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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARTIN J. WALSH,
Plaintiff,

vs.

CHE GARIBALDI, et al.,
Defendants.

Sacramento, California
No. 2:22-cv-00756-WBS-KJN
Thursday, July 7, 2022
10:01 a.m.

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TRANSCRIPT OF PROCEEDINGS
PLAINTIFF'S MOTION FOR TRO
BEFORE THE HONORABLE WILLIAM B. SHUBB, DISTRICT JUDGE
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*Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription*

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1 SACRAMENTO, CALIFORNIA, Thursday, July 7, 2022, 10:01 a.m.

2 --o0o--

3 (In open court.)

4 THE CLERK: Case 22-civil-756; Martin Walsh versus
5 Che Garibaldi, et al.

6 Counsel, please state your appearances.

7 MS. STA.ANA: I'm Jennifer Sta.Ana on behalf of the
8 United States Secretary of Labor. Also with me is an
9 investigator of the Wage an Hour Division at the Department of
10 Labor's client agency, Raquel Alfaro.

11 MR. PARKER: And good morning. I'm Alden Parker. I
12 represent the defendants in this matter. I have an associate
13 of mine here today, Marco Rodriguez. I also have two law
14 clerks from our office here today: Daniela Contreras and
15 Melina Kazemzadeh. Pretty close? Okay, sorry about that.

16 THE COURT: All right. Well, this morning we're here
17 for consideration of the plaintiff's motion for a temporary
18 restraining order. It asks also for an order to show cause why
19 a preliminary injunction should not issue.

20 So let's talk about the temporary restraining order now.
21 Ms. Sta.Ana, tell me more about this case.

22 MS. STA.ANA: So, your Honor, simply put, this case
23 is a situation which we asked for a temporary restraining order
24 because we have heard from employees that defendants are
25 threatening employees with retaliation, specifically saying

1 that they will fire employees if they speak to U.S. Department
2 of Labor as well as misinforming the Department of Labor
3 stating that all the information that employees give to the
4 department will be sent to immigration authorities so that they
5 may be deported.

6 This situation is urgent, it also impedes on the Department
7 of Labor from progressing in this case as well as the judicial
8 process in trying to obstruct potential witnesses from coming
9 forward and speaking to us to tell us about what is happening
10 at defendant's workplace.

11 THE COURT: When did you start to learn this
12 information?

13 MS. STA.ANA: The most immediate threats of
14 termination and deportation occurred just a few weeks ago in
15 mid-June.

16 THE COURT: So why did you wait until the afternoon
17 of the Friday before the three-day weekend to file this motion?

18 MS. STA.ANA: We did talk to employees to try to
19 figure out whether or not what was being said was affected --
20 was affecting multiple employees, and so we were doing our due
21 diligence before filing.

22 THE COURT: Have you identified these employees to
23 the defendant?

24 MS. STA.ANA: We have not because of the government's
25 informant's privilege.

1 THE COURT: How do you expect the defendant to
2 respond to these allegations? They have actually literally
3 hearsay on hearsay?

4 MS. STA.ANA: And in terms of the briefing and some
5 of the case law that we have in Federal District Court,
6 including the Ninth Circuit, the government informant's
7 privilege is something that is respected especially when you're
8 so early during litigation. The government's informant's
9 privilege has been uplifted when you're closer to trial.
10 Defendant's *Nuzon*, a case that we litigated at the Department
11 of Labor. And that trial -- that trial was upcoming in two
12 weeks where witnesses were already being prepared for trial.
13 And here we're not even at the discovery phase.

14 Even at the discovery phase District Courts have said that
15 informant's privilege cannot be -- cannot be threatened in
16 order to protect the FLSA's enforcement.

17 THE COURT: What about at the preliminary injunction
18 stage?

19 MS. STA.ANA: At the preliminary injunction stage,
20 your Honor, we believe that it is far too early given the fact
21 that employees are so scared right now to testify and even come
22 forth, and that's why we have a declaration from our
23 investigator.

24 THE COURT: The informant's privilege, as I
25 understand it, arises out of the *Roviaro* case, which is a

1 criminal case. Apparently, the idea has been taken forward
2 into civil litigation, but it makes it very difficult for any
3 defendant to answer allegations when you say, "Somebody is
4 saying something, I'm not going to tell you who they are and
5 I'm not going to give you any information to help you identify
6 who they are."

7 Now, I understand that hearsay on hearsay is admissible if
8 it's reliable, but how is that kind of information reliable?

9 MS. STA.ANA: So we do have a federal government
10 investigator who has trained to work up these cases. And we do
11 have our investigator here today who is willing to testify to
12 try to explain, if you so choose, as to what she has heard from
13 workers and why the information that she has received is
14 something that is very worrisome to the department.

15 THE COURT: Mr. Parker, what do you have to say about
16 this?

17 MR. PARKER: I'll try to take that in reverse order,
18 your Honor. I think it would be inappropriate for the
19 investigator to testify at this point. They had their
20 opportunity to go ahead and present whatever evidence she saw
21 fit to present in this application already, and I think they're
22 married to what their application goes ahead and holds.

23 THE COURT: But in that regard, wouldn't it be to
24 your advantage to be able to cross-examine that investigator?
25 You haven't been able to do that yet, apparently.

1 MR. PARKER: It would be, your Honor. Especially if
2 I'm allowed to inquire about the identity of the individuals,
3 but I don't believe I need that.

4 It is the plaintiff's burden here, and it's a high burden.
5 They have to demonstrate by a clear showing that they can meet
6 the four factors for a TRO.

7 THE COURT: Let me ask you about that. You're
8 talking about the *Winter* factors.

9 MR. PARKER: Correct.

10 THE COURT: They've cited some case law that I had
11 not seen previously to the effect that where the plaintiff asks
12 for an injunction in a case where a statute allows injunctive
13 relief that there's only one *Winter* factor, probability of
14 success on the merits, and they don't have to prove irreparable
15 harm.

16 MR. PARKER: I saw that, your Honor, in the brief
17 amount of time that we had to do this. We were contacted, by
18 the way, back in the middle of May with a threatening letter
19 about coming to the Court and seeking a temporary restraining
20 order.

