

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

DAVID BONIFACE,
NISSANDÈRE MARTYR, and
JUDERS YSEMÉ,

 Plaintiffs,

 v.

JEAN MOROSE VILIENA
(a.k.a. JEAN MOROSE VILLIENA),

 Defendant.

Case No. 1:17-cv-10477-ADB

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ EMERGENCY MOTION
FOR PROTECTIVE ORDER TO BAR HARASSMENT
AND INTIMIDATION OF PARTIES AND WITNESSES**

Pursuant to Fed. R. Civ. P. 26(c) and this Court’s inherent powers, plaintiffs David Boniface (“David”), Nissandère Martyr (“Nissandère”), and Juders Ysemé (“Juders”) (collectively “Plaintiffs”) hereby submit this memorandum in support of their motion for an emergency protective order barring any further harassment, intimidation, and/or physical harm of Plaintiffs and witnesses either directly or indirectly by defendant Jean Morose Viliena (“Defendant”).

RELEVANT BACKGROUND

This case arises from the brutal torture, killing, and persecution of media activists and human rights advocates in the Haitian town of Les Irois between 2007 and 2009. As the former Mayor of Les Irois, Defendant personally led an armed group aligned with his political party in a series of attacks on his critics and perceived political opponents in Les Irois. As Plaintiffs will demonstrate at trial, Defendant and his associates killed David’s younger brother, Ecclesiaste Boniface, and also tortured and attempted to extrajudicially kill Juders and Nissage Martyr (“Nissage”)—an original plaintiff and Nissandère’s father. Plaintiffs will also establish at trial

that Defendant led a campaign of mass arson that burnt down the homes of 36 of Defendant's perceived political opponents in Les Irois, including Plaintiffs' homes.

Shortly after Plaintiffs filed this lawsuit on March 22, 2017 under the Torture Victim Protect Act, Pub. L. No. 102-256, Nissage died under mysterious circumstances. (Dkt. 105, Declaration of Juders Ysemé ("Ysemé 2020 Decl." ¶ 4.) This Court granted Plaintiffs' motion to substitute Nissandère as a named plaintiff for his deceased father. (Dkt. 56.)

Following Nissage's death, David and Juders fled Les Irois and went into hiding because they feared for their safety and believed that they were at risk of being further targeted by Defendant and his associates for their involvement in the present lawsuit. (Ysemé 2020 Decl. ¶ 5.) Because of their continued fear of retaliation by Defendant, both David and Juders have now been living in hiding—disconnected from their homes, families, friends, and support networks—for almost five years.

This Court has previously recognized the grave allegations asserted here and has twice imposed emergency protective orders—one imposing an unequivocal no contact order between Defendant and Plaintiffs or their families or the witnesses identified in Plaintiffs' initial disclosures, (Dkt. 80); and one imposing restrictions on Defendant's participation in depositions of Plaintiffs and witnesses, which acknowledged "reasonable fear for their safety," (Dkt. 106).

This Court also explicitly admonished Defendant to stay away from Plaintiffs and Plaintiffs' witnesses:

Court: Stay far away. No witness tampering. No trying to contact any witnesses. Nothing to do with getting any witnesses hurt or harmed or made otherwise unavailable. I want you to stay far away.

Mr. Viliena: Okay.

Court: I'm not suggesting that you had anything to do with this, but I'm just warning you that you should not have anything to do with any witness or give someone the ability to suggest that you're acting inappropriately with regard to these witnesses. Do you understand that?

Mr. Viliena: Okay.

(Dkt. 104, Declaration of Bonnie Lau (“Lau 2020 Decl.”) at Ex. 1, Hearing Transcript dated Sept. 7, 2017, 12:1-12:12).

