

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

LARRY KLAYMAN

Plaintiff,

v.

HILLARY RODHAM CLINTON,

and

WILLIAM JEFFERSON CLINTON,

and

THE CLINTON FOUNDATION

a/k/a The William J. Clinton Foundation

a/k/a The Bill, Hillary & Chelsea Clinton Foundation

1271 Avenue of the Americas, 42nd Floor

New York, New York 10020

Service: Chairman Bruce Lindsey or Vice-Chairman

Chelsea Clinton Mezvinsky (née Chelsea Victoria Clinton)

Defendants.

Civil Action No.: 9:15-cv-80388

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**EXPEDITIOUS HEARING  
RESPECTFULLY  
REQUESTED**

**PLAINTIFF'S REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PREJUDGMENT ATTACHMENT OF COMPUTER EMAIL FILE  
SERVER**

**I. INTRODUCTION AND SUMMARY**

This case is properly brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, and pleads several predicate acts in furtherance of a criminal enterprise conceived of and implemented by Defendants Hillary Clinton, Bill Clinton, and the Clinton Foundation, to reap hundreds of millions of dollars personally and for their Foundation by selling government access and influence. Two of the predicate acts criminally

concern Defendants' destruction of evidence which will go to prove the criminality and result in RICO liability.

Specifically, Defendants, in particular Hillary Clinton, destroyed emails which Plaintiff had requested under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), concerning her sale of waivers as Secretary of State to do business with the Islamic Republic of Iran and her participation principally in the criminal release of classified government information involving American and Israeli cyber-warfare to destroy or severely cripple Iranian atomic centrifuges and also the release to New York Times reporter David Sanger of classified Israeli war plans to wage a preemptive air attack to eliminate Iranian nuclear facilities. *See* Amended Complaint ¶2.

Defendant Hillary Clinton has been forced to admit she destroyed thousands of emails and then, not coincidentally, wiped her personal servers clean. *See* Amended Complaint ¶61. It is now known and incontrovertible that Hillary Clinton, allegedly acting in concert with the other Defendants in furtherance of a criminal enterprise, communicated as Secretary of State using private email servers in her home in Chappaqua, New York. Amended Complaint ¶¶87,146. This was obviously intended to hide her and the other Defendants' illegal criminal enterprise from the public and law enforcement authorities. Amended Complaint ¶267.

This case is thus the "perfect" case for the use of RICO as pled in the Amended Complaint. Accordingly, for these compelling reasons, Plaintiff correctly seeks to have this Court take custody immediately of Defendant Hillary Clinton's email servers to preserve evidence before it is totally destroyed. Once in the Court's custody at the appropriate point in the litigation, the Court can appoint a forensic computer expert to re-create any deleted emails that are relevant to this suit, while preserving the confidentiality of non-relevant documents.

This procedure is both factually and legally appropriate and the Court must act immediately to protect the interests of justice and the rights of Plaintiff.

**II. STATEMENT OF FACTS MATERIAL TO THE MOTION**

The contents of Defendants' private email server are the most significant and important evidence of the RICO enterprise Plaintiff sues upon. It is likely that the data on the server goes to the heart of the violations and RICO enterprise. The Defendants' email server is the place where relevant documents would still reside, after Defendant admittedly deleted them.

Defendants are alleged to have operated a criminal enterprise and conspiracy which is unlawful pursuant to the Racketeer Influenced and Corrupt Organizations (RICO) Act 18 U.S.C. § 1962(b). The relevant evidence can be recreated from Defendant Hillary Clinton's servers. This previously occurred when the Honorable Royce Lamberth of the U.S. District Court for the District of Columbia ordered the reconstruction of emails concealed by Defendant Bill Clinton and Defendant Hillary Clinton, then serving as President and First Lady in the Executive Office of the President during their administration. After these Defendants insisted in court filings that those emails could not be retrieved, millions of emails were subsequently retrieved and made available to the public records offices and archives of the U.S. Government when ordered by Judge Lamberth in *Alexander v. FBI, et. al*, 971 F. Supp. 603 (D.D.C. 1997); Civil Action Nos. 96-2123

But immediate action is needed. Time is of the essence. The techniques that may recover or preserve the data on the server are more likely to succeed with fast action.

