

**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
IN CONNECTION WITH ONGOING TRIAL PROCEEDINGS**

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 trial witnesses either directly or indirectly by defendant Jean Morose Viliena (“Defendant”).

RELEVANT BACKGROUND

Since the filing of this lawsuit, the Court has imposed three emergency protective orders—the December 2022 Protective Order explicitly barring Defendant from taking either direct or indirect action “designed to intimidate, harass, or physically harm Plaintiffs, their families, or any potential witnesses who may testify at the trial,” (Dkt. 180); the August 2019 order imposing an unequivocal no contact order between Defendant and Plaintiffs or their families or the witnesses identified in Plaintiffs’ initial disclosures, (Dkt. 80); and the March

2020 order imposing restrictions on Defendant’s participation in depositions of Plaintiffs and witnesses, which acknowledged “reasonable fear for their safety,” (Dkt. 106).

As explained below and in the attached declarations from Plaintiff Juders Yseme and third-party trial witness, Vilfranc Larrieux, following the trial testimony last week of Plaintiffs and third-party witnesses, both the declarants and their families in Haiti received direct threats, harassment, and intimidation in retaliation for their trial testimony.

Since the start of trial on March 13, 2023, and upon hearing the testimony of Plaintiffs and third-party witnesses, threats against the families of Plaintiffs and trial witnesses have only increased. For example, the family of trial witness Vilfranc Larrieux has been the target of Defendant’s associates in Haiti since Mr. Larrieux testified on March 15, 2023. (Declaration of Vilfranc Larrieux (“Larrieux Decl.”), ¶ 4.) Just yesterday on March 19, 2023, the wife of William Lebon—the brother of trial witness Osephita Lebon and Defendant’s opponent in the 2006 mayoral election—was threatened. (Declaration of Juders Ysemé (“Ysemé 2023 Decl.”), ¶¶ 11-13.) Plaintiffs have proffered testimony that this is the exact type of retributive violence frequently relied upon by powerful state actors to deter victims from pursuing justice. (3/16/23 Trial Tr. at 24:25-25:3 (expert witness Brian Concannon testifying that “people who pursue claims against powerful people in Haiti for human rights violations . . . face a very significant risk of retributive violence.”).) The attached Declarations of Mr. Yseme and Mr. Larrieux make clear that there is an imminent threat of violence and ongoing intimidation in Haiti against the families of Plaintiffs and trial witnesses in a blatant effort to thwart their legal case and deny them justice. Plaintiffs and the trial witnesses will face similar threats of reprisals upon their return to Haiti. Plaintiffs bring the instant motion to mitigate the significant safety risks and to protect the trial witnesses.

LEGAL STANDARD

Under Fed. R. Civ. P. 26(c), this Court has the authority 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 ASSOCIATES.

Plaintiffs seek an Order from the Court barring Defendant from engaging in any further actions, either directly or through orders to his family members or agents or associates, designed to intimidate, harass, physically harm, or kill Plaintiffs, the trial witnesses, or their families. This Court has previously granted three 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). Since the trial began last week, Plaintiffs and multiple third-party witnesses have testified about Defendant's abuse of power in Les Irois. Following this testimony, Defendant and his associates' intimidation and threats of violence have only escalated. (Ysemé 2023 Decl. ¶¶ 6-14.) 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 very real risk of harm to trial witnesses and their families, 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 remain available in light of the ongoing 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 against Plaintiffs and their witnesses has been well documented with this Court. (*See generally* Ysemé 2020 Decl., Ysemé 2022 Decl. (Dkt 178) and Ysemé 2023 Decl.) Defendant's ongoing threats have also 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).

Immediately after Plaintiffs and third-party witnesses testified at trial last week, the declarants and their families received a series of alarming threats:

- On or about March 17, 2023—the same day Franckel Isme testified at trial, two individuals approached Franckel’s son in Les Irois indicating that they had heard about Franckel’s trial testimony and admonishing Franckel’s son that Franckel and all other trial witnesses would get what was coming to them upon their return to Haiti, (Ysemé 2023 Decl. ¶ 14);
- On or about March 18, 2023—following the close of evidence and with closing statements and jury deliberations imminent, Defendant posted a well-known Haitian battle song on his Facebook page that includes lyrics referencing acts of violence and moving forward with blood on his sword, (Ysemé 2023 Decl. ¶¶ 6-8; *Id.* at Ex. A);
- On or about March 18, 2023—shortly after Mr. Larrieux testified at trial, Meritus Beaublanc¹ and Pierrot Boileau,² who have been identified by multiple witnesses as long-standing associates of the Defendant, threatened Mr. Larrieux’s wife in front of their home in Les Irois, emphasizing that they will respond accordingly after the verdict issues, (Larrieux Decl. ¶ 4); and
- On or about March 19, 2023, the wife of Paster William Lebon—the brother of trial witness Osephita Lebon—received threatening text messages one of which included a machine gun with a caption threatening “how [she] would have died” and letting her know that “the day is coming.” (Ysemé 2023 Decl. ¶¶ 11-12; *Id.* at Ex. B.) A follow-on message featured a photo of Pastor Lebon’s wife with a caption threatening “[t]he day is here.” (Ysemé 2023 Decl. ¶¶ 11-12; *Id.* at Ex. C.)