21 The government then waited more than six weeks to go ahead
22 and submit the application when most of the evidence that they
23 submitted by unnamed hearsay declarants through the declaration
24 of the investigator, they've gone ahead and submitted that
25 information. Most of it happened back in May, decreasing the

1 argument that there's some emergency situation here for a
2 temporary restraining order.

3 But when we look at the likelihood of success, they fail to
4 meet their burden by a clear showing which is absolutely their
5 requirement. In fact, based on the evidence --

6 THE COURT: No. But you said they took you by
7 surprise. They took me by surprise too because I had not
8 understood this concept, but I took a look at some of the
9 authority that they cite and other authorities which seems to
10 say that where injunctive relief is allowed by statute, even in
11 the context of a preliminary injunction, there is a presumption
12 of irreparable harm. And the plaintiff doesn't have the burden
13 of showing irreparable harm. What does that do to the *Winters*
14 test?

15 MR. PARKER: You know, I think that it goes ahead and
16 shrinks overall. My comment would be it shrinks the *Winters*
17 test to the likelihood of success, which they still have not
18 met in this case.

19 THE COURT: All right. Is this good law? Are you
20 familiar with it?

21 MR. PARKER: I am somewhat familiar with it. Having
22 had a prescheduled family vacation, there was not enough time
23 to devote to this. Our opposition was submitted at 10:30 last
24 night to the Court.

25 In that, what is notable I think for the Court on this one

1 factor that the department says is still relevant for this
2 injunctive relief that they're requesting is the likelihood of
3 success. I believe on the merits it is actually the defendants
4 that have shown a likelihood of success on retaliation here.

5 We have direct evidence from people that are named
6 declarants that not only call into question the unnamed
7 declarant's hearsay statement, the statement that retaliations
8 were made.

9 We also have evidence -- direct evidence from witnesses
10 that say the investigator herself has incorrectly identified an
11 individual that doesn't exist. One of the defendants, his last
12 name is not Rodriguez, it is Hernandez. And this goes ahead
13 and calls into question the reliability of the investigator's
14 own notes, information, recollection of events, aside from the
15 fact that they're not actually from the declarants.

16 We have two individuals that were accused of making
17 statements that both directly under oath deny that that
18 occurred. And the government, based on its thin evidence,
19 cannot meet their burden even if it is supposed to be only one
20 factor. It's actually the defendants that have demonstrated a
21 likelihood on retaliation that they would succeed in this
22 matter.

23 THE COURT: Ms. Sta.Ana, you've given the Court, I
24 presume, declarations from the investigator who interviewed the
25 witnesses, correct?

1 MS. STA.ANA: Correct.

2 THE COURT: Now why couldn't you at least have given
3 the Court expurgated declarations from the individuals
4 themselves that would at least eliminate one of the steps of
5 the hearsay objection?

6 MS. STA.ANA: The workers are extremely fearful at
7 this moment.

8 THE COURT: You can say that in any case. You know,
9 I've had cases where immigrant employees will go to a
10 government agency and say anything they think will allow them
11 to stay in the United States.

12 We don't know whether these people are subject to
13 deportation, we don't know whether they're trying to cooperate
14 with the government in order to avoid deportation. We don't
15 know a thing about them.

16 So for you to stand there and tell me they're extremely
17 fearful, I don't have any doubt on your good faith, but there's
18 no credibility in that statement. You don't know how fearful
19 somebody else is, and your investigator doesn't know how
20 fearful they are.

21 MS. STA.ANA: Our investigator is here today.

22 THE COURT: Fine.

23 MS. STA.ANA: And you're able to ask questions. But
24 from what you see in the declaration, some of the workers were
25 crying to the point where they felt like they couldn't speak up

1 anymore.

2 THE COURT: Maybe they were crying because they
3 thought they were going to be deported. I don't know why they
4 were crying.

5 I had a gentleman in here yesterday that cried because he
6 thought he was going to go to prison and he did, but we don't
7 know why somebody is crying.

8 MR. PARKER: Your Honor --

9 THE COURT: So your answer to my question as to why
10 you couldn't provide expurgated declarations of individuals
11 themselves was that they were too scared to give a declaration.

12 MS. STA.ANA: They were too scared, yes.

13 THE COURT: Even though it might not disclose their
14 identity?

15 MS. STA.ANA: In terms of disclosing their identity.
16 I mean, right now at issue is the fact that they feel like
17 they're going to be terminated or deported if they speak up.

18 THE COURT: Anybody can say that. I'm just giving
19 you an opportunity here, Ms. Sta.Ana, to give me more credible
20 evidence than what's already presented. Because, as I told
21 you, I am fully aware of the fact that the Court can consider
22 hearsay on the motion for a temporary restraining order. And
23 I'm fully aware that the hearsay, if it's to be considered, has
24 to be found to be reliable by the Court.

25 And I'm giving you fair warning that I am not inclined to

1 find this kind of testimony to be reliable for the reasons that
2 you and I are discussing right now, and I'm giving you the
3 opportunity to think about presenting it in a more reliable
4 way.

5 So with that in mind, I want to talk about the informant's
6 privilege. What do you know about it, Mr. Parker?

7 MR. PARKER: Your Honor, in the context of employment
8 cases, the informant's privilege seems to attach more readily
9 to cases where wage and hour violations are being alleged, and
10 the proof is going to be based on documentary evidence, that
11 it's been brought by an informant to the government, but most
12 of the time that is shielded in instances where you can
13 demonstrate based on documents alone the potential liability.

14 In instances like this where there's retaliation that's
15 dependent on what was said, that's dependent on how it was
16 said, that depends on whether someone was justifiably feared or
17 whether an adverse employment action occurred, all of those
18 things require actual testimony from a live person to
19 substantiate the factors necessary to demonstrate the claim.

20 And in those instances Courts have gone ahead and disclosed
21 the individuals. You can see the plaintiff's overreach in
22 their own restraining order application where they ask that we,
23 the representatives of my clients, cannot go ahead and speak
24 with any workers about the substance of the litigation. That
25 ties my hands to go ahead and not even be able to interview

1 people that I don't even know if they were an informant or not
2 to go ahead and discover whether retaliatory statements or
3 potential retaliatory statements are being made.

