

1 Jacqueline C. Kelly
2 Jacqueline.Kelly@usdoj.gov
3 United States Attorney's Office
4 Southern District of New York
5 One Saint Andrew's Plaza
6 New York, NY 10007
7 212-637-2200



5 Allison Nichols
6 Allison.Nichols@usdoj.gov
7 United States Attorney's Office
8 Southern District of New York
9 One Saint Andrew's Plaza
10 New York, NY 10007
11 212-637-2200

9 Celia V. Cohen
10 Celia.Cohen@usdoj.gov
11 United States Attorney's Office
12 Southern District of New York
13 One Saint Andrew's Plaza
14 New York, NY 10007
15 212-637-2200

13 Attorneys for Intervenor
14 United States Attorney's Office
15 Southern District of New York

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

17 JANE DOE NO. 1-10,
18 Plaintiffs,
19 v.
20 DANIEL S. FITZGERALD,
21 Defendant.

Case No.: 2:20-cv-10713-MWF

Reply in Support of Motion to Intervene and Stay

1 The United States Attorney’s Office for the Southern District of New
2 York respectfully submits this reply in further support of its motion to
3 intervene and stay the above-captioned matter. For the reasons set forth
4 herein and previously set forth in its motion (Dkt. 210), the motion should be
5 granted.

6 **I. This Office’s Request is Governed by 18 U.S.C § 1595(b)**

7 The request by the United States Attorney’s Office for the Southern
8 District of New York (“USAO-SDNY,” or “this Office”) for a complete stay
9 of the instant case is governed by 18 U.S.C. § 1595(b)(1), which provides:
10 “Any civil action filed under this section shall be stayed during the pendency
11 of any criminal action arising out of the same occurrence in which the
12 claimant is the victim.” 18 U.S.C. § 1595(b)(1). On its face, the statute
13 mandates a stay of any civil action while an overlapping criminal case is
14 pending. As another court in this district has noted, this is a “broad,
15 encompassing mandatory stay provision.” *Doe v. Mindgeek USA Inc.*, No.
16 SACV 21-00338-CJC, 2021 WL 6618628, at *2 (C.D. Cal. Dec. 28, 2021).
17 Consequently, there is no discretion afforded or balancing of interests
18 required where the provision applies.

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1 Section 1591(b)(1) applies here.¹ The reach of Section 1595 is not
2 determined by the fact that Fitzgerald is not named in the Nygard Indictment.
3 Indeed, the statute does not contain any such qualification, as the *Doe* Court
4 expressly found: “Section 1591(b) does not contain any limiting language
5 suggesting that it applies only when there is an overlap in defendants in the
6 relevant civil and criminal actions. Instead, the statute focuses on the identity
7 of the claimant-victim and the conduct at issue in the civil and criminal
8 actions.” *Doe v. Mindgeek USA Inc.*, 2021 WL 6618628, at *3.

9 In *Doe*, as here, the defendants in the civil case were not named in the
10 criminal indictment but the underlying conduct related to the same victim. In
11 the instant case, multiple Jane Doe Plaintiffs are victims encompassed by the
12 Nygard Indictment.² Moreover, the conduct alleged relates directly to the
13 criminal conduct alleged against Peter Nygard and his co-conspirators in the
14 Nygard Indictment. Indeed, in the instant civil action, Fitzgerald is alleged
15 to have acted as Nygard’s co-conspirator in the sex trafficking conduct
16 described in the Nygard Indictment and to have modeled his solo trafficking
17 exploits on that same venture. There is thus no plausible argument that the
18 allegations in the instant case are not “arising out of the same occurrence in

19 _____
20 ¹ As set forth in the USAO-SDNY’s motion, the requested stay is also in the interests of
21 justice. However, because a stay is mandatory under 18 U.S.C. § 1595(b)(1), the Court
need not engage in a balancing test to enter the requested stay.

² To the extent the Court requires additional information as to the identities of particular
victims, the USAO-SDNY may provide additional information on an *ex parte* basis.

1 which the claimant[s] [are] the victim[s].” Section 1595(b)’s mandatory stay
2 provision therefore applies.

