

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
	§	
v.	§	CRIMINAL NO. C-06-563
	§	
	§	
CITGO PETROLEUM CORPORATION,	§	
CITGO REFINING AND CHEMICALS	§	
COMPANY, L.P.,	§	
	§	
Defendants	§	

**RESPONSE OF THE UNITED STATES TO
CITGO’S MOTION TO APPROVE LETTER TO ALLEGED VICTIMS**

COMES NOW, the United States of America and files this Response to CITGO’s Motion to Approve Letter to Alleged Victims and in support thereof avers the following:

The defendants CITGO Petroleum Corporation and CITGO Refining and Chemicals Company L.P., (hereinafter collectively CITGO) have filed an unprecedented motion seeking to have the court order the government to sign a letter prepared by the defendants to be sent to the very victims of the defendants’ crimes. Not surprising, the defendants’ motion is devoid of any statutory or other legal or other authority to support their request—because there is none.

A. BACKGROUND

The District Court entered an order on March 28, 2008 (docket # 583) directing the government to provide CITGO certain personal information of the victim/witnesses the government intends to call at the initial phase of the sentencing hearing “...to the extent that such information is available.” The information to be provided included a complete employment

history; full medical history and records, including records of any blood or tissue samples¹. The Court's Order also directed the government to "...send a letter to the alleged victims that it intends to present at the April 28, 2008 hearing indicating that the court has specifically entered an Order *authorizing* these depositions and that the Court has *requested* that CITGO be provided with the information set forth above. CITGO must approve the Government's correspondence before it is sent." (emphasis ours). See March 28, 2008 Order (Docket # 583).

B. FACTS AND RELEVANT LAW

The government prepared the appropriate letter and provided CITGO with a copy of the same on March 30, 2008. (See Exhibit A, letter to victim/witnesses transmitting the District Court's Order of March 28, 2008.). CITGO, on its own, decided that the March 28, 2008 Order directed it to write a letter to the victim/witnesses that the government would be required to sign. Rather than discuss the government's letter, CITGO drafted its own letter which incorrectly suggests that the court had ordered the victim/witnesses to appear and be deposed. The March 28, 2008 Order says no such thing. In fact, such an order would violate the rule of criminal procedure which permits the taking of depositions, See *Fed. R. Crim P.*, 15 (a)(1). Such an order would also violate the Crime Victims' Rights Act. See 18, U.S.C. § 3771(a)(8).

1. No Authority Exists for the Court to Order a Witness to Submit to a Deposition in Anticipation of Sentencing.

The Federal Rules of Criminal Procedure authorize the taking of depositions only to "...preserve testimony for trial." See *Fed. R. Crim. P.* 15 (a)(1). While the government believes

¹ The Court's March 28, 2008 order directed the government to provide CITGO with the full name and current and former address of the victim/witnesses to appear at the sentencing. The government has already provided CITGO with that information. (Docket # 588)

the rule may fairly, appropriately and reasonably be used to “preserve” testimony for sentencing as well, such depositions in criminal cases are clearly not for the purpose of discovery. See *United States v. Fei Ye*, 436 F.3d 1117, 1123 (9th Cir. 2006). In *Fei Ye* the court stated, “[a] party may move that a prospective witness be deposed in order to preserve testimony for trial, and that the court may grant the motion because of exceptional circumstances and in the interest of justice. Fed R. Crim. P. 15(a)(1). Unlike in civil cases, however, Rule 15 depositions are not allowed merely for discovery purposes. (Citation Omitted).” *Id.* See also *In Re Eisenberg*, 654 F.2d 1107, 1113, *Fn 9*, (5th Cir. 1981). The Fifth Circuit Court of Appeals has stated, “In criminal cases, depositions are not intended as discovery devices. They are in limited favor where a party’s own witness is unable to attend trial.” Citing *United States v. Wilson*, 601 F.2d 95, 97 (3d Cir. 1979); *United States v. Rich*, 580 F.2d 929, 933-34 (9th Cir.), *cert. Denied* 439 U.S. 935 (1978).²

The only use for the depositions of the victim/witnesses by CITGO is for discovery. Because the defendant is not entitled to such depositions, the District Court recognized, during the March 28, 2008 status conference, the rights of the victim/witnesses to decline to be deposed. It is well established that in a criminal case, every witness has the right not to consent to an interview or deposition by the government or the defendant. The victim/witnesses do not lose that right by virtue of having been victimized by CITGO. In fact, the Crime Victims’ Rights Act explicitly recognizes the rights of a crime victim to be treated with fairness and with respect for

² The United States does not object to the Court’s March 28, 2008 Order to the extent the order is read so as not to require, compel, direct or command the victim/witnesses to consent to a deposition or provide the specified information. We believe the court was very aware of the limitations to compel the victim/witnesses to submit to a deposition.

the victim's dignity and privacy. See *18 U.S.C. § 3771 (a)(8)*. The government believes that this would include, at a minimum, the same rights that every other witness is afforded.

2. **The Crime Victims' Rights Act Protects the Rights of Victims and CITGO has no Rights or Remedies Under the Act.**

Under the Crime Victims' Rights Act, the victims have the right to be reasonably protected from the defendant. See *18 U.S.C. § 3771 (a)(1)*. The Court's March 28, 2008 Order provided such protection. The Court Order states: "Although the alleged victims have not yet been qualified as 'crime victims' under the CVRA, CITGO shall not be permitted to contact the alleged victims except as otherwise provided in this order." (See Docket # 583, p.2). The defendant CITGO should not be permitted to contact the victim/witnesses directly or indirectly. CITGO's letter is a blatant attempt to indirectly contact the victim/witnesses and force upon them CITGO's reading of the March 28, 2008 Order.