4 But counsel's own argument belies why this declaration is
5 unreliable. She said there's been a threat of deportation.
6 Their own declaration does not say that. Their declaration
7 goes ahead and states that there was a statement made that the
8 Department of Labor may be looking into their employment
9 status. There was no call to any immigration authorities like
10 it was in the case that they cited in *Arias*.

11 This is a completely unreliable declaration that actually
12 misstates who the declarant was. You can't rely on -- even if
13 hearsay is admissible and considered -- where you have to weigh
14 that hearsay. It is completely unreliable when the declarant
15 doesn't even know who she's speaking with, who she is speaking
16 about, and who she's attributing the hearsay statement to.

17 THE COURT: Now, Ms. Sta.Ana, I would have to
18 research the informant's privilege in a little bit more detail.
19 I don't know if Mr. Parker is correct in his assessment of when
20 it typically applies and when it does not.

21 But if your concern is that these informants would be
22 subject to retaliation, one of the things you're asking the
23 Court to do in your temporary restraining order is to enjoin
24 retaliation. So they should not have to be concerned about
25 retaliation, they've got the protection of the Secretary of

1 Labor and they've got the protection of the Court.

2 If they're concerned about deportation, the defendant can't
3 deport them, only the government can deport them. You are the
4 government here. You're the Department of Labor. You're not
5 the Department of Homeland Security, but there's nothing the
6 defendant here can do to deport them.

7 So I don't see why there's this concern that you seem to
8 have for their safety under those circumstances. Why can't you
9 ask the Court to enjoin retaliation, and if that injunction is
10 issued, then you can disclose the identity of those people to
11 the defendants so they can get a little due process.

12 MS. STA.ANA: I will refer the Court to *Nuzon*,
13 actually, in this situation.

14 THE COURT: To what?

15 MS. STA.ANA: *Acosta v. Nuzon* in the Central District
16 where in a preliminary injunction and temporary restraining
17 order situation, in fact, the declaration of investigator was
18 indeed sufficient enough to show that a temporary restraining
19 order should be imposed as well as unforgettable coding in the
20 District of Nevada.

21 THE COURT: Well, maybe it was in that case to that
22 judge, but this Court is no more bound by the decisions of that
23 judge than that judge is bound by my decisions.

24 I'm suggesting to you what -- in the circumstances of this
25 case -- might be credible evidence for the Court to consider.

1 Now, answer my question. I don't care what the other judge
2 did. Answer my question in this case. What are you concerned
3 about if the Court were to enjoin retaliation, what would you
4 be concerned about giving the identity of those complaining
5 witnesses to the defendant so they can defend themselves in
6 this case?

7 MS. STA.ANA: I think there's just no case law that
8 we can turn to where it's so early on in litigation where a
9 federal government has exposed the names of informants who are
10 trusting of the federal government to protect them in the
11 future and in the long run.

12 And when we have a situation where it's right now unknown
13 how defendants are going to react, we are just not even at the
14 stage where there's been a response from defendants in this
15 litigation. And we've seen at multiple District Courts, even
16 at the discovery phase of litigation, where it's too early to
17 expose the name of informants.

18 THE COURT: Well, I'll tell you what I'm inclined to
19 do, and then you can take it from there. If that's your
20 position at this stage, I'm not going to be inclined to be so
21 tough as to emphatically arbitrarily say, "You turn the
22 identity of those people over to the defendant."

23 But I think I can tell you that if you don't give them the
24 identity of those people so they can talk to them or take their
25 depositions, I'm not going to give much credibility to the

1 hearsay-on-hearsay statements that you've presented from those
2 unknown people. So you can take it from there.

3 MS. STA.ANA: Would it be okay with the Court if we
4 do some briefing when it comes to the informant's privilege
5 since we did not?

6 THE COURT: It's always appropriate to give me
7 briefing on anything that you think is relevant. And I have no
8 doubt that you're going to be able to show me cases in other
9 districts where judges have declined to require the disclosure
10 of the names of complaining witnesses at an early stage. I
11 have no doubt that you're probably going to find me some cases
12 from the Ninth Circuit that have affirmed that.

13 But I think also I could point to cases where district
14 judges have been given the discretion not to believe hearsay
15 testimony when they didn't find it was reliable.

16 So right now I am not going to grant a temporary
17 restraining order because you haven't shown me anything that
18 you think is going to happen between now and the time we could
19 have a hearing on a preliminary injunction that would upset the
20 status quo to require a court order.

21 MS. STA.ANA: Right now, your Honor, the employees
22 have not spoken to the Department of Labor as often because
23 they're so afraid that they will be retaliated against, and
24 that impedes our ability to move forward with this case.

25 THE COURT: I will tell you right now, I do not

1 believe that. I will tell you that right now. Now, it may be
2 true, but the evidence you've given me to prove that is not
3 credible. The evidence you've given me to prove that is you
4 standing right here telling me repeatedly that these people are
5 afraid. You're not telling me who they are, you're not telling
6 me -- call your witness. I know you didn't want him called,
7 but let's hear what he has to say. You can cross-examine him
8 or her.

9 MR. PARKER: Thank you, your Honor.

10 THE COURT: Call your witness. See if he can
11 persuade me that these people are so afraid that they need a
12 temporary restraining order between now and the time that you
13 can have a full hearing on the motion for a preliminary
14 injunction.

15 And I'm telling you right now if you want that hearing
16 between now and -- what's the trial date that I have, Karen?

17 THE CLERK: One moment, your Honor. July 26th.

18 THE COURT: Between now and July 26th I can give it
19 to you, and that trial is going to last two weeks. And I've
20 promised them every working hour of every day for that trial
21 until it's over, and so that would have to be August the 15th
22 or 16th. So I can't hear the preliminary injunction between
23 July the 26th and August the 12th, but I can hear it before
24 then and I can hear it after then.

25 So I want to know why it is that you need a temporary

1 restraining order. You know, when you didn't -- you didn't
2 even ask for it to be heard. When was it they said they wanted
3 to be heard, Karen?

4 THE CLERK: It was noticed for July 11th, your Honor.

5 THE COURT: So you noticed it -- you noticed it for
6 next week. So, obviously, you didn't think anything was going
7 to happen between now and next week.