Meanwhile, despite the *ad hominem* disparagement by Defendants' counsel<sup>1</sup>, which neither addresses the merits nor is consistent with professional decorum, Plaintiff Larry Klayman has repeatedly been proven right and has succeeded in litigation including on issues closely related to the issues in this case including with nearly the same parties. Since one of the main goals of Larry Klayman in founding Judicial Watch and later Freedom Watch has been transparency in government and accountability to the public of government operations, success is often measured in terms of remedying the concealment of information and documents that belong to the public.

Yet another case brought by Larry Klayman, then as General Counsel and Chairman of Judicial Watch also before Judge Royce C. Lamberth, resulted in nearly a \$1 Million USD judgment against the Clinton Commerce Department which involved Defendant Hillary Clinton, who as pled in the Amended Complaint orchestrated the sale of trade mission seats to China and elsewhere in exchange for donations to her husband Bill Clinton's political campaign and The Clinton Library. Thanks to White House whistleblowers, the destruction of documents by Defendant Clinton and others in the Clinton administration was revealed and the court initiated contempt proceedings and secured the evidence that also was recreated from White House servers. *Judicial Watch v. U.S. Department of Commerce*, Case No. 96-0331 (D.D.C.) (J. Royce C. Lamberth).<sup>2</sup>

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<sup>1</sup> In virtually every pleading of this nature throughout the last many years, Defendants have waged similar *ad hominem* and irrelevant attacks against Plaintiff. This has become routine for the Clintons and their counsel.

<sup>2</sup> Defendants also try to make a point of the signature on the certificate of consultation portion of the motion by a staff attorney Jonathon Moseley assisting the Plaintiff and under-signed counsel. Acting under the direction of under-signed counsel, Moseley sent an email request to Defendant's attorney David Kendall by email but received no response. The rule requires certification that opposing counsel has been contacted by "counsel" but does not specify

### III. ARGUMENT

#### A. The Court Has Inherent Authority to Preserve Evidence

The Court has the inherent authority as well as the actual authority to order the preservation of evidence and take custody of the file server[s] in the interests of the justice. The duty to preserve evidence can arise from regulatory<sup>3</sup>, statutory<sup>4</sup>, or court-ordered<sup>5</sup> admonitions to preserve documents or information. The ordinary pre-litigation duty to preserve is a consequence of the inherent authority of the courts to sanction parties who may permit the loss or destruction of relevant evidence prior to the initiation of an action. Most courts describe the preservation obligation as a duty to preserve information because one knows or should know that it is relevant to future litigation. *John B. v. Goetz*, 531 F.3d 448, 459 (6th Cir. 2008) (indicating that the duty to preserve evidence is triggered when a “party has notice that the evidence is relevant to litigation or . . . should have known that the evidence may be relevant to future litigation” (internal quotation marks omitted)); *Burlington N. & Santa Fe Ry. Co. v. Grant*, 505 F.3d 1013,

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that “counsel of record” in the case must certify consultation. Nevertheless, in the future the undersigned counsel will sign such certification on any further motions.

<sup>3</sup> For example, a particular regulation states: “Any personnel or employment record made or kept by an employer (including but not necessarily limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the employer for a period of one year from the date of the making of the record or the personnel action involved, whichever occurs later.” 29 C.F.R. § 1602.14 (1991).

<sup>4</sup> By way of analogy, the Private Securities Litigation Reform Act provides as follows: “During the pendency of any stay of discovery pursuant to this paragraph, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(b)(3)(C)(i) (2006).

<sup>5</sup> A federal district court may impose sanctions under Federal Rule of Civil Procedure (Rule) 37(b) when a party spoliates evidence in violation of a court order. *See* FED. R. CIV. P. 37(b)(2).

1032 (10th Cir. 2007) (“A spoliation sanction is proper where (1) a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence.”).