The Crime Victims' Rights Act gives the victim/witnesses the right to confer with the attorney for the government. See *18 U.S.C. § 3771 (a)(5)*. And, the government is given discretion in dealing with the potential victims and affording them the protections under the act. See *18 U.S.C. § 3771(d)(6)*. Moreover, CITGO has absolutely no rights under the Crime Victim's Rights Act, "A person *accused of the crime* may not obtain any form of relief under this chapter. (emphasis ours). See *18 U.S.C. § 3771(d)(1)*.

///

///

///

3. **The Government is required Under the Crime Victims' Rights Act to Confer with the Potential Victims and Advise them of All of Their Rights.**

In conferring with the victim/witnesses, the government has the obligation to ensure they are “notified of and accorded” of all their rights. See 18 U.S.C. § 3771(c)(1). CITGO has no such obligation and the letter prepared by CITGO does not acknowledge any of the rights conferred on the victim/witnesses but instead attempts to mislead and bully them into sitting for a deposition with the imprimatur of this Court’s March 28, 2008 Order. This the court should not allow to happen.

The letter the government proposed to send to the victim/witnesses clearly and fully advised each victim/witness of all of their rights. The letter advised the victim/witnesses of the Court’s encouragement that they sit for the depositions and that the victim/witnesses make certain personal information available to the defendants. The letter also advises the victim/witnesses that they have the right to decline to be deposed in spite of the Court’s encouragement. The government’s letter informed the victim/witnesses that the court would take certain steps to ensure that the personal information was protected and used only for a limited purpose. CITGO’s letter did none of this. Instead CITGO’s proposed letter lies to the victim/witnesses and says the Court “**ordered** you [the victim] to provide the following information...” (emphasis ours). See Exhibit B to CITGO’s Motion to Approve Letter to Alleged Victims. (Docket # 587). The Court’s March 28, 2008 Order says no such thing.

Additionally, the government included with its letter a form that the victim/witnesses could execute to meet the written notification of the Court’s Order. The government also

included a self-addressed stamped envelope to facilitate a prompt response from each of the victim/witnesses. The form simply allows the victim/witness' to state their desire to sit, or not to sit for a deposition. This was done for the convenience of the potential victim/witnesses.

Finally, the government's letter also asked the victim/witnesses to notify the government if there was a reason they did not want to provide the information identified in the Court's Order so that their reason for not wanting to provide the information could be raised with the court. This was done for the benefit of CITGO. Where a victim/witness was inclined not to provide personal information, the government believed it should attempt to give the court an opportunity to review the reasons given by a potential victim/witness and pass on the validity of those reasons independently. The government's letter is proper, reasonable, fair and protects the rights of the potential victim/witnesses and conveys clearly the requirements of the March 28, 2008 Order.

C. CONCLUSION

Crime victims have at a minimum the very same rights as any other witness, including the right to agree or not agree to be interviewed or deposed by a criminal defendant. The law is clear that depositions are not to be ordered in criminal cases for the purpose of discovery. This applies to CITGO. The government is concerned that CITGO's repeated refusal to accept well established legal principles is but one more tactic aimed at postponing the initial phase of the sentencing hearing.

Here, the letter prepared by the government fully apprises the potential victim/witnesses of all their rights and clearly conveys the purpose and intent of the March 28, 2008 Court Order and provides a copy of the Court's Order itself. The government's letter is reasonable, proper and does not violate any purported rights of the CITGO defendants.

WHEREFORE, and for the reasons stated above, the United States requests that the court deny CITGO's Motion to Approve Letter to Alleged Victims and enter an Order allowing the government to send its proposed letter to said victim/witnesses immediately to avoid any unnecessary delay.

Respectfully submitted,

/s/ Howard P. Stewart

HOWARD P. STEWART
Senior Litigation Counsel
Environmental Crimes Section
U.S. Department of Justice
Washington, DC
(202) 305-0334
WILLIAM R. MILLER
Special Assistant United States Attorney
Southern District of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response of the United States to CITGO's Motion to Approve Letter to Alleged Victims was served on counsel for the defendants as identified below via the ECF System and email.

Dick DeGuerin, Esquire
1018 Preston Ave., 7th Floor
Houston, Texas 77002
PH: (713) 223-5959
FX: (713) 223-9231

Matt Hennessy, Esquire
1018 Preston Ave., 7th Floor
Houston, Texas 77002
PH: (713) 223-5959
FX: (713) 223-9231

James B. Blackburn, Jr., Esquire
Blackburn Carter, P.C.
4709 Austin
Houston, Texas 77004
PH: (713) 524-1012
FX: (713) 524-5165

Nathan P. Eimer, Esquire
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Ave., Suite 1100
Chicago, Illinois 60604
PH: (312) 660-7601
FX: (312) 692-1718

Catherine Baen, Esquire
1018 Preston, 8th Floor
Houston, Texas 77002
PH: (713) 223-5959
FX: (713) 223-9231

Jimmy Parks, Jr.
214 Dwyer, Suite 210
San Antonio, Texas 78204
PH: (210) 229-1322
FX: (210) 229-9405
Attorney for Philip Vrazel

DATED: April 8, 2008

/s/ Howard P. Stewart

HOWARD P. STEWART