8 MS. STA.ANA: I did on the papers request the
9 earliest possible, but understood that defendant did request
10 the week of July 11th. And being as mindful and respectful of
11 that request I put it for the ECF system, but in the briefing
12 it's either that or the very earliest the Court can hear.

13 THE COURT: All right. So you really haven't
14 persuaded me why you waited until the Friday before the holiday
15 weekend to file it, but I'll accept your representation that
16 you think that was timely. That's incidentally a pretty cheap
17 trick to file a motion for a TRO at 3:00 o'clock in the
18 afternoon on a Friday before a three-day weekend.

19 So call your witness.

20 MS. STA.ANA: I call Raquel Alfaro up to the stand.

21 THE CLERK: Please step forward. All the way up to
22 the witness stand and remain standing and face me.

23 (The Witness, RAQUEL ALFARO, is sworn.)

24 THE WITNESS: I do.

25 THE CLERK: Thank you. You may be seated. Please

1 state your full name, spell your last name for the record.

2 THE WITNESS: Raquel Alfaro. A-L-F, as in Frank,
3 A-R-O.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 Q. BY MS. STA.ANA: Ms. Alfaro, where do you currently work?

7 A. For the Department of Labor, Sacramento District Office.

8 Q. And what position do you hold at the Department of Labor?

9 A. I'm a wage and hour investigator.

10 Q. As a wage and hour investigator, what do you do?

11 A. Conduct investigations to enforce compliance with various
12 labor laws.

13 Q. As an investigator, what is your role in the matter
14 regarding Che Garibaldi?

15 A. I am the lead investigator.

16 Q. As a lead investigator in the matter, what is your role
17 with regards to speaking with employees?

18 A. My role in speaking with employees is to conduct
19 investigation -- sorry, interviews.

20 Q. So during these interviews, what information did you
21 receive from employees at the beginning of your investigation?

22 A. From the beginning of the investigation, employees told me
23 that they were told to --

24 MR. PARKER: Your Honor, if I could impose an
25 objection. It's hearsay.

1 THE COURT: Yes, you may. It's not only hearsay, but
2 when you're going to say that somebody told you something, you
3 have to say when they told it to you, where you were when they
4 told it to you, who was present, and what they said.

5 MS. STA.ANA: So we were -- so, again, I'm going to
6 call the informant's privilege and would request a brief
7 writing.

8 THE COURT: Look, how much litigation experience do
9 you have?

10 MS. STA.ANA: I have about seven.

11 THE COURT: Seven trials?

12 MS. STA.ANA: I have had one trial.

13 THE COURT: Okay. Even with the most liberal
14 requirements for admissibility, you can't have a witness say
15 "people told me this" and not lay the foundation as to when,
16 who was present, or anything like that. If you want me to
17 believe that, you might as well have me believe you've got some
18 nice property waterfront in Arizona to sell me. Because that
19 kind of testimony is never going to be credible.

20 MS. STA.ANA: I was trying to go to party admission
21 and state of mind, but I can build up more foundation if you
22 prefer.

23 THE COURT: All right. I'm not even going to sustain
24 the objection. If she wants to say that -- I'm giving you the
25 benefit of my thinking. I'm just telling you I'm not going to

1 find it credible.

2 MS. STA.ANA: Well, we can start from the very
3 beginning of the investigation if you prefer, your Honor.

4 THE COURT: You do what you want to do.

5 Q. BY MS. STA.ANA: When did you start the investigation?

6 A. The investigation was initiated in May of 2021, I believe.

7 Q. And in terms of the start of the investigation in May 2021,
8 what was the first thing that you did?

9 A. The first thing I did was contact Mr. Eduardo Hernandez,
10 the employer.

11 Q. And in that conversation, what was exchanged between you
12 and Mr. Hernandez?

13 MR. PARKER: Your Honor, that's vague and overbroad
14 as to the subject matter of the investigation. They seem to be
15 looking to establish facts relating to the wage and hour
16 portion of their claims and not limited to retaliation.

17 THE COURT: Well, we'll hear what they have to say.
18 Overruled.

19 THE WITNESS: Can you repeat the question? I'm
20 sorry.

21 Q. BY MS. STA.ANA: And what was exchanged between you and
22 Mr. Hernandez?

23 A. I informed him that I was initiating the investigation,
24 that I would be sending him an appointment letter with a
25 records request. And he agreed to send me the records

1 requested to initiate the investigation. I also informed him
2 of the investigative process.

3 Q. And after that conversation with Mr. Hernandez, what was
4 the next thing that you did?

5 A. I believe the next thing I did after that was -- well, I --
6 until I received the records from him, that's when I initiated
7 reviewing the records provided and contacted employees via
8 telephone. Because of COVID, we conducted the investigation
9 mostly over the phone, and he provided me with a list of
10 employees and their phone numbers.

11 Q. And how many employees did you speak with?

12 A. Roughly, I would say more than ten.

13 Q. In these conversations with employees, what was told to you
14 in terms of your investigation?

15 THE COURT: Well, again, you can ask that question,
16 but unless you say some person actually said that -- okay, go
17 ahead. I've given you enough of my thinking to know what's
18 going to work and what isn't going to work for you. If this is
19 the way you want to ask the question, go ahead and ask the
20 question.

21 This is -- these are a number of conversations, probably
22 more than ten, that she had over the phone. No verification as
23 to how she determined that the person that she was talking to
24 was, in fact, the person she thought she was talking to. No
25 determination as to how many times this was said, just a

1 general gist of what was said to her over the course of more
2 than ten telephone conversations. That's your question. I'll
3 hear the answer.

4 Q. BY MS. STA.ANA: We can start with how did you determine
5 that these were employees?

6 A. Eduardo Hernandez sent me the list of the employees with
7 their telephone and contact information.

8 Q. And did you use those telephone numbers to contact the
9 people on that list?

10 A. Correct, I did.

11 Q. And you spoke to ten individuals?

12 A. Roughly, around that number. Could be more.

13 Q. So in your recollection, and you can go from the very first
14 employee that you talked to, what was communicated to you?

15 MR. PARKER: Objection, your Honor. Lacks foundation
16 and hearsay.

17 THE COURT: Okay. So this is the first employee.
18 She's going to talk now about what the first employee said,
19 right?

