In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10398

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JONATHAN CRUZ,
a.k.a. Big Man,
a.k.a. Boss Man,
a.k.a. Chico Li,
ERIC ORTIZ MELENDEZ,
a.k.a. E,
JORGE APONTE FIGUEROA,

Defendants,

[redacted],

Interested Party-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:17-cr-20487-RNS-1

Before WILSON, LAGOA, and BRASHER, Circuit Judges.

BY THE COURT:

In this appeal, [redacted] challenges three pre-judgment orders issued by the district court in this criminal case in which he is not a party. The United States argued in its response to the jurisdictional question ("JQ") that this appeal should be dismissed as to two of those orders—those entered on January 18, 2023, and January 30, 2023—and we construe its response as a motion to dismiss that part of this appeal. As explained below, that motion is GRANTED IN PART, as to the January 18 order and the recusal ruling in the January 30 order, and is otherwise DENIED.

The motion to dismiss is GRANTED IN PART as to the portion of the January 18 order granting the government's motion for the court to direct [redacted] to turn over any discovery materials for destruction, as the order is not appealable as an injunction. While the January 18 order did not explicitly grant an injunction, it nevertheless has the practical effect of an injunction because it required [redacted] to turn over the discovery materials. *See United States v.*

Bowman, 341 F.3d 1228, 1236 (11th Cir. 2003); *United States v. City of Hialeah*, 140 F.3d 968, 973 (11th Cir. 1998); *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1127 (11th Cir. 2005). The order is also enforceable through contempt, if disobeyed. *See U.S. Army Corps of Eng'rs*, 424 F.3d at 1128. However, the order likely would not have serious, irreparable consequences or be effectively unreviewable on appeal from the final judgment. While the government specifically requested that [redacted] turn over any discovery materials he possesses so that they can be destroyed, [redacted] could nevertheless request and receive copies of any destroyed documents or recordings from the government if we agreed with him that the protective order did not apply to him and he was entitled to such materials.

The motion to dismiss is also GRANTED IN PART as to the portion of the January 18 order directing Google to remove a specific YouTube video. [redacted] lacks standing to appeal that ruling because it was directed at Google and, thus, only compelled Google to act. Thus, [redacted] was not adverse to that portion of the order. *See Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1353 (11th Cir. 2003); *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1233 (11th Cir. 2020).

The motion to dismiss is DENIED IN PART as to the portion of the January 30, 2023, order denying [redacted]'s motion to quash a subpoena directed to Google in November 2022 because [redacted], the privilege holder, is powerless to prevent Google, the information holder, from turning over the allegedly privileged information. The claimed reporter's privilege, however tenuous, is enough to

establish this Court's jurisdiction. *See Doe No. I v. United States*, 749 F.3d 999, 1006 (11th Cir. 2014). While the government asserts in its JQ response that [redacted] never filed a motion to quash and instead solely sought leave to file such a motion, [redacted] explicitly requested in his motion for leave to appeal that the district court quash the November 2022 subpoena.

Finally, the motion to dismiss is GRANTED IN PART as to the portion of the January 30 order denying [redacted]'s request that the district judge be recused because such orders are not reviewable under the collateral order doctrine. *See Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-61 (5th Cir. 1980). Additionally, the issue of recusal is not sufficiently intertwined with the court's denial of [redacted]'s motion to quash to warrant the exercise of pendent appellate jurisdiction because those issues do not implicate the same facts or law. *See Smith v. LePage*, 834 F.3d 1285, 1292 (11th Cir. 2016); *see also Jones v. Fransen*, 857 F.3d 843, 850 (11th Cir. 2017); *Leslie v. Hancock Cnty. Bd. of Educ.*, 720 F.3d 1338, 1344 (11th Cir. 2013).

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CASE NO. 23-10398

[redacted], Movant-Appellant, -versus- USA, Respondent-Appellee.

