

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALD VANCE and NATHAN ERTEL,)	
)	06 C 6964
Plaintiffs,)	
)	Judge Shadur
v.)	
)	Magistrate Judge Keys
DONALD RUMSFELD, UNITED STATES of)	
AMERICA and UNIDENTIFIED AGENTS,)	
)	
Defendants.)	JURY TRIAL DEMANDED

**RENEWED MOTION FOR LEAVE TO
SERVE EXPEDITED DISCOVERY**

Plaintiffs, DONALD VANCE and NATHAN ERTEL, by their undersigned attorneys, LOEVY & LOEVY, move this Honorable Court to enter an order pursuant to Fed.R.Civ.P. 26(d) granting Plaintiff leave to conduct certain discovery on the United States and other third parties. In support of this Motion, Plaintiffs state as follows:

1. Last year, Plaintiffs Donald Vance and Nathan Ertel were abducted from the United States Embassy in Baghdad, Iraq while they slept, and arrested by members of the United States military. Though they committed no crimes, and in fact, were never formally charged with crimes, Plaintiffs were forced to spend months wrongfully detained in a military prison. During that time, various United States officials held Mr. Vance and Mr. Ertel *incommunicado*, deprived them of access to a court to challenge their detentions, physically and psychologically abused them and repeatedly interrogated them under the threat that they

would be detained indefinitely unless they "did the right thing." See Amended Complaint, Dckt. No. 21.

2. Plaintiffs have brought this suit against Mr. Rumsfeld and other Unidentified Agents for their role in creating and carrying out the unconstitutional system under which Plaintiffs were detained.

3. In their Amended Complaint, Plaintiffs have also added the United States as a party defendant. Plaintiffs seek from the United States the return of their unlawfully-seized property pursuant to the Administrative Procedures Act, 5 U.S.C. §702. In particular, Plaintiffs have requested their laptop computers, cell phones, digital and video cameras, and all of the data stored on the same. The United States has already appeared in this action to assert its interest, and it is being served with a summons and copy of the Amended Complaint.

4. Given the usual circumstances at the outset of a case, it will likely be at least several months before Mr. Rumsfeld and/or the United States files an answer or responsive pleading and before discovery has commenced.

5. The reason for this Motion is that Plaintiffs need to identify the as-of-yet Unidentified Agents who share responsibility for Plaintiffs' mistreatment and who should be named as defendants in this suit. As this Court itself has recognized, those defendants should be named at the earliest

possible juncture. This is particularly true given that the statute of limitations on the potential claims may be as short as one year (e.g. state law claims and certain *Bivens* claims).

6. Plaintiffs, however, do not know the names of the Unidentified Agents and cannot reasonably ascertain their identity without using the discovery procedures of this Court. All of the participants in the system under which Plaintiffs were detained and interrogated are intentionally anonymous to the detainees. For example, when United States military officials at the detention camp would interact with Plaintiffs, they would wear "sterilized" uniforms, meaning there was no name tag or insignia of rank. Similarly, because of the intentional opacity of the detention system, Plaintiffs do not even know who decided to detain them initially, much less the persons who continued their detention until they were finally released.¹

7. Only the United States has access to this information. During a hearing on January 26, 2007, the United States represented to this Court that it was already in the process of collecting the names of the potential unidentified defendants and would complete this process within 60 days. However, when pressed to provide the information on a rolling basis, the

¹ Indeed, Plaintiffs have alleged that Unidentified Agents reached an agreement or agreements, to unlawfully cover-up from Plaintiffs the identities of those who are liable to them for violation of their rights as well as the evidence needed to prove those violations. See Amended Complaint, Dckt. No. 21.

government stated that it was not a party and that it therefore would not provide the names it was uncovering.

8. Albeit not a valid reason to withhold this information from Plaintiffs and the Court, at the time that the United States made this representation, it was not a named defendant. Now that it is a party to this suit, it cannot continue to lodge this objection. Rather, the United States is now subject to the same discovery obligations as any party.

9. Considerate of the early juncture at which these discovery requests arise, Plaintiffs have narrowed their requests for expedited discovery from their original request to the bare minimum. They now ask only that the United States respond to a single interrogatory and provide to Plaintiffs the documents regarding Plaintiffs.

10. The United States's in-court representations show that it has already collected some of these materials and is on target to complete this process within the shortest arguable limitations period. Accordingly, Plaintiffs ask that the discovery responses commence immediately and be supplemented on a rolling basis.