20 MS. STA.ANA: Correct.

21 THE COURT: Okay.

22 THE WITNESS: I was told by the employee that Eduardo
23 and Alejandro told employees to tell the Department of Labor
24 that they worked only 40 hours a week, that they did not work
25 overtime, that they took breaks, that they did not have to pay

1 for their uniforms. And also they told me that -- the
2 employees told me that Eduardo had said that the employee --
3 the employees owed him for giving them work and that -- that
4 it's their turn -- the employees' turn now to return the favor
5 in helping them with this investigation by lying to the
6 Department of Labor.

7 MR. PARKER: Your Honor, I'll object and move to
8 strike everything after the first sentence. The witness
9 strayed from the question about the first employee she talked
10 to and started to talk about the employees en masse.

11 THE COURT: I don't know if that's what she was
12 saying. I interpret her to be saying that employee number one
13 was purporting to tell her what the defendants had said to
14 other employees. That's the way I understood what she said.

15 Now, no representation as to how employee number one would
16 have known what the defendants told other employees, but that's
17 what they want to offer.

18 Q. BY MS. STA.ANA: In terms of employee number two, if you
19 can recall, what was communicated to you?

20 A. I honestly can't recall who number two was, but I do know
21 that it was -- I can't recall, I don't want to say because I
22 don't remember who I spoke with after number one.

23 Q. With what you provided what employee number one shared with
24 you, did you hear that information again from any other
25 employee that you interviewed?

1 A. I did.

2 Q. And how many would you say?

3 A. I would say more than five employees. For sure more than
4 five, possibly more.

5 Q. Is there anything else that you can recollect that employee
6 number one told you?

7 A. Employee number one also informed me at a later time that
8 the employer, Eduardo Hernandez, brought in a priest who was a
9 friend of Eduardo Hernandez to hold confessions at the
10 establishment in the back of the restaurant. And multiple
11 employees told me that they took part in this confession, and
12 they found it odd because the priest was asking questions
13 regarding their loyalty to the employer and to the business.

14 Q. And when can you recall that information being shared to
15 you?

16 A. That is tough. I know it was before May 2022, but I don't
17 remember -- I don't recall the exact month that they informed
18 me of this.

19 Q. And as your role as an investigator, the information that
20 employee one shared with you that was shared with you by
21 multiple employees as well as what you have shared about this
22 priest. As your role as an investigator, what were your
23 thoughts?

24 A. I thought that it was a form of -- of -- what's the word --
25 intimidation that the employer was using to intimidate the

1 employees to keep them from talking to the Department of Labor.

2 Q. After the Secretary filed his complaint in May 2022, did
3 you hear from workers again?

4 A. I did.

5 Q. And what did they tell you?

6 MR. PARKER: Your Honor, they're asking about all the
7 employees that she contacted.

8 THE COURT: That's the way she wants to do it. I'm
9 through trying to educate her. That's the way she wants to ask
10 the question. I'll hear whatever they want to present.

11 Go ahead.

12 THE WITNESS: Can you repeat the question, please.

13 Q. BY MS. STA.ANA: After the Secretary filed their complaint
14 in May 2022, did you hear from the employees?

15 A. I did.

16 Q. Okay. So we can start with the first employee that
17 contacted you at that time.

18 A. Okay.

19 Q. What do you remember from that conversation?

20 A. The first employee that contacted me let me know that
21 Alejandro was very upset because of the complaint and because
22 of the news coverage that the complaint had, and told the
23 employee and others that if -- to not speak to the news, to not
24 speak to the Department of Labor. That because of this
25 complaint now their immigration status was going to be

1 compromised, and that they need to learn to be quiet.

2 Also said that this is -- this is -- this should not be
3 used as a way to get easy money, and that the employee should
4 be grateful for Eduardo because this is the -- the money that
5 they're making at the restaurant is what they eat off of. It's
6 kind of lost in translation from Spanish to English, but
7 basically they need their job to survive.

8 Q. Did the workers tell you where those statements -- who made
9 those statements?

10 A. Alejandro.

11 Q. Was there another employee that reached out to you after
12 the complaint was filed?

13 A. Yes.

14 Q. Can you recall what was shared with you with that employee?

15 A. That employee informed me that Alejandro had told them not
16 to speak to anybody from the news as well and to not speak to
17 the Department of Labor. That -- to not speak to the news, to
18 not speak to the Department of Labor. That if they did that
19 they would be terminated.

20 Q. And did another worker approach you after that employee?

21 A. I did speak with another employee after that.

22 Q. And what was shared?

23 A. That employee also informed me that Alejandro was very
24 upset, that everybody at the restaurant was nervous and scared
25 because Alejandro was very upset. And that Alejandro

1 repeatedly told everybody not to speak to anybody from the news
2 or from the Department of Labor, and that they would be
3 terminated if they spoke with the Department of Labor.

4 Q. After that third employee, did you speak to another?

5 A. Yes.

6 Q. And what did that fourth employee tell you?

7 A. That employee also told me the same thing, that Alejandro
8 was upset and to not -- that Alejandro said not to speak to
9 anybody from the Department of Labor or to the news.

10 Q. After that fourth employee, did you speak to another
11 employee?

12 A. I'm not -- I'm not sure.

13 Q. Am I correct that these were conversations that happened
14 after the complaint was filed?

15 A. Correct.

16 Q. After -- after that time period, did employees contact you
17 again?

18 A. Yes.

19 Q. And when was that?

20 A. It was last month, in June.

21 Q. Do you know when approximately in June?

22 A. It was either mid-June or early June.

23 Q. And what -- how many workers did you talk to in June?

24 A. One.

25 Q. And what did that worker tell you?

1 A. That employee told me that Alejandro told employees that
2 the investigation with the Department of Labor was over. That
3 Eduardo's attorneys were taking over the investigation, and
4 that any information the Department of Labor obtained was going
5 to be forwarded to immigration.

6 And also said -- Alejandro said -- I'm trying to think of
7 exactly how he said it. That why would the Department of Labor
8 help you if you guys are illegals.