CERTIFICATE OF INTERESTED PERSONS AND
APPELLANTS RESPONSE TO JURISDICTIONAL QUESTION

[redacted] hereby certifies that the following is a complete list of persons and entities who have an interest in the outcome of this case:

Adeduntan, Rilwan
Adelstein, Stuart
Altonaga, Hon. Cecilia M.
Anton, Jodi
Cash America
Carmon, Katherine
Cariglio, Jr., Gennaro
Caruso, Michael
Chambrot, Joseph Abraham
Cohn, Hon. James I.
Colan, Jonathan D.
Cooke, Hon. Marcia G.
Cordovi, Lazaro Armando
Cruz, Jonathan
Encinosa, Israel Jose
Fajardo Orshan, Ariana
Fenn, Leonard Paul
Fera, G.P. Della
Fernandez, Eloisa Delgado
Figueroa, Jorge Apointe
Fleisher, Bruce Harris
Garber, Hon. Barry L.
Gilfarb, Michael E.
Gonzalez, David
Gonzalez, George
Gonzalez, Juan Antonio
Goodman, Hon. Jonathan

Graham, Hon. Donald L.
Greenberg, Benjamin G.
Gregg, Richard Morton
Joffe, David Jonathon
Johannes, Vanessa Singh
Kay, Ashley Devon
Kobrinski, Jonathan
Levin, Albert Zachary
Lopez, Alejandra Lizzette
Louis, Hon. Lauren Fleischer
McAliley, Hon. Chris M.
Melendez, Eric Ortiz
Miranda, Annika Marie
Nelus, Sadieu
Noto, Kenneth
O'Sullivan, Hon. John J.
Otazo-Reyes, Hon. Alicia M.
Padilla, Joaquin E.
People's Pawn and Jewelry
Perwin, Amanda
Presser, Shlomi
Reid, Hon. Lisette M.
Rier, Andrew
Rodriguez, Jose Rafael
Rubio, Lisa Tobin
Shearn, Rae
Simonton, Hon. Andrea M.
Thomas, Trayvon Jabbari
Torres, Hon. Edwin G.
Turnoff, Hon. William C.
White, Hon. Patrick A.
Widlanski, Benjamin Jacobs
Williams, Hon. Kathleen M.

/s/ [redacted]
[redacted] PRO SE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 23-10398

[redacted], Movant-Appellant, -versus- USA, Respondent-Appellee.

APPELLANTS RESPONSE TO JURISDICTIONAL QUESTION

1. Appellant has filed two appeals to preserve his First Amendment right to report upon scandals occurring in the Southern District of Florida. The appeals cases are 22-13407 an 23-10398 and both are already fully briefed as part of the 22-13407 appeal. A motion to consolidate both cases is pending. An order was issued in 22-13407 affirming that the issues identified in the jurisdictional questions are CARRIED WITH THE CASE. Since the same issues apply to the instant appeal, the collateral order doctrine applies to both cases and thus should also be carried with the instant case.

2. This current appeal arises after the District Court continued to issue orders violating the First Amendment even after the prior appeal was already filed. Appellant was not a party to the criminal matter from which these appeals arise until the FBI, United States Attorneys, District Court and court-assigned Defense Counsels engaged unlawful threats of arrest upon Appellant and court orders to deter him from reporting upon newsworthy scandals occurring in SDFL to the public.

3. In the current appeal, Appellant and Defendant Jonathan Cruz made numerous requests to Court-assigned counsel Jimmy Dela Fera to challenge an

overbroad and unconstitutional "protective order" issued by the SDFL court for the sole purpose of concealing federal government misconduct from being reported upon to the public. Indeed the Appellant is tracking numerous cases in SDFL where the Courts are issuing over-broad protective orders to prevent defendants from being able to share exculpatory content contained in the discovery submissions with the public (to plead their innocent to the public directly in any such situation where the Courts have demonstrated unlawful bias in favor of helping the executive branch of government cover up misconduct committed on federal cases).

4. The topic of his instant appeal concerns one short video (out of hundreds) that both the Appellant and also Defendant Jonathan Cruz wish to publish to the public as part of a documentary project covering the government corruption which occurred on his case. Appellant posted this short clip on Youtube and the government immediately demanded for the Court to issue an order removing it from Youtube based upon a claim that it violates a "protective order" to which appellant is not party and is not bound by. Defendant Cruz has himself made multiple requests for his own Court-appointed counsel to challenge the over-broad and thus unconstitutional protective order, but the Court-appointed counsel is himself implicated in unlawful activity occurring in the case and so he refuses to file a motion that will expose his own crimes (and the Court refused to remove him from the case prior to trial despite the flagrant conflict of interest).