11. Plaintiffs request a response to the following interrogatory:

"Please identify the persons responsible for the following actions. In doing so, please include all persons who issued and/or signed any policy or order that relates to the topics listed in (a) - (f), even if such policy and/or order was of general applicability and not specific to Plaintiffs' cases. As to each person identified, please state the county and

state where s/he maintains permanent residence, and either the street address of same or such other address as that person authorizes for receiving service of process. Plaintiffs do not need street address information for any person who designates the government to accept service on his/her behalf.

- (a) All persons who decided to remove and/or authorized removing Plaintiffs from the United States Embassy and turning them over to the persons who arrested them at the Embassy gate on or about April 16, 2006;
- (b) All persons who arrested Plaintiffs at the Embassy gate on or about April 16, 2006, and all persons who authorized and/or ordered that arrest;
- (c) All persons who ordered or authorized detaining Plaintiffs following their arrests and/or who made a determination not to release Plaintiffs from Camp Cropper at any point prior to their release;
- (d) All persons who interrogated Plaintiffs during their detention and all persons responsible for the manner in which Plaintiffs were interrogated;
- (e) All persons who were present at Plaintiffs' Detainee Status Review Board proceedings and all persons responsible for the manner in which the Detainee Status Review Board was conducted; and
- (f) All persons responsible for the conditions at the Camp Cropper detention facility, in which Plaintiffs were housed, including: the cycling of light in their cells; the temperature of their cells; the cleanliness of the cells; the frequency of their meals; whether Plaintiffs would receive personal hygiene items such as soap, toothbrush and toothpaste; and the provision of their medical care.

12. So that the Plaintiffs may ascertain the role of each person identified, Plaintiffs request that this Court also order the United States to produce for Plaintiffs a copy of all documents concerning them or used to answer the interrogatory.

13. In addition to requesting leave to take this limited and necessary discovery from the United States, Plaintiffs also request leave of this Court to subpoena Mr. Vance's Internet Service Provider, SBC Global, and cell phone carrier, Orascom Telecom, for available evidence of his emails and telephone communications with the FBI so that this evidence is not lost or destroyed. Both SBC Global and Orascom Telecom have records of the numerous communications between Mr. Vance and FBI Agent Travis Carlisle, to whom Mr. Vance would report.

14. At present, the only way that Mr. Vance can obtain the emails he sent to Mr. Carlisle is by subpoenaing SBC Global for their records of the same. For safety reasons, Mr. Carlisle instructed Mr. Vance to delete any emails Mr. Vance sent him, so those emails are no longer stored in Mr. Vance's outbox.

15. Because more than a year has passed since Mr. Vance started emailing Mr. Carlisle, the records may be lost or destroyed before the usual discovery period commences. Therefore, to preserve this material evidence, Mr. Vance requests that this Court grant him leave to serve a subpoena on SBC Global for any emails or associated data on Mr. Vance's email account, from October 1, 2005 through April 30, 2006.

16. Additionally, Mr. Vance requests leave to subpoena Orascom for his Iraqna cell phone records. Like his emails, these records will demonstrate the frequent communications

between Mr. Vance and Mr. Carlisle, corroborating Mr. Vance's whistleblowing.

17. Because those phone conversations began over a year ago, Mr. Vance is concerned that if he waits until the formal discovery process begins to subpoena these records, Orascom will no longer have them in its possession. It is unclear how long Orascom maintains records of incoming and outgoing cell phone calls, particularly regarding Iraqna phones. Therefore, to preserve this material evidence, Mr. Vance requests that this Court grant him leave to serve a subpoena on Orascom Telecom for all incoming and outgoing telephone calls to Mr. Vance's Iraqna cell phone from October 1, 2005 through April 30, 2006.

18. As Mr. Rumsfeld has not yet appeared, Plaintiff is serving this Motion on United States Department of Justice attorney Jim Whitman, who has indicated to Plaintiffs' counsel that he will be representing the Mr. Rumsfeld, and on Robert Easton, who has represented Mr. Rumsfeld in other matters and who has been appointed by Mr. Rumsfeld to accept service on his behalf. See Exhibit A. Additionally, this Motion will be served on Samuel Cole, who has appeared for the United States in this matter. See Dckt. No. 18.

WHEREFORE, Plaintiffs, DONALD VANCE and NATHAN ERTEL, hereby request leave to serve immediate discovery on the UNITED STATES and on third parties SBC Global and Orascom, and any other relief this Court deems just and appropriate.

RESPECTFULLY SUBMITTED,

/s/ Michael Kanovitz
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