9 Q. While you were speaking to the employee, what in your
10 opinion was the state of mind of that worker?

11 A. That employee was very scared. I could hear it in the
12 employee's voice. I asked the employee if they would testify
13 to this information, but that employee was too scared to do
14 that. That employee was at the point of crying, and that's not
15 the only employee that has cried to me about this matter. But
16 that employee said that this situation is getting worse and
17 that everybody is very scared and afraid at the restaurant.

18 MS. STA.ANA: I have no further questions, your
19 Honor.

20 THE COURT: Mr. Parker, you may cross-examine.

21 MR. PARKER: Thank you, your Honor.

22 CROSS-EXAMINATION

23 Q. BY MR. PARKER: Ms. Alfaro, how long did you spend
24 preparing for today's hearing?

25 A. For today? Not long.

1 Q. Okay. You had access to your investigation file to
2 prepare?

3 A. I did not have a chance to look at my investigation file.

4 Q. Okay. You did submit a declaration in support of the
5 application, right?

6 A. Correct.

7 Q. And how long did you spend going ahead and reviewing that
8 document and making sure it's accurate before you signed it
9 under penalty of perjury?

10 A. I reviewed it -- I don't know, like -- I reviewed it for
11 accuracy and -- I don't know. Once I knew that everything that
12 was on there was correct, I submitted it.

13 Q. Did you spend an hour reviewing it for accuracy?

14 A. Possibly.

15 Q. Okay. More? More than an hour?

16 A. I would say -- I mean, altogether collectively, probably
17 two hours.

18 Q. Okay. How about providing the information for the
19 declaration? Did you spend additional time providing the
20 information that would end up in this declaration?

21 A. The information I was provided was collected over -- I had
22 it all in my notes.

23 Q. Okay. And you had access to these notes when you prepared
24 and then reviewed this declaration for accuracy, right?

25 A. Correct.

1 Q. Okay. So can you tell me why you didn't put in that
2 declaration that there was a statement "immigration status
3 would be compromised"?

4 A. Can you repeat that?

5 Q. Yeah. In signing this declaration you meant to provide the
6 Court with useful information for the Court to assess this
7 application for a temporary restraining order, right?

8 A. Yes.

9 Q. All the information that you felt would weigh on the
10 Court's decision, correct?

11 A. Correct.

12 Q. You signed it under penalty of perjury and did not contain
13 a statement the immigration status would be compromised, did
14 it?

15 A. I'd have to look at the statement.

16 Q. Now you're testifying under oath, without your notes in
17 front of you, that that statement was made, right?

18 A. I'd have to look at the statement to see what's in there.

19 Q. I heard your statement correctly, right? You are now
20 alleging that someone told you that an employee of my client
21 made a statement, "Your immigration status is going to be
22 compromised," right?

23 A. Maybe I didn't say it correctly or in the words exactly
24 like the employee told me, but that was the basis of what was
25 said.

1 Q. So some of the testimony you've offered is not what the
2 employees actually told you?

3 A. No, everything is what they told me. I'm saying I may have
4 phrased it differently from exactly how the employee told me.

5 Q. You've phrased it differently from what the employee
6 actually said?

7 A. Also --

8 Q. Hold on, ma'am.

9 A. Uh-huh.

10 Q. My question is: You have gone ahead and taken the words of
11 the employee and then changed them in your testimony, correct?

12 A. No. So when I spoke with employees also, it was in
13 Spanish. So some words do not translate identically in
14 English, so...

15 Q. So was the statement made by someone that they were told
16 your immigration status would be compromised?

17 A. Yes. They said -- they mentioned immigration. The
18 employers mentioned immigration to the employees on various
19 occasions in various phrases and various different manners.

20 Q. Right. But you put those phrases in your declaration,
21 right?

22 A. Uh-huh.

23 Q. The ones that your notes reflected were actually made,
24 correct?

25 A. Correct.

1 Q. And that statement was actually the Department is
2 collecting this information and sending it to immigration,
3 right?

4 A. Correct.

5 Q. And why would the Department care about you because you're
6 illegal, right?

7 A. Correct.

8 Q. They did not say, "Your immigration status is going to be
9 compromised if you support the Department," correct?

10 A. Like I said, I'm not -- the employees told me multiple
11 times, multiple phrases, multiple conversations they've had
12 with the employers regarding their immigration status, their
13 immigration status being compromised, and -- yeah.

14 Q. Ma'am, you speak Spanish, right?

15 A. Correct.

16 Q. You were speaking directly to them in Spanish?

17 A. Correct.

18 Q. No employee said their immigration status would be
19 compromised, did they?

20 A. Not in those --

21 Q. Then why did you testify and tell your own attorney that
22 they did?

23 A. In English, you mean? Because they said it to me in
24 Spanish.

25 Q. In whatever language they communicated with you in.

1 A. They did say that to me in Spanish.

2 Q. You just told me they didn't say it. So first you tell
3 your attorney they did say it, then you testify under oath they
4 didn't say it, and now you're saying again they did? And you
5 expect the Court to believe you; is that correct?

6 THE COURT: Well, that's argumentative.

7 Q. BY MR. PARKER: Why do you keep changing your statement
8 regarding that?

9 A. I'm not changing my statement.

10 Q. Which number employee made that statement to you?

11 A. I'd have to look.

12 Q. What date was the statement made on?

13 A. I would have to look as well.

14 Q. Why didn't you bring your file with you?

15 A. I don't have an answer for that.

16 Q. Why didn't you include that specific information in your
17 declaration?

18 THE COURT: Ms. Sta.Ana, is her file here in the
19 courtroom?

20 MS. STA.ANA: It is not, your Honor.

21 THE COURT: Well, you offered to call her and you
22 knew what the issue was at this hearing. I would have thought
23 you would have had her bring her file -- or you would have
24 brought your copy of her file so it could be used in the course
25 of this hearing.

1 MS. STA.ANA: The file would require extensive
2 redactions because of government privileges.

3 Q. BY MR. PARKER: Ms. Alfaro, do you remember the gender of
4 the statement -- of the individual that said the immigration
5 status was compromised?

6 MS. STA.ANA: Objection. Relevance.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 Q. BY MR. PARKER: Okay. Were you on the phone with the
10 person?

