

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,)	
Plaintiffs)	
)	
v.)	Civil Action No. 2:12-cv-184
)	
KENNETH L. MILLER, et al.,)	
Defendants)	

**STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA
REGARDING DEFENDANT’S REQUEST FOR PROTECTIVE ORDER**

Introduction

The United States Department of Justice is charged with the prosecution of federal criminal offenses. Response Unlimited’s request for a protective order in this litigation suggests that the plaintiff has gathered information at the behest of the government for a criminal investigation. Because this inaccurately characterizes the interactions between the government and one of its crime victims in this matter,¹ and because the proposed order would interfere with the open and appropriate communications between the United States and one of its crime victims, the United States files this Statement of Interest pursuant to 28 U.S.C. §517.²

Background

In August 2012, the government convicted Kenneth L. Miller at trial for aiding and abetting the international parental kidnapping of IMJ, the then seven-year-old daughter of plaintiff Janet Jenkins and Lisa Miller. Before, throughout, and since that trial, the government

¹ Title 18 U.S.C. § 3771 provides rights to a crime victim, including the “reasonable right to confer with the attorney for the Government in the case.”

² Title 28 U.S.C. § 517 states, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

has maintained contact with Ms. Jenkins through her counsel, as required by the Crime Victims' Rights Act, 18 U.S.C. § 3771, et seq., and as appropriate as a trial witness. At the conclusion of the criminal trial, Ms. Jenkins, independent of the government, filed the present lawsuit against Kenneth L. Miller and a number of other defendants. The government was not, and is not, a party to this case.

Argument

On May 5, 2014, in a pleading related to on-going discovery disputes, defendant Response Unlimited made a request for a protective order that would restrict Janet Jenkins from sharing information obtained in the civil suit with the government. Response Unlimited cited heavily to cases restricting the government's own ability to bring parallel civil proceedings in order to obtain discovery for a criminal proceeding. Because this case is not brought by the government, nor has the government directed the parties' information requests or requested access to documents obtained through them, the characterization is inappropriate. Further, because the proposed protective order would interfere with the open and appropriate communication between the United States and a victim of a crime, the Court should refuse to issue such an order.

It is well established that the government may not institute civil proceedings simply to gain information for a criminal case. See United States v. Kordel, 397 U.S. 1, 11-12 (1970)(noting civil case brought by government "solely to obtain evidence for its criminal prosecution" as an example of potentially improper prosecution). That, however, is not this case. This case is an independent civil proceeding brought by a crime victim. To the extent any information has been shared by the plaintiff with the government, it has been at the plaintiff's initiative, not at the government's request.

Such a procedure is appropriate, according to the Second Circuit. Doctor's Assocs., Inc. v. Weible, 92 F.3d 108, 116 (2d Cir. 1996) (declining to find fault with civil litigant's provision of information from the civil proceeding to the government as follows: "We simply cannot agree that merely providing information to the government, without more, constitutes an abuse of legal process.")

Response Unlimited tries to suggest impropriety by noting that it received a grand jury subpoena for information while litigating the extent of its responses to Jenkins's interrogatories in this case. No such impropriety exists. Because the litigation involves a crime victim, the government has monitored this case. When it became apparent during the course of this litigation that Response Unlimited was in possession of documents which might pertain to the government's continuing investigation of the international parental kidnapping of IMJ, the government issued a grand jury subpoena to Response Unlimited for that information. This is an appropriate route by which the government may seek such information.³ See Martindell v. Int'l Telephone & Telegraph Corp., 594 F.2d 291, 194 (2d Cir. 1979) ("the proper procedure ... was .. to subpoena [the civil case documents of interest to the government] for use in a pending proceeding such as a grand jury investigation or trial, in which the issue could be raised by motion to quash or modify the subpoena..."). The fact that the same or similar information had been requested in the civil case does not protect the information from compelled production to the grand jury. United States v. Davis, 702 F.2d 418, 422 (2d Cir. 1983).

Response Unlimited hinges its request for a protective order on Martindell v. International Telephone and Telegraph Corporation, in which the Second Circuit rejected the

³ Further, since as corporation Response Unlimited has no Fifth Amendment privilege, it is likely any documents produced in the civil litigation that were responsive to process in the criminal investigation would be provided to the government. See Kordel, 391 U.S. at 7-8 (noting individual defendant had Fifth Amendment privilege while corporation did not).

government's efforts to circumvent a pre-existing protective in order to obtain civil case documents. 594 F.2d at 292-94. Martindell, however, is inapposite. In this case, the government has not sought information from the plaintiff, nor has any preexisting protective order been violated. The plaintiff violated no law, rule, or measure of propriety, by voluntarily providing to the government information already received.

Response Unlimited now seeks a protective order without providing any explanation of why it is entitled to such an order. Open communication between the plaintiff in this case and the government is part of an appropriate government-victim relationship. The government urges the Court to deny the because it seeks to threaten precisely that communication. Further, the government has already requested the documents it desires directly from Response Unlimited, thus, the only purpose of such an order could be to preclude the government from accessing information provided through depositions of individuals employed by Response Unlimited. As the employees of Response Unlimited are already aware of the criminal case, however, they have the ability to assert their Fifth Amendment privilege if they have concerns about their testimony. No protective order is needed.

Finally, as Response Unlimited disclosed in its pleading, it has been subpoenaed by the grand jury. Any challenges to the conduct of the government's investigation in matters related to the international parental kidnapping of IMJ may be pursued in litigation related to that request or in other aspects of the criminal investigation. There is no cause to litigate them in a civil case to which the government is not a party.

Conclusion

To the extent the plaintiff has shared any information obtained in the civil proceeding with the government, she has done nothing wrong, to suggest otherwise is inappropriate. The

Court should reject attempts to litigate matters related to the government's criminal investigation in this civil matter to which the government is not a party, and should reject the request for a protective order which threatens the open and appropriate communication between the government and one of its crime victims.

Dated at Burlington, in the District of Vermont, this 14th day of May, 2014.

Respectfully Submitted,

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I, Stacie Brosky, Legal Assistant for the United States Attorney's Office for the District of Vermont, do hereby certify that the **STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA REGARDING DEFENDANT'S REQUEST FOR PROTECTIVE ORDER** filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) generated in connection with this document.

Dated at Burlington, Vermont this 14th day of May, 2014.

/s/ Stacie Brosky
Stacie Brosky
Legal Assistant