



## **B. Procedural History**

On August 25, 2000, Defendant filed his motion for the return the computer. (Dkt. No. 18.) On October 24, 2000, Defendant's wife Alice Buttwell, Petitioner, filed her motion for the return of the computer. (Dkt. No. 27.) On October 31, 2000, the United States filed a memorandum in opposition to both motions. (Dkt. No. 28.)

## **II. DISCUSSION**

### **A. Defendant's Motion**

Defendant argues for the return of the computer to his wife asserting that the computer was "used by his wife to access [the] internet, is required for the medical and educational needs of her son ..., and is necessary for [her son's] care and welfare." (Dkt. No. 18 at 1.) The son has special needs and requires full-time observation and attention. (Id.; see Dkt. No. 28 at 3.) Defendant asserts that the need for the computer and the data it contains is acute as Defendant's wife is "struggling with adjustments to her son['s] medications" and she needs the information within the computer to coordinate his medical treatment. (Dkt. No. 18 at 1.) Defendant argues that although the government may need the computer for investigative or evidentiary purposes, this need should be balanced against the critical need of his wife for use of the information within the computer. (Id. at 2.)

Defendant's motion is denied. He signed a plea agreement that he would not make any "claim adverse to the administrative forfeiture of these items." (Dkt. No. 14 at 3.) He is held to those terms. To the extent that he argues for special consideration due to the needs of the child, the United States asserts that it has already returned copies of the

software and computer files that were requested and that it believes that Defendant's wife possesses a second computer on which she may access and use the software and computer files. (Dkt. No. 28 at 3.)

### **B. Defendant's Wife's Motion**

In her motion, Defendant's wife raises issues somewhat different from her husband's. She asserts that she is the owner of the computer.<sup>1</sup> (Dkt. No. 27 ¶ 1.) The computer contains the complete medical and educational history of her son, who has special needs. (Id. ¶ 2.) As a result of the seizure, she has experienced "great difficulty and hardship" in caring for her son's medical needs. (Id. ¶ 3.) Moreover, since Defendant has pleaded guilty in the underlying prosecution, the United States should have no need for the computer for evidentiary purposes. (Id. ¶ 4.)

As a general proposition, until sentencing is concluded, the United States is entitled to hold property seized as part of a criminal prosecution. The mere fact that Defendant has pleaded guilty does not eviscerate the government's need for it. The government may wish to use the evidence in furtherance of its arguments at sentencing. It may also wish to protect its prosecutorial interests should the plea agreement be withdrawn or for some reason nullified before the sentencing.

However, in the present case the government's need does not extend to all of the seized property. The United States does not offer any basis, nor can this court discern one, for why it would need the monitor, printer, keyboard, scanner, speakers, power

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<sup>1</sup> It is not clear whether she claims to be the sole owner of the computer or a joint owner of the computer with her husband, but she has asserted an ownership interest.

cords, and data cords that it seized. (See Dkt. No. 28.) The United States does not dispute her ownership interest. (See id.) They offer no evidentiary value to the government. Therefore, they shall be returned to Defendant's wife. As for the hard drive unit (otherwise commonly referred to as a CPU), it may offer evidentiary value to the government and so need not be returned at this time.

As to the data contents of the hard drive unit, the United States represents that it has already returned copies of the software and computer files that Defendant's wife requested. (Id. at 3.) Should Defendant's wife still have a need for these software and computer files or for any other software and computer files on the hard drive unit, the government shall make the hard drive unit accessible to her so that its contents may be copied.

At the conclusion of sentencing, the United States has represented that it will return the computer to Defendant's wife. (Dkt. No. 28 at 3.) Should it not do so, Defendant's wife may bring an administrative forfeiture hearing seeking return of the hard drive unit. (See id.)

### III. CONCLUSION

Defendant's motion for the return of the computer (Dkt. No. 18) is **denied** without prejudice.

Defendant's wife's motion for the return of the computer (Dkt. No. 27) is **granted in part**.

SO ORDERED.

Dated at New Haven, Connecticut, November \_\_, 2000.

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Peter C. Dorsey  
Senior United States District Court Judge