11 A. Yes.

12 Q. Okay. Not by video?

13 A. No.

14 Q. So you don't know what the person looks like?

15 A. I do know what the person looks like.

16 Q. Okay. Could you describe her for me, please.

17 A. Hispanic female.

18 Q. Okay. Height?

19 A. Average height.

20 Q. Okay. Color of the hair?

21 A. Brown.

22 Q. How long is her hair?

23 A. I don't know. It was up.

24 Q. Did she wear glasses?

25 A. No.

1 MS. STA.ANA: Your Honor, again, objection.

2 Relevance.

3 THE COURT: Well, it might be a way that he's trying
4 to get through the privilege. We haven't litigated that
5 privilege yet. I'm going to reserve that for a later time, so
6 I'm going to stop you right there. She says she remembers the
7 person is a female. You didn't ask her how she knows what the
8 person looked like, but she talked to her on the phone. I'm
9 assuming she's going to say she saw the person at another date.

10 Q. BY MR. PARKER: You've interviewed this person in person?

11 A. No. I visited the establishment prior to interviewing the
12 person.

13 Q. And you observed her?

14 A. Correct.

15 Q. How did you know she was the person that you later spoke
16 to?

17 A. Well, she identified herself to me.

18 Q. By name?

19 A. When I spoke with her.

20 Q. The names on the list that the employer voluntarily
21 provided you?

22 A. Correct.

23 Q. The employer voluntarily produced documents you requested
24 and an entire list of employee names and addresses and contact
25 information, correct?

1 A. And inaccurate time cards as well.

2 Q. And you would say that based on that, the employer
3 cooperated with you, correct?

4 A. Not necessarily, because the employer provided me with
5 inaccurate time cards and did not provide me with the requested
6 time cards for the timekeeping system that he told me that he
7 did not use which we were able to subpoena records for and
8 indicated that he did use those records.

9 Q. So they cooperated in part, correct?

10 A. Partially.

11 Q. And, in fact, the witnesses that you talked to that went
12 ahead and said that there are what you feel are wage and hour
13 issues at the establishment, there were also employees that
14 told you the opposite of that, right?

15 A. Correct.

16 Q. I mean, your declaration says "I received contrary
17 information from other workers, including that the information
18 I received about workers not working over 40 hours per week was
19 not accurate," correct?

20 A. Correct.

21 Q. How many of those were there?

22 A. Less than the number of interviews that I have stating
23 otherwise.

24 Q. How many less?

25 A. I don't know the -- I don't know the exact number.

1 Q. Why didn't you include those numbers in your declaration so
2 the Court could know and weigh how many people are saying there
3 is an issue versus how many people are saying there's no issue?

4 A. I don't have an answer for that.

5 Q. The people that are supporting the employer aren't fearful
6 of retaliation, right?

7 A. I wouldn't necessarily say that, because some of the
8 employees that gave me these contradictory statements did come
9 to me later and tell me they were told to tell me otherwise.

10 Q. Not all of them did, right?

11 A. Not all.

12 Q. So the employees that said -- and gave you information that
13 said the reporting of hours is correct and did not tell you
14 about any fear of retaliation, what are the names of those
15 people?

16 MS. STA.ANA: Objection, your Honor.

17 THE COURT: Well, they're not in fear of anything,
18 are they?

19 MS. STA.ANA: It's unclear whether or not they are
20 stating comments or statements on their own accord.

21 THE COURT: I want to --

22 MR. PARKER: Your Honor, that's another way to say
23 they don't know whether they are or not.

24 THE COURT: Right. I'm going to overrule the
25 objection. Even if you can persuade the Court of the

1 informant's privilege and if it's based on their fear, and
2 you've shown no suggestion that the individuals that he's
3 asking about have any fear of anything, just the opposite.

4 I'm going to overrule the objection.

5 THE WITNESS: Well, I don't have the names of the
6 employees right now at the top of my head.

7 Q. BY MR. PARKER: You don't remember a single one?

8 A. No. Honestly, I don't. I've worked many cases since that
9 case and I've interviewed multiple people. I would have to
10 look at the list of the employees, and then I can possibly tell
11 you.

12 Q. You don't even remember any of the names of the employees
13 that told you they were fearful?

14 A. No. I know names, I just don't know the names of all the
15 employees that I interviewed. I'd have to look at the list,
16 and then I can identify that if I need to.

17 Q. Well, you don't know the name of Alejandro, right?

18 A. So I believe Alejandro's last name is Alejandro Hernandez
19 Rodriguez, and that's why it is Rodriguez in the statement.

20 Q. Then why didn't you include that in your declaration?

21 A. I don't have an answer for that.

22 THE COURT: Wait a minute. Is Alejandro one of the
23 people she interviewed or is he one of the defendants?

24 MR. PARKER: He's one of the defendants, your Honor.
25 He was identified as a person making these statements, and he's

1 testified in his own --

2 THE COURT: Wait a minute. Alejandro is one of the
3 defendants, and he's one of the persons complaining about --

4 MR. PARKER: No. He's one of the people that is
5 alleged to have made comments that the Department feels are
6 retaliatory.

7 THE COURT: All right.

8 MR. PARKER: But she got the name wrong in the
9 declaration, as pointed out by Alejandro Hernandez's
10 declaration.

11 THE COURT: Well, it's typical that Hispanic
12 individuals will have two names, their mother's name and their
13 father's name. I think what she's saying is his name is
14 Alejandro what?

15 THE WITNESS: Hernandez Rodriguez.

16 THE COURT: Hernandez Rodriguez. One of his mother's
17 name, one is his father's name, right?

18 THE WITNESS: I didn't ask him that, but that's the
19 name that was given to me.

20 THE COURT: All right.

21 Q. BY MR. PARKER: And Ms. Alfaro, you're familiar that
22 culturally there may be two surnames, right?

23 A. There could be.

24 Q. And that if you're formally addressing people, you're going
25 to address them by both of those surnames, correct?

1 A. Well --

2 MS. STA.ANA: Your Honor, relevance. She's already
3 corrected --

4 THE COURT: Okay. I think I understand where this
5 is, so I think we can go on to another subject.

6 I understand what Mr. Parker is saying and I also
7 understand what she's saying so -- I don't think we need to
8 pursue that question any further.

