 ¶ 97. Indeed, Jane Doe 1's understanding about the posture of the case had been reinforced, in early January, when the Government sent her a letter requesting her "continued patience while we conduct a thorough investigation." At that point, it became

necessary for the Government to set the record straight to prevent its "partial or ambiguous statement of the facts from being misleading." RESTATEMENT (SECOND) OF TORTS § 551(2)(b) (1977). If the CVRA's promise to victims that they have a right to fair treatment during the criminal justice process is going to mean anything, it must mean that the Government cannot hold a face-to-face meeting with a victim who is requesting federal prosecution for a man who sexually abused her while concealing the fact that it has previously signed an agreement barring such prosecution. While the CVRA may not give victims the right to "dictate the manner, timing, or quantity of conferrals," *Jordan v. Dep't of Justice*, 173 F. Supp. 3d 44, 52-53 (S.D.N.Y. 2016), during such a face-to-face meeting, the Government must at least proceed in a straightforward and upright way.

Third and similarly, the Government had a duty to speak when it "subsequently acquired information that" it knew made "untrue or misleading a previous representation that when made was true or believed to be so." RESTATEMENT (SECOND) OF TORTS § 551(2)(c) (1977). The Government argues that it genuinely believed that the case was truly "under investigation" even well after the NPA was signed, because it did not know whether Epstein intended to plead guilty. While the victims strongly dispute this view of the Government's actions, even crediting them, this belief obviously was no longer genuine as of Friday, June 27, 2008, when Epstein told the prosecutors that he was going to Florida court on Monday morning, June 30, to plead guilty. Accordingly, when the Government was contacting the victims in the days before that hearing – such as when it called Mr. Edwards – it had a duty at that point, in light of the "subsequently acquired information" that Epstein was pleading guilty, to alert Mr. Edwards (and the victims)

that the case was no longer "under investigation" and was instead moving to a point where the NPA would be triggered.[7]

Fourth, the Government had a duty to correct its concealment when it subsequently learned Mr. Edwards, for example, was "about to act in reliance upon [misleading government statements] in a transaction with [the Government]." RESTATEMENT (SECOND) OF TORTS § 551(2)(d) (1977). The Government learned, for example, that Mr. Edwards was going to send it a letter explaining why federal charges should be brought against Epstein – even though Epstein could no longer be prosecuted due to the NPA. Indeed, Mr. Edwards took time from his busy law practice (and away from his family on the eve of the Fourth of July) to write a letter to the U.S. Attorney's Office on July 3, 2008, asking the U.S. Attorney's Office to prosecute Epstein – even though the NPA blocking that prosecution had taken final effect three days earlier. The Government's duty to correct the false impression it had (deliberately) created with Mr. Edwards is manifest.[8]

Fifth and finally, under the "objective circumstances" of this case, the victims would have "reasonably expect[ed] disclosure of the facts." RESTATEMENT (SECOND) OF TORTS § 551(2)(e) (1977). The victims (and their attorneys) could hardly have expected that the prosecutors and the man who had sexually abused them would be working together to conceal an

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[7] Here again, the detailed and recently-submitted affidavit from the victims' attorney, Bradley J. Edwards, provides additional detail about what he was told – and not told – about the state guilty pleas. *See* Edwards Aff. of Aug. 11, 2017 at ¶ 17. If the Government fails to dispute this part of the affidavit, of course that affidavit would provide additional evidence supporting summary judgment for the victims.

[8] Here again, the detailed and recently-submitted affidavit from the victims' attorney, Bradley J. Edwards, provides additional detail about how he was relying on misleading statements from the Government. *See* Edwards Aff. of Aug. 11, 2017 at ¶ 19. If the Government fails to dispute this part of the affidavit, of course that affidavit would provide additional evidence supporting summary judgment for the victims.

arrangement that would prevent his prosecution for crimes against them. And the Government must have been aware that it was keeping the victims in a position where they could not object to the plea arrangement until it was consummated.[9] A duty of disclosure was manifest.

The foregoing analysis simply applies conventional America tort principles to the Government's concealment, showing that the Government's actions were tortious under those principles. But, of course, the victims need not demonstrate that the Government's actions were so extreme as to amount to tort in order to obtain relief. All the victims need show is that the Government failed to discharge its obligation to treat them with "fairness."

Congress made clear what it meant by promising victims a right to fairness, describing these CVRA as "broad rights" in the relevant legislative history:

> The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.
>
> It is not the intent of this bill that its significance be whittled down or marginalized by the courts or the executive branch. This legislation is meant to correct, not continue, the legacy of the poor treatment of crime victims in the criminal process.

150 Cong. Rec. 22952 (Oct. 9, 2004) (statement of Sen. Kyl). The Government did not treat victims with the respect they deserve when it concealed what it was doing.

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[9] Here again, the detailed and recently-submitted affidavit from the victims' attorney, Bradley J. Edwards, provides additional detail about what was reasonable under these circumstances. *See* Edwards Aff. of Aug. 11, 2017 at ¶ 23. If the Government fails to dispute this part of the affidavit, of course that affidavit would provide additional evidence supporting summary judgment for the victims.

To be sure, now that the victims have moved for summary judgment, the Government claims that the reason for this concealment was to prevent cross-examination of the victims about the financial consequences of a guilty plea. DE 401-2 at 16-17. The Government argues that "it was completely appropriate for the Government to avoid creating additional impeachment material by not alerting the victims that the Government was seeking a resolution that would facilitate their collecting money damages from Epstein." DE 401-2 at 17. If the Court accepts this argument as a basis for assessing CVRA compliance, then the Government will never have to give *any* information in *any* case to *any* victim. Of course, whenever the Government obtains a guilty plea from a criminal defendant to crimes he has committed against victims, that resolution will "facilitate their collecting money damages" from the defendant through operation of collateral estoppel. *See* 18 U.S.C. § 3664(l) ("A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim"). Thus, even assuming that the Government's alleged motivation is true,[10] it cannot serve as a basis for withholding information from victims, or the CVRA would be sapped of meaning.