**B. Concealment or Destruction of Government Records is a Crime**

This Motion is especially warranted and meritorious because the actions that Defendant Hillary Clinton has publicly admitted to – at a minimum –constitute obstruction of justice and other crimes under federal law, and reasonable inferences from those admissions implicate further crimes. Furthermore, these violations create additional predicate acts establishing a RICO enterprise and RICO liability.

Defendant Hillary Clinton admits to removing and concealing records from other government officials and personnel entitled to access them, from the government’s record keeping and archiving functions throughout her term as Secretary of State. These records were surreptitiously removed and concealed inside the Defendant Hillary Clinton’s private residence from January 20, 2009, through February 1, 2013, and then some of them for an additional two years after leaving her position as Secretary of State until March 2015.

As stated in the Complaint and the Motion, the statements made by Defendant Hillary Clinton’s attorney concerning Hillary Clinton deleting records from her file server are admissible evidence as admissions by a party-opponent. Fed.R.Evid. 801(d)(2).

The records including emails and/or other data deleted by Defendant Hillary Clinton were subject to active litigation by multiple parties under FOIA and Congressional subpoenas.

Defendant Hillary Clinton’s admitted concealment in her personal custody and deletion of records from her file server hard drive is a violation of 18 U.S.C. § 1519, which requires that (*emphasis added*):

Whoever knowingly alters, **destroys**, mutilates, **conceals**, covers up, falsifies, or makes a false entry in any record, document, or tangible object **with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department** or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

Amended Complaint ¶248.

Defendant Hillary Clinton's admitted concealment in her personal custody and deletion of records from her file server hard drive is a violation of 18 U.S.C. § 1505 (*emphasis added*):

Whoever **corruptly**, or by threats or force, or by any threatening letter or communication influences, **obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law** under which any pending proceeding is being had **before any department** or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Defendant Hillary Clinton's admitted concealment in her personal custody and deletion of records from her file server hard drive is a violation of 18 U.S. Code § 2071, which requires that (*emphasis added*):

(a) Whoever willfully and unlawfully **conceals, removes**, mutilates, obliterates, or **destroys**, or **attempts to do so**, or, with intent to do so takes and **carries away any record**, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, **or in any public office**, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, **willfully and unlawfully conceals**, removes, mutilates, obliterates, falsifies, or **destroys** the same, shall be fined under this title or imprisoned not more than three years, or both; and **shall forfeit his office and be disqualified from holding any office under the United States**. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

Amended Complaint ¶252.

Upon leaving her office as Secretary of State on February 1, 2013, Defendant Hillary Clinton was required to immediately return any official records in her personal custody upon her separation from service at the Department. Pursuant to 18 U.S. Code § 2071(b) (*emphasis added*), Defendant Hillary Clinton was required to return all documents in her personal custody, because otherwise she would be concealing or removing those records:

Whoever, **having the custody of any such record**, proceeding, map, book, document, paper, or other thing, **willfully and unlawfully conceals, removes,** mutilates, **obliterates**, falsifies, **or destroys the same**, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States . . .

Amended Complaint ¶ 71.

Defendant Hillary Clinton's admitted concealment in her personal custody and deletion of records from her file server hard drive is a violation of 18 U.S.C. § 793(f) (*emphasis added*):

(f) **Whoever, being entrusted with or having lawful possession or control of any document, writing,** code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) **through gross negligence permits the same to be removed from its proper place of custody** or delivered to anyone in violation of his trust, **or to be lost**, stolen, abstracted, **or destroyed**, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

Amended Complaint ¶274.

Defendant Hillary Clinton's admitted concealment in her personal custody and deletion of records from her file server hard drive is a violation of 18 U.S.C. § 793(g) (*emphasis added*):

(g) If two or more persons conspire to violate any of the foregoing provisions of



this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

Amended Complaint ¶275.