Defendant has repeatedly flouted the Court’s clear warnings. In fact, following the September 2017 warning, Defendant returned to Les Irois and actively targeted Plaintiffs for reprisal because of their suit against him. (Dkt. 105, Ysemé 2020 Decl. ¶¶ 9-15.) On August 4, 2019, Defendant delivered a speech on a microphone to a crowd at a soccer match in Les Irois, and later met with a smaller group of people at his home in Les Irois, during which he stated that Nissage was already dead and that David and Juders needed to be killed by any means. (*Id.* ¶¶ 10-11.) On that same day—August 4, 2019—two men on a motorcycle found David and Juders’ apartment despite the fact that they were in hiding. (*Id.* ¶ 12.) They asked for Juders by name, but left after Juders pretended not to be there. (*Id.*) The following day, on August 5, 2019, David and Juders immediately left the apartment. (*Id.*)

Defendant’s threats and actions prompted Plaintiffs to move for an emergency Protective Order, which this Court granted on August 8, 2019, finding as follows:

Defendant Jean Morose Viliena (“Defendant”) was present in Haiti on or around August 4, 2019 and had contact with former associates during which he discussed harming Plaintiffs. Plaintiffs Boniface and Ysemé reasonably fear for their safety and are concerned about retaliation by Defendant. Their fears are based on past dealings with Defendant as well as a recent interaction with men they believe to be Defendant’s associates. In light of the foregoing, the Court concludes that Plaintiffs have demonstrated good cause for a protective order. The Court has previously ordered that Defendant shall have no contact with witnesses. *See* [ECF No. 78-4 at 5].

(Dkt. 80.) The Court ordered Defendant to “have no contact” with specified individuals listed in Plaintiffs’ initial disclosures, which included all of the individuals who have been deposed and are likely to testify at trial in this matter. (Dkt. 80.)

Despite the Court’s unambiguous Order and prior warning, Plaintiffs subsequently learned that on August 9, 2019—just one day after this Court’s entry of the first Protective Order—the men on motorcycles returned to Plaintiffs’ former residence and, on August 12, 2019, Defendant’s brother-in-law convened an additional meeting on Defendant’s behalf for the specific purpose of discussing the next steps in their plan to threaten or kill Plaintiffs. (Ysemé 2020 Decl. ¶¶ 14-15.) Shortly after this meeting, Juders received three anonymous threatening phone calls directing him to stop pursuing the U.S. proceeding. (*Id.* ¶ 15.)

On March 30, 2020, in the face of ongoing threats of violence against Plaintiffs and their witnesses, Plaintiffs secured yet another emergency protective order focused on ensuring their safety during depositions and limiting Defendant’s involvement. (Dkt. 106.)

Trial is rapidly approaching on March 13, 2023. As before, Defendant and his associates have ratcheted up their threats and intimidation of witnesses — in blatant violation of this Court’s prior Protective Orders — as they have done each prior time that Plaintiffs advanced their efforts to secure justice in Haiti or the United States. The attached Declaration of Juders makes clear that there is an imminent threat of violence and ongoing intimidation in Haiti against Plaintiffs and their potential trial witnesses in a blatant effort to thwart their legal case and deny them justice. Plaintiffs bring the instant motion to mitigate the severe safety risk and to protect their trial witnesses.

LEGAL STANDARD

Under Fed.R.Civ.P. 26(c), this Court has the authority to control the scope of discovery and to issue a protective order, for good cause, to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Furthermore, this Court has the “inherent powers that are ‘governed not by rule or statute but by the control necessarily vested in

courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Katz v. Liberty Power Corp.*, LLC, No. 18-CV-10506-ADB, 2019 WL 957129, at *1 (D. Mass. Feb. 27, 2019) (citing *Dietz v. Bouldin*, 136 S. Ct. 1885, 1891 (2016)).

In *Ben David v. Trivisono*, 495 F.2d 562, 564 (1st Cir. 1974), the First Circuit upheld a District Court’s Order precluding prison guards from taking adverse action against a class of prisoners who sued alleging improper treatment. *Id.* at 563 (upholding order preventing prison guards “from taking any action in retaliation against plaintiffs and members of plaintiffs’ class or of depriving plaintiffs and members of plaintiffs class of any and all rights and privileges on account of plaintiffs and members of their class participating, assisting, or volunteering any facts or circumstances in the furtherance of this lawsuit”). In doing so, the First Circuit affirmed the District Court’s “discretionary authority” to enter such an order without an evidentiary finding. *Id.* at 565. As the Court found, an evidentiary hearing was not necessary and “the findings necessary to support such a protective order are simply that the plaintiffs reasonably fear retaliation and that the court’s fact-finding may be materially impaired unless there is provided the tangible protection of a suitable court order.” *Id.* at 564. *See also Rissman Hendricks & Oliverio, LLP v. MIV Therapeutics, Inc.*, No. 11–10791–MLW, 2011 WL 5025206, at *6 (D. Mass. Oct. 20, 2011) (finding that affidavits relaying conversations in which threats were made constitute reliable evidence that witnesses were threatened).

