

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA/JOHNSON

JANE DOE #1 and JANE DOE #2,

Petitioners,

vs.

UNITED STATES,

Respondent.

/

**UNITED STATES' OPPOSITION TO JANE DOE #1 AND JANE DOE #2'S
MOTION TO SUPPLEMENT AUTHORITIES**

Respondent, United States, by and through its undersigned counsel, files its Opposition to Jane Doe # 1 and Jane Doe # 2's Motion to Supplement Authorities, and states:

Petitioners seek to supplement authorities in their Motion for an Order Directing the U.S. Attorney's Office Not to Withhold Relevant Evidence. The motion should be denied since petitioners fail to explain how a letter from the Department of Justice's Office of Professional Responsibility (OPR) constitutes "authority" in support of their contention that the U.S. Attorney's Office has a legal obligation to provide them with evidence in their CVRA lawsuit.

The May 6, 2011 letter from OPR references Professor Cassell's claim that "improper influences" may have resulted in the U.S. Attorney's Office's decision to enter into a non-prosecution agreement with Jeffrey Epstein. Petitioners' Exhibit A at 1. The letter advises that OPR's policy is to "refrain from investigating issues or allegations that were, are being, or could have been addressed in the course of litigation, unless a court has made a specific finding of

misconduct by a DOJ attorney or law enforcement personnel or there are present other extraordinary circumstances.” OPR declined to conduct an investigation, based on a finding that issues or allegations were, are being, or could be, addressed in the course of the pending litigation, and the absence of extraordinary circumstances or a finding of misconduct by the court.

From this three paragraph letter, petitioners conclude that: (1) the government has in its possession information that will be helpful to the victims’ case; and (2) the Government is not currently investigating these issues. The OPR’s decision to decline to conduct an investigation into Professor Cassell’s allegations neither supports nor undercuts petitioners’ argument that the U.S. Attorney’s Office is obligated to disclose information which may be relevant to their CVRA case. In short, the letter is irrelevant.

Petitioners argue that “[t]he letter makes clear that it is only before this Court that such issues can be adjudicated.” D.E. 82 at 2. They are suggesting that, because OPR will not investigate their claims of “improper influences,” this Court must do so. It is well-settled that “[t]he federal courts are not empowered to seek out and strike down any governmental act that they deem to be repugnant to the Constitution. Rather, federal courts sit ‘solely, to decide on the rights of individuals.’” Hein v. Freedom From Religion Foundation, 551 U.S. 587, 598 (2007), citing Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803). This case does not even involve the Constitution, but a claim of a statutory right under the CVRA. The sole issue is whether the Government owed any legal duties to petitioners under 18 U.S.C. § 3771(a)(1) - (8), in the absence of a formal charge filed against Jeffrey Epstein. This litigation is not a platform for petitioners to obtain judicial review of the manner in which the Executive Branch exercised its

discretion in entering into a non-prosecution agreement. The May 6, 2011 OPR letter is not authority of any kind, to support petitioners' contention that the U.S. Attorney's Office is legally obligated to provide them with evidence which may support their claims. Accordingly, petitioners' motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 30, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

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

SERVICE LIST

Jane Does 1 and 2 v. United States,
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United States District Court, Southern District of Florida

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