5. The collateral doctrine requires that for an order to be appealable, the order must [1] be conclusive, [2] resolve important questions completely separate from the merits, and [3] that such important questions are effectively unreviewable on appeal from final judgment in the underlying action. All three prongs are satisfied in both appeals filed by Appellant.

ARGUMENT

6. This instant appeal arises after Appellant posted a news worthy video to youtube, that the government claims to be a violation of a protective order issued in the underlying case. It is assumed that even if a protective order prevents a criminal defendant from publishing exculpatory evidence to the public, it still does not prevent a defendant from publishing exculpatory evidence at trial for the purpose of establishing non-guilt. For those reasons, it is assumed that a protective order cannot, on its own, have a bearing upon guilt or non-guilt at any criminal trial and thus cannot be an issue that is appealable as part of a criminal conviction. Only if exculpatory discovery and/or evidence was prohibited from being shown to an actual sitting jury at trial, can a defendant raise that type of issue as part of a direct criminal appeal (in which case it would not be raised as a "protective order" violation, but rather an evidentiary violation).

7. Even if the entire general public sees exculpatory evidence published on a blog site confirming that a criminal defendant is innocent of crimes for which he was convicted, the public is still powerless to merely have a democratic vote to reverse any such unfair conviction outside of the confines of a being assigned to the jury which will vote upon the merits of a case inside a courtroom.

8. In this matter, the Appellant is not a defendant in the instant criminal case from which the appeal arises, he is merely an investigative journalist and paralegal working on behalf of Defendant Cruz and the public (for the purpose of exposing newsworthy scandals occurring in SDFL criminal cases directly to the public). Appellant has never been party to any protective order issued in this case and thus cannot be bound by it "after the fact" by the government. The government is upset that Appellant is reporting upon unlawful activity occurring in this case to the public and publishing evidence of the crimes on youtube, and so they have made unlawful requests to the Court to issue an order to remove Appellant's journalism content from youtube so as to assist them with cover-up of their misconduct. The Court then acted upon the government's unlawful demands and ordered Youtube to remove the video.

9. The order issued by the Court to restrain the Appellant-journalist from publishing a newsworthy video to youtube occurred without permitting Appellant a hearing to explain to the court exactly why the video cannot be covered by any lawful protective order, which is also unconstitutionally over-broad as it also applies to

everyone else whom the government purports to be bound by it (despite the fact that Appellant was never bound by it from the start).

10. The order completely resolves a matter that is separate and distinct from the merits of the underlying criminal case. The underlying criminal case is filed for the purpose of determining the guilt or non-guilt of Defendant Cruz and other criminal defendants charged in a Hobbs Act conspiracy. Whether or not a journalist is permitted to report on this case is a legal matter that is completely separate from the merits of whether the trial of the defendants was conducted in accordance with the law. While Defendant Cruz absolutely has an interest in being able to plead his innocence on numerous charges directly to the public, even if the entire public of the USA agrees that Defendant Cruz is wrongfully convicted upon numerous counts, such public sentiment is still not capable of overturning his conviction because that can only happen through the Court process anyway.

11. And lastly, the order is not appealable as part of the criminal appeal already filed by Defendant Cruz because the order has no bearing on his guilt or non-guilt at a jury trial, except with regards to the fact that his court-assigned counsel refused to permit Defendant Cruz to publish that recording to a jury (which he was permitted to do, regardless of the protective order which is only meant to apply to prohibit evidence from being released to the general public). As such, the refusal of the Court to also permit Defendant Cruz his own right to publish that video on

Youtube still has no bearing on his case because his jury was never located on Youtube, his jury was located inside the federal court while his trial was ongoing.

10. For these reasons, the orders appealed by Appellant are in full compliance with the Collateral Order doctrine and thus the 11th Circuit has full jurisdiction over the instant appeal filed to preserve a journalists right to report upon newsworthy scandals.

Respectfully submitted by [redacted] PRO SE

/s/ [redacted]

CERTIFICATE OF COMPLIANCE

This response complies with the type-volume limitation of Rule 27(d)(2) of the Federal Rules of Appellate Procedure because it contains 1407 words. This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements for Fed. R. App. P. 32(a)(6) because this response has been prepared in a proportionally-based typeface using Microsoft Word 2010, 14-point Times New Roman.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 17th, 2023 the foregoing Appellant's Response to Jurisdictional Question was served on all counsel of record via email/ecf and mail.

[redacted] PRO SE

/s/ [redacted]