When drafting a protective order, the Court should “err on the side of caution,” prioritizing witnesses’ safety over convenience of the parties. *Sexual Minorities Uganda v. Lively*, No. 12-30051-MAP, 2014 WL 588009, at *2 (D. Mass. Feb. 14, 2014) (noting that the court “err[ed] on the side of caution” in the interest of protecting witnesses when drafting a protective order).

ARGUMENT

I. A PROTECTIVE ORDER IS NECESSARY TO PROTECT PLAINTIFFS AND TRIAL WITNESSES FROM DEFENDANT AND HIS AGENTS.

Plaintiffs seek an Order from the Court barring Defendant from engaging in any actions, either directly or through orders to his family members or agents, designed to intimidate, harass, physically harm, or kill Plaintiffs, potential trial witnesses, or their families. This Court has previously granted two emergency Protective Orders, finding that Plaintiffs demonstrated good cause that Defendant posed a reasonable threat to Plaintiffs and their witnesses and barred Defendant from any contact with them. (Dkt. 80) As the trial nears, Defendant's intimidation and threats of violence have only escalated, following rumors that U.S. visas were issued to potential witnesses to testify against Defendant at trial. (Declaration of Juders Ysemé ("Ysemé 2022 Decl."), filed contemporaneously herewith, ¶ 5.) This Court should again find that Defendant's well-documented pattern of intimidation and reprisal against those who would dare testify against him, as well as recent events heightening the risk of harm to trial witnesses, constitute exceptional and compelling circumstances justifying a Protective Order. A Protective Order barring Defendant and his associates from further threats or harm to Plaintiffs and trial witnesses is necessary to ensure that such witnesses are available to testify at trial, and to prevent Defendant from "materially impair[ing]" the court's fact finding abilities. *See Ben David*, 495 F.2d at 564.

Defendant's long-standing and persistent pattern of threatening conduct and violence has been well documented with this Court. Defendant has previously flouted this Court's Protective Orders and continued to threaten Plaintiffs and witnesses who he believes may speak against him. His current aggressive and potentially deadly course of conduct seeks to deny Plaintiffs the opportunity to finally have their claims heard in the Court after years of seeking justice.

As Plaintiffs will establish at trial, Clorene Francois, a neighbor of the Boniface family who witnessed the savage killing of Ecclesiaste Boniface, was brutally beaten by members of the KOREGA militia after she was summoned to provide in-court, eyewitness testimony linking Defendant to the murder. (*See also* Dkt. 1, ¶ 63.) Mers Ysemé, the father of Plaintiff Juders Ysemé and a potential witness in this case, was shot in 2015 by Defendant’s associates Meritus Beublack and Agnel Jean when they tried to find Juders on the orders of Defendant in retaliation for Juders’ testifying against Defendant at a criminal hearing in Haiti in 2015. (Ysemé 2020 Decl. ¶ 3.) In 2017, Defendant and his associates created a “Kill List” containing the names of Plaintiffs and several witnesses in this case. (*Id.* ¶ 7). In January 2019, Micheline Boniface, the wife of Plaintiff David Boniface and also a potential witness in this case, was threatened by another one of Defendant’s associates, Jean Louis Bell. (*Id.* ¶ 8.) All of these incidents demonstrate that Defendant has a history of retaliating against those he perceives as opposing him or testifying against him, including their family members, either personally or through his associates. (*Id.* ¶¶ 12-13.) Indeed, trial testimony will establish that the killing of David’s brother, Ecclesiaste, the raid carried out on the community radio station where Nissage and Juders were grievously injured, and the mass arson of 36 homes in Les Irois of Defendant’s perceived political opponents, were all carried out in retaliation by Defendant and/or his associates. (*See also* Dkt. 1 ¶¶ 29-39, 40-51, 52-58.)