¹ 3/14/23 Trial Tr. at 16:9-25 (David Boniface identifying Meritus Beaublanc as among Defendant’s associates threatening him at Judge Bell’s house); *id.* at 45:5-9 (Juders Ysemé identifying Meritus Beaublanc as part of Defendant’s group of supporters wearing KOREGA t-shirts), *id.* at 50:8-12 (Juders Ysemé identifying Meritus Beaublanc among Defendant’s associates in advance of radio station attack), *id.* at 55:12-18 (Juders Ysemé identifying voice of Meritus Beaublanc among group at radio station station attack); 3/15/23 Trial Tr. at 62:21-63:3 (Mers Ysemé identifying Meritus Beaublanc among group Defendant handed weapons at radio station attack); *id.* at 88:23-89:6 (Vilfranc Larrieux identifying Ti Merikan among Defendant’s crew at radio station attack); *id.* at 100:23-101:9 (Vilfranc Laguerre identifying Meritus Beaublanc among Defendant’s mayoral staff), *id.* at 103:21-104:3 (Vilfranc Larrieux identifying Meritus Beaublanc as among Defendant’s partisans), *id.* at 108:6-19 (Jean Denais Laguerre identifying Meritus Beaublanc as among group Defendant distributed weapons to outside radio station).

² 3/14/23 Trial Tr. at 50:8-12 (Juders Ysemé identifying Pierrot Boileau as among Defendant’s associates connected to the attack on the radio station); 3/15/23 Trial Tr. at 27:8-13, 29:8-14, 35:4-10 (Osephita Lebon identifying Pierrot Boileau as among Defendant’s associates connected to the killing of Ecclesiaste Boniface); *id.* at 86:1-86 (Vilfranc Larrieux identifying Pierrot Boileau as among Defendant’s associates connected to the witness’ beating); *id.* at 100:23-101:9, 103:21-104:6 (Jean Denais Laguerre identifying Pierrot Boileau as among Defendant’s associates).

The song Defendant posted on Facebook includes the following lyrics:

I have my sword, I will keep moving forward
I am in war, I need to fight.
Don't be a coward
My sword already has blood on it not the time to stop
Already bleeding, so no way to stop
No move back. Getting closer than ever
Soldiers stand up for Haiti
Do you want to fight raise your hand

(Ysemé 2023 Decl. ¶ 7.)

Plaintiffs and the trial witnesses reasonably believe that Defendant and his associates will physically harm or kill them in retaliation for testifying at trial. (Ysemé 2023 Decl. ¶ 8; Larrieux Decl. ¶ 5.) They also fear that if Defendant and his associates do not find them, they will physically harm or kill their family members. (Ysemé 2023 Decl. ¶ 8; Larrieux Decl. ¶ 5.) Plaintiffs not only fear for their safety and their families' safety but that of the trial witnesses and their families. (Ysemé 2023 Decl. ¶ 8; Larrieux Decl. ¶ 5.)

In light of these significant escalating threats, Haiti's well-publicized vitiated security circumstances,³ and Defendant's ongoing history of retaliation against perceived opponents, Plaintiffs have more than demonstrated a reasonable fear for their lives and those of their family members and witnesses. (3/17/23 Trial Tr. at 25:13-21 (Concannon testifying about retributive violence for bringing legal claims against a "powerful person" in Haiti, explaining that he "can't think of anyone who has pursued a legal claim for human rights violations against a powerful person where there has not been retributive violence".) Indeed, this Court has repeatedly

³ 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>

recognized the very real threat posed by Defendant and his associates and issued three prior Protective Orders. An emergency Protective Order is necessary now to protect against heightened threats and risk of harm as the jury is set to deliberate. The relief is essential to ensure that Plaintiffs and their witnesses are available in light of the ongoing trial, and to mitigate the verified risks to their safety.

CONCLUSION

For the reasons set forth above, and based on the concurrently-filed declarations of Juders Ysemé, Vilfranc Larrieux, 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 and their families, or any trial witnesses and their families. Further, Plaintiffs request that the Order provide that they may seek monetary or evidentiary sanctions against Defendant.

Dated: March 20, 2022

Respectfully submitted,

DAVID BONIFACE, NISSANDÈRE
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