3 Fitzgerald’s arguments to the contrary are unavailing. (Fitzgerald Opp.
4 (Dkt. 216) 6-7). The civil complaint, which appends and extensively quotes
5 the Nygard Indictment, is a sufficient basis alone to find that the civil case
6 arises out of the same core conduct. In addition, the USAO-SDNY has
7 proffered to the Court that there is overlap between the Jane Doe Plaintiffs
8 and the victims in the criminal case. No more is required by the statute.

9 The two cases Fitzgerald cites to the contrary are inapposite.
10 (Fitzgerald Opp. 7). *Cortez-Romero* involved an uncharged investigation
11 where there was no public record of the defendants or allegations under
12 investigation. *See* No. 2:20-CV-14058, 2020 WL 3162979, at *1 (S.D. Fla.
13 June 11, 2020). In the second case, *Tianming Wang*, the civil and criminal
14 cases shared similar factual background, but the claims alleged (which did
15 not include trafficking in the criminal case) and the claimants involved were
16 different. *See* No. 1:18-CV-0030, 2020 WL 5983939, at *4 (D. N. Mar. I.
17 Oct. 9, 2020). Here, by contrast, both the civil and criminal cases include
18 allegations of sex trafficking as part of the same Nygard-led conspiracy and
19 there are claimants in common.

20 Fitzgerald’s demand for additional information pertaining to the
21 USAO-SDNY’s ongoing criminal prosecution and investigation has no legal

1 basis. Moreover, the disclosure of such information, especially as to the
2 identities of victims and as to the ongoing investigation of Nygard’s co-
3 conspirators, would seriously impede the criminal case. Requiring the
4 USAO-SDNY to disclose additional information in order to stay the
5 proceedings would thus frustrate the purpose of Section 1595(b), which, as
6 the defendant concedes, is aimed at preventing interference with criminal
7 prosecutions.

8 **II. The Case Should be Stayed in its Entirety**

9 Both Fitzgerald and Jane Doe No. 5 argue that if a stay is entered, it
10 should not apply to the case in its entirety. (*See* Fitzgerald Opp. 7-8; Jane
11 Doe. No. 5 Resp. (Dkt. 215) 3-7). These arguments also fail because Section
12 1595(b)(1) does not permit the Court discretion as to the scope of the stay.

13 Under the plain language of Section 1595(b), the instant action must
14 be stayed in its entirety. This includes all counterclaims and parties. *Sharma*
15 *v. Balwinder*, 2021 WL 4865281, at * 2 (N.D. Cal. Sep. 29, 2021) (“[t]he
16 plain language of [§ 1595] requires a stay of ‘[a]ny civil *action*’ ... The statute
17 does not limit the stay to particular [parties] or claims.”) (quoting 18 U.S.C.
18 § 1595(b)(1)) (emphasis in original). *See also Lunkes v. Yannai*, 882 F. Supp.
19 2d 545, 550 (S.D.N.Y. 2012). As the *Lunkes* court observed, “other courts
20 that have stayed cases involving TVRPA claims have consistently taken the
21 view that the stay applies to the whole case rather than to the plaintiff’s

1 TVPRA claims alone.” *Id.* The parties cannot therefore cherry- pick which
2 claims or parties are encompassed by the stay.

3 Neither Fitzgerald nor Jane Doe No. 5 has cited any authority for a
4 partial stay under Section 1595(b)(1). Even as to the counterclaims against
5 Jane Doe No. 5, the purposes of the stay provision would be thwarted if those
6 claims were permitted to proceed. Those counterclaims are not limited to
7 allegations relating to a single sexual assault in Mexico, but also relate to
8 statements allegedly made by Jane Doe No. 5 about Fitzgerald being
9 “investigated by the fbi for sex trafficking/rape/sex w minors etc” and that
10 Fitzgerald was attempting to prevent Jane Doe No. 5 from “testifying in the
11 trial.” (*See* Fitzgerald Answer and Counterclaims (Dkt. 181) ¶ 399).
12 Regardless of the veracity or not of those allegations, there is no dispute that
13 the allegations relate to the ongoing criminal case.

14 In sum, permitting any subset of claims to go forward would be
15 inconsistent with the statute’s plain meaning, which requires that the entire
16 civil “action” be stayed, as well as with its legislative purpose to allow
17 criminal investigations and prosecutions to proceed without hinderance.

18 **III. Conclusion**

19 For the reasons stated herein, and in the USAO-SDNY’s motion to
20 stay, a stay of the entire case pending before this Court is required.

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