Defendant’s ongoing threats have repeatedly been documented with third-party human rights organizations. In 2015, the Inter-American Commission on Human Rights (IACHR) ordered the Government of Haiti to immediately provide effective protection to Juders, David and Nissage, along with their families, in light of serious threats of violence by Defendant and his associates. In its ruling, the IACHR determined that precautionary measures were warranted

given that the serious and urgent situation presented a risk of irreparable harm to Plaintiffs. (Ysemé 2020 Decl., Ex. B).

Recently, Plaintiffs learned that Defendant, his brother, and Defendant's associates in Haiti have been plotting to harm Plaintiffs, potential trial witnesses, and their family members. (Ysemé 2022 Decl. ¶¶ 3-4.) On or about November 29 or 30, 2022, Defendant's brother, Faria Viliena, convened a meeting with approximately 15 of Defendant's associates in Les Irois, Haiti, to eliminate the threat posed by witnesses in the instant case. (*Id.* ¶ 3.) This meeting was prompted by a rumor that Plaintiffs and certain trial witnesses had been granted visas to travel to the U.S. to testify against Defendant at the upcoming trial, which would threaten his ability to run for future political office in Haiti. (*Id.* ¶¶ 5-6.) Faria and Defendant's associates discussed searching for and "finishing" Plaintiffs to prevent them from continuing to pursue this litigation, and indeed are currently searching the town where they believe Plaintiffs are living in hiding. (*Id.* ¶ 7.) Faria and Defendant's associates also discussed targeting Plaintiffs' family members and suspected trial witnesses. (*Id.*)

Plaintiffs reasonably believe that if they are found, Defendant's brother and associates will physically harm or kill them to prevent them from testifying at trial. (*Id.* ¶ 7.) They also fear that if Faria and Defendant's associates do not find them, they will physically harm or kill their family members. (*Id.*) Plaintiffs not only fear for their own safety but that of potential trial witnesses, who Defendant also seeks to silence before trial. (*Id.*)

In light of these significant escalating threats, Haiti's well-publicized vitiated security circumstances¹, and Defendant's ongoing history of retaliation against perceived opponents,

¹ Catherine Porter, Michael Crowley, & Constant Méheut, *Haiti's President Assassinated in Nighttime Raid, Shaking a Fragile Nation*, N.Y. Times, (July 7, 2021) <https://www.nytimes.com/2021/07/07/world/americas/haiti-president-assassinated-killed.html>; Natalie Kitroeff & Maria Abi-Habib, *Haiti Appeals for Armed Intervention and Aid to Quell Chaos*, N.Y. Times, (Oct. 7, 2022) <https://www.nytimes.com/2022/10/07/world/americas/haiti-international-intervention-violence.html?searchResultPosition=10>

Plaintiffs have more than demonstrated a reasonable fear for their lives and those of their family members and witnesses. Indeed, this Court has repeatedly recognized the very real threat posed by Defendant and his associates and issued two prior Protective Orders. An emergency Protective Order is necessary now to protect against heightened threats and risk of harm as trial rapidly approaches. The relief is essential to ensure that Plaintiffs and their potential witnesses are available to testify at trial and to mitigate the verified risks to their safety.

For the reasons set forth above, and based on the concurrently-filed declarations of Juders Ysemé and Bonnie Lau, Plaintiffs respectfully request that this Court grant their Motion and enter a Protective Order barring Defendant Jean Morose Viliena, from engaging in any actions, either directly or through orders to his family members or agents, designed to intimidate, harass, or physically harm Plaintiffs, their families, or any potential witnesses and their families. Further, Plaintiffs request that the Order provide that they may seek monetary or evidentiary sanctions against Defendant.

Dated: December 16, 2022

Respectfully submitted,

DAVID BONIFACE, NISSANDÈRE
MARTYR, AND JUDERS YSEMÉ

By their attorneys,

/s/ Bonnie Lau

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