

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

JANE DOE #1 and JANE DOE #2,

Petitioners,

vs.

UNITED STATES,

Respondent.

RESPONDENT'S RESPONSE TO PETITIONERS' MOTION FOR A
PROMPT RULING DENYING GOVERNMENT'S MOTION TO STAY

Respondent United States of America, by and through its undersigned counsel, files its Response to Petitioners' Motion for a Prompt Ruling Denying Government's Motion to Stay, and states:

The government filed its motion to stay discovery on November 7, 2011. The motion was premised upon the government filing a motion to dismiss for lack of subject matter jurisdiction, also filed on November 7, 2011. Petitioners filed their opposition to both motions, and the government filed its replies. Now the petitioners ask the Court to deny the motion to stay, claiming that "[t]he practical effect of a lack of a ruling on that motion has been to effectively grant the stay." D.E. 179 at 1.

The government sought a stay of discovery because it had filed a motion to dismiss challenging this Court's subject matter jurisdiction. The Government argued that resolution of the threshold jurisdictional question should occur before requiring the parties and the Court to expend time and resources in the discovery process. That argument remains valid.

Petitioners' contention that the stay has been "effectively granted" (D.E. 179 at 2-3) seems to suggest the Government has already received a benefit, but is still not complying with its present legal obligations, such as when a party seeks an enlargement of seven days to file a document, seven days elapse without the Court ruling on the motion, and the party still has not filed the document. But the government's motion did not seek additional time to comply with discovery, and the government certainly has not ignored or failed to comply with a legal requirement that has already ripened. Instead, the government sought the stay because *it should not be obligated* to incur the expense and expend the time necessary to respond to petitioners' far-reaching discovery requests—which include twenty-five requests for broad categories of information, many composed of numerous sub-parts, and which go well beyond the issues for which the Court authorized limited discovery and seek information independently protected from discovery and disclosure—where the case should be dismissed for lack of jurisdiction, and certainly not while a case-dispositive, jurisdictional motion to dismiss is pending. That is still the case.

Petitioners are not entitled to discovery while the government's motion to dismiss for lack of jurisdiction is pending. Consequently, the government's motion to stay discovery should be granted.

DATED: December 21, 2012

Respectfully submitted,

WIFREDO A. FERRER
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 21, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and served the attorneys on the attached Service List by U.S. Mail.

s/ Dexter A. Lee
DEXTER A. LEE
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SERVICE LIST

Jane Does 1 and 2 v. United States,
Case No. 08-80736-CIV-MARRA/JOHNSON
United States District Court, Southern District of Florida

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