### **C. Defendants Admit Spoliation of Evidence**

Defendant Hillary Clinton's claims, by her attorney David Kendall, that she deleted all the data on her file server hard drive also justifies granting the Plaintiff's to avoid or minimize spoliation of evidence. *See, e.g., Aldrich v. Roche Biomedical Lab., Inc.*, 737 So. 2d 1124, 1125 (Fla. App. 1999) (finding in that case that the evidence was inconclusive as to the party responsible for medical slides apparently lost in shipping); *Cf. Bambu v. E.I. Dupont De Nemours & Co. Inc.*, 881 So.2d 565 (Fla. App., 2004) (adverse inference from destruction of test results that probably occurred was proper for closing argument but not for jury instruction, as invading province of the jury).

Under Florida law, the elements of negligent destruction of evidence (as a cause of action for liability) are "(1) existence of a potential civil action, (2) a legal or contractual duty to preserve evidence which is relevant to the potential civil action, (3) destruction of that evidence, (4) significant impairment in the ability to prove the lawsuit, (5) a causal relationship between the evidence destruction and the inability to prove the lawsuit, and (6) damages." *Continental Ins. Co. v. Herman*, 576 So.2d 313, 315 (Fla. 3d DCA 1990), rev. denied, 598 So.2d 76 (Fla.1991). Here, the destruction was not even negligent, but admittedly intentional, triggering civil and criminal liability under RICO.

### **D. Pre-Judgment Attachment of Email Server**

Attachment is not used only for money in danger of being moved out of the United States or elsewhere, although that is simply a common use of prejudgment attachment proceedings

under FRCP 64 but this is merely because of the large proportions of lawsuits that center on money. Attachment of a physical, tangible object which is evidence or contains evidence is also a legitimate use of the procedure.

Pursuant to FRCP Rule 64: "Seizing a Person or Property"

(a) REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

Under Florida law,<sup>4</sup> "injunctive relief [is] appropriate to protect the res in a claim for a constructive trust." *Blecher v. Dreyfus Brokerage Servs., Inc.*, 770 So. 2d 1276, 1277 (Fla. Dist. Ct. App. 2000); *Ga. Banking Co. v. GMC Lending & Mortgage Servs., Corp.*, 923 So. 2d 1224, 1225 (Fla. Dist. Ct. App. 2006) ("Injunctive relief is appropriate to prevent dissipation of . . . specific, identifiable trust funds.").

In *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435 (C.A.7 (Ill.), 1994) the Court "perpetuated" the tax and bank records of a huge corporation ancillary -- in a different case. The Court referred to Rule 27(c), which is for the perpetuation of deposition testimony in advance of trial. Yet clearly the Court felt it could be used for documents as well as testimony. But the analysis of the U.S. Court of Appeals for the Seventh Circuit was not limited to the rule, but based more generally on the authority of the Court in general to preserve evidence.

Specifically, the court held that, "[n]o prejudice will inure to Camaro Trading's detriment merely by the perpetuation of the evidence." Order (Nov. 2, 1993). The court added that "[t]his action was brought to insure that evidence would not be destroyed. The preservation of evidence is in every litigant's proper interests." *Id.* The district court also found (1) that Camaro Trading's application was untimely, (2) that it lacked an interest in whether relief was granted, since "the preservation of evidence is in every litigant's proper interest," and (3) that its interest would not--as a practical matter--be impaired. *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435 (C.A.7 (Ill.), 1994).

That is, attachment can preserve a thing (res) which need not only be liquid funds or money.

#### **IV. CONCLUSION**

The Court should, in the abundance of caution to prevent the destruction of material evidence going to prove the RICO criminal enterprise, grant the Plaintiff's Motion and take the computer file server / email server into its custody under the actual and inherent authority of the Court. To not order this could prevent Plaintiff from proving his case before a jury of his peers, and thus work a denial of due process, as well as countenance if not further Defendants' obstruction of justice in destroying evidence relevant to this case. No prejudice will result to Defendants by this Court now taking custody of the servers to preserve evidence.

**Plaintiff respectfully requests a hearing to be set expeditiously on this motion.**

**Dated: May 27, 2015**

Respectfully submitted,

/s/ Larry Klayman  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of May, 2015, a true and correct copy of the foregoing (Case No. 9:15-cv-80388) was filed via CM/ECF and served upon the following:

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*/s/ Larry Klayman*

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