

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**Criminal Case No. 02-CR-00509-RB**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

- 1. CAROL GILBERT,**
- 2. JACKIE MARIE HUDSON,**
- 3. ARDETH PLATTE,**

**Defendants.**

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**GOVERNMENT'S RESPONSE TO DEFENDANTS' PLAN REGARDING  
RESTITUTION AND SUPERVISORY RELEASE REQUIREMENT**

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The United States of America, by William Leone, United States Attorney for the District of Colorado, through Robert Brown, Assistant United States Attorney, complies with the Court's Order to respond to the Defendants' plan to satisfy the Court's restitution order and objects to their suggestion that supervised release be "rescinded."

1. On November 6, 2005, the Court entered an order in response to attempts by the defendants to avoid their court-ordered (and non-appealed) restitution to the United States Air Force resulting from their convictions of damaging property of that entity by their criminal acts.

2. The Court ordered that a "plan for community service in lieu of restitution" be submitted by the defendants, and a plan has been submitted.

3. The government objects to the "plan" as it is really no "plan" for future action at all, but rather a dissertation on the defendants' past good deeds which, they suggest, somehow satisfies the restitution order.

4. The victim in this case is the United States government, specifically the United States Air Force. By suggesting the defendants can "satisfy" their restitution obligation of making their victim whole in a manner consisting of past acts of community service to other entities defeats the purpose of the Mandatory Victims Restitution Act of 1996 (MVRA), Title 18, United States Code, Section 3663A. By its terms, the MVRA directs a defendant to make restitution to the victim, not the community as a whole. (Subsection (a)(1)). In *United States v. Ekanem*, 383 F.3d 40 (2nd Cir. 2004), the Court made clear that the government is included within the definition of "victim" and noted the Act intended to expand restitution remedies and compel a defendant to pay his or her debt to society (sentencing) and to the victim (restitution), even if a victim declined restitution (which this victim does not). *Id.* at 44. See also, *United States v. Quarrell*, 310 F.3d 664, 677 (10th Cir. 2002).

5. Restitution is mandatory and must be ordered to the victim without regard to a defendant's ability to pay. *United States v. Yeager*, 331 F.3d 1216, 1227 (11th Cir. 2003). Ability to pay should only be addressed when considering a payment schedule. *United States v. Stoecker*, 215 F.3d 788, 792 (7th Cir. 2000), *cert denied* 531 U.S. 1127 (2001).

6. The government submits if the Court chooses to impose a community service alternative to monetary payments of restitution, that service be to the United States government, in some fashion – obviously not in a sensitive venue. It is

submitted a criminal is not permitted to choose to commit acts of vandalism against a target with whom she disagrees and then, when apprehended and punished, choose to do good deeds for others to pay for the harm caused. If one burns down his neighbor's house in protest of his neighbor's beliefs, he cannot escape his obligation under the MVRA to that victim by having done, or promising to do, good deeds for the church down the street or across the country. These defendants deserve no alternative other than making restitution to the victim and the object of their crime – the United States Government, and in particular, the United States Air Force. Their plan of alternative restitution should be directed to the benefit of the victim.

7. In addition, the government objects to a "lifting" of the supervised release requirement in order to meet the goals of sentencing, one of which is deterrence.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of December, 2005, I electronically filed the foregoing **GOVERNMENT'S RESPONSE TO DEFENDANTS' PLAN REGARDING RESTITUTION AND SUPERVISORY RELEASE REQUIREMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand delivery, etc.) indicated by the non-participant's name:

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