In sum, even if the Court limits its view to the undisputed facts, ample basis exists for concluding that the Government violated the victims' right to fair treatment. Of course, if this case were to go to trial, the victims have alleged many more actions by the Government that

[10] If this case were to go to trial, the victims intend to prove that the Government's true motivation was, among other things, the one explained in an email to Epstein's defense attorneys – *i.e.*, that the line prosecutor had an admitted "bias against plaintiffs' attorneys," Victims' S.J. Mot., Ex. 70, and thus worked in concert with Epstein's attorneys to keep Epstein from being sued civilly.

violated their rights. *See* Victims' S.J. Mot., DE 361 at 51-53; *see also* Victims' Resp. to Gov't S.J. Mot., Part VI (filed contemporaneously with this brief). But the simplest way for the Court to proceed at this juncture is to grant the victims' motion for partial summary judgment based on the undisputed facts showing the Government's concealment of the NPA in violation of their CVRA right to fair treatment.

C. Partial Summary Judgment is Appropriate on the Victims' Argument that the Government Violated their CVRA Right to Reasonable and Accurate Notice.

Partial summary judgment is also appropriate on the undisputed ground that the Government violated the victims' CVRA "right to *reasonable, accurate* and timely notice of any public court proceedings . . . involving the crime." 18 U.S.C. § 3771(a)(2) (emphasis added). In a contemporaneously-filed brief, the victims have refuted the Government's legal argument that this right-to-notice provision lacks application with regard to state court proceedings, at least on the unique facts here involving a federal NPA that was directly intertwined with state court guilty pleas needed to trigger its effectiveness. *See* Victims' Resp. to Gov't S.J. Mot., Part V.A. And in that same brief, the victims have shown why, as a factual matter, the Government is not entitled to summary judgment on this issue. *Id.* at Part V.B. For purposes of this reply, a few words are appropriate on why the undisputed facts are now so clear as to warrant partial summary judgment in favor of the victims.

To grant partial summary judgment for the victims, the Court need only put together three undisputed facts. The first is that the NPA between the Government and Epstein made Epstein's guilty plea to Florida state crimes the triggering event for the NPA, which barred federal prosecution of Epstein's crimes against the victims. The plain language of the NPA

establishes this fact, *see* Victims' S.J. Mot., DE 361 at 17 (Executed Non-Prosecution Agreement, Ex. 62), and the Government does not contend otherwise. Second, Epstein pled guilty in Florida state court to those triggering offenses on June 30, 2008. Again, the Government does not dispute this obvious fact. Victims' S.J. Mot., DE 361, at 36 ¶ 112. And third, the Government did not notify the victims that what was happening when Epstein pled guilty on June 30, 2008, was that he was triggering this NPA barring prosecution of the crimes against them. Again, this fact is undisputed. *See* Gov't Fact. Resp. at 10, ¶ 82 ("The government did not inform the victims of the NPA, until after Epstein entered his plea . . . .").

Based on these simple and uncontested facts, summary judgment for the victims is appropriate. Given the circumstances of the case, the Government's notice was neither "reasonable" nor "accurate." As explained in the victims' response to the Government's summary judgment motion, "accurate" is commonly defined as "in exact conformity to truth or to some standard." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 14 (1993). The Government did not provide notice exactly conforming to the truth when it concealed from the victims what was really happening. And "reasonable" is commonly defined as being "fair [or] proper . . . under the circumstances; sensible." BLACK'S LAW DICTIONARY 1456 (10 ed. 2014). Under the circumstances of this case, it was not fair or proper for the Government to conceal that Epstein's guilty pleas to the state crimes triggered the NPA. Indeed, the Government did not inform the victims' (or their attorneys) of the single most important thing about Epstein's guilty pleas: that his pleas would, via operation of the NPA, block federal prosecution of Epstein for his federal crimes against the victims.

Of course, if this case were to go to trial, the victims would prove in more detail why the Government refused to give notice to the victims. In particular, the victims would show that the Government was trying to keep the victims from raising any objection to the plea deal in front of the Florida judge, and thus the Government needed to conceal the NPA's existence until the pleas had been accepted. But the Court need not delve into the Government's motivations to grant summary judgment for the victims. The Court should simply grant summary judgment on the undisputed facts, which establish unreasonable and inaccurate notice.

CONCLUSION

The undisputed facts of this case prove that, rather than forthrightly discharging its obligations to numerous child sexual assault victims, the Government chose to enter into a secret deal with the man who had victimized them. Perhaps before Congress enacted the CVRA, such outrageous behavior could escape a judicial response. But now that the CVRA is the law of the land, the Court is obligated to take all necessary steps to "ensure" that the victims' rights are protected. 18 U.S.C. § 3771(b).

On the undisputed facts, this is not a close case. This is a summary judgment case. For all the foregoing reasons, the Court should find the Government violated the rights of Jane Doe 1, Jane Doe 2, and other similarly situated victims under the CVRA – specifically, their "reasonable right to confer with the attorney for the Government in the case," their right "to be treated with fairness and with respect for the victim's dignity and privacy," and their right "to reasonable, accurate, and timely notice of any public court proceeding." 18 U.S.C. § 3771(a)(5), (8), (2).

If the Court grants their motion, the victims would then ask the Court to set an appropriate schedule for briefing and a hearing on the issue of the remedy for the violations of their rights.

DATED: August 11, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on August 11, 2017, on the following using the Court's CM/ECF system:

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