9 Q. BY MR. PARKER: Ms. Alfaro, your investigation began in May
10 of 2021, right?

11 A. Yes.

12 Q. Over a year ago, correct?

13 A. Yes.

14 Q. You've been talking with employees at the restaurant for
15 over a year, correct?

16 A. Correct.

17 Q. You're aware that no one has been fired during that time,
18 right?

19 A. I don't know that that's true.

20 Q. Well, did you read the declaration that I submitted?

21 A. I read it, but I don't know that it's true.

22 Q. The declaration by someone who actually puts their name on
23 it. Did you read that one?

24 A. I did.

25 Q. Okay. Are you aware that no one has been reported to ICE

1 or some immigration authority?

2 A. I don't know.

3 Q. Did you see that the declarations by people that actually
4 will sign their name to it that supposedly made statements deny
5 the fact that they went ahead and made any of those statements?

6 A. So I read that Hector wrote a declaration, but I never said
7 or I was never told that Hector made any statements. Eduardo
8 Hernandez is the one that made these threats and allegations --
9 and statements to the employees, and there's no declaration
10 from Eduardo.

11 THE COURT: Is that right, Mr. Parker?

12 MR. PARKER: I don't believe that's what your
13 declaration says, does it?

14 THE WITNESS: I believe it does say that Eduardo and
15 Alejandro are the two employers that were making these
16 statements to the employees.

17 Q. BY MR. PARKER: Alejandro Hernandez Rodriguez, correct?

18 A. Correct, and Eduardo.

19 Q. And so it wasn't just Eduardo, as you just testified, it
20 was Alejandro as well?

21 A. Correct. But --

22 Q. And you read his declaration which said he didn't make
23 those statements, correct?

24 A. I did read it.

25 Q. As a trained investigator, do you give that any weight?

1 A. Because of the information that Alejandro gave me during my
2 investigation which contradicted the evidence I was able to
3 substantiate that they were working more than 40 hours. His
4 credibility is -- is not -- doesn't hold much weight for me.

5 Q. So the answer to my question is, yes, you give it some
6 credibility, correct?

7 A. I don't believe that's what Alejandro said in his
8 statement.

9 Q. Do you give it -- as a trained investigator, a statement
10 where someone denies making the other statement, you give zero
11 credibility to; is that what I'm understanding now?

12 A. I gave it consideration, but I do not believe his
13 statement.

14 Q. Okay. So you gave it consideration. Just like the
15 statements by employees that said there weren't any wage and
16 hour problems, you gave that consideration as well, right?

17 A. Correct.

18 Q. You gave it some degree of weight, right?

19 A. Correct.

20 Q. You ultimately rejected it?

21 A. Correct.

22 Q. Okay. The first employee you spoke to, what date was that
23 in May?

24 A. I don't have a date.

25 Q. Was that by phone?

1 A. Yes.

2 Q. How long did it last?

3 A. I don't know.

4 Q. Did you start at the top of the list and just go down?

5 A. No.

6 Q. Why did you pick that person then if it wasn't at the top
7 of the list?

8 A. Eduardo gave me multiple lists for multiple locations, and
9 I don't -- I just called numbers on the list. I don't know.

10 Q. Well, which location was it?

11 A. Howe.

12 Q. Okay. And so did you start at the top of the list for
13 Howe?

14 A. I don't recall if I started from the top of the list. I
15 just know that I called employees from the list.

16 Q. And was it a female or a male?

17 A. You asked me. It's a female.

18 Q. Okay. But you had never met this person before? You had
19 never seen them?

20 MS. STA.ANA: Asked and answered.

21 THE COURT: Overruled. I want to make sure -- I'm
22 thinking of the same person that he is.

23 Go ahead.

24 THE WITNESS: Can you repeat the question?

25 Q. BY MR. PARKER: Was this the same Hispanic female that you

1 had observed when you went into the location?

2 A. Correct.

3 Q. And you don't know how long that conversation lasted?

4 A. No.

5 Q. And you took notes?

6 A. Correct.

7 Q. You didn't record it?

8 A. No.

9 Q. She wasn't under oath?

10 A. No.

11 Q. During the first statement she didn't say anything about
12 statements that were allegedly retaliatory?

13 A. No.

14 Q. And how long before you contacted a second employee?

15 A. I don't know.

16 Q. I heard your testimony that you don't remember what that
17 person said. What's the breakdown of males versus females in
18 terms of the ten or so employees that made -- that attributed
19 statements to Alejandro?

20 MS. STA.ANA: Objection. Relevance.

21 THE COURT: I'm going to sustain it for now because
22 it's -- it's related to the question of the informant's
23 privilege which I'm going to address in more detail later.

24 MR. PARKER: But, your Honor, it goes -- if I can
25 make an offer. It goes to the reliability of the witness's

1 memory without her notes here, without any sort of filing. She
2 doesn't seem to remember much other than the statements she
3 attributes to unnamed individuals that somehow harmed my
4 client.

5 THE COURT: I know. That's true, but it also is a
6 back doorway of trying to determine who these individuals are
7 which I'm not going to go into today.

8 Q. BY MR. PARKER: Ms. Alfaro, there were employees that told
9 you there weren't statements made threatening their immigration
10 status, right?

11 A. No.

12 Q. There were no employees that said that?

13 A. No.

14 Q. You asked your investigator in retaliation, right?

15 A. So these questions about immigration came about after, and
16 the employees reached out to me to inform me, and that's how I
17 was aware of the -- the threats about immigration.

18 Q. What do you mean "after"?

19 A. After the complaint was filed.

20 Q. Okay. So only since the complaint these supposed
21 statements have been made?

22 A. The statements about the Department of Labor gathering
23 information to send to immigration.

24 Q. The statements that you feel were threatening toward
25 employees?

1 A. Correct.

2 Q. That only happened after the complaint was made?

3 A. It heightened after the complaint was made. It wasn't
4 as -- I -- during the investigation I -- I don't recall hearing
5 much about the immigration issue, just about the threats of --
6 sorry, I don't --

7 THE COURT: Well, I was waiting for you to finish
8 your sentence here.

9 THE WITNESS: Sorry.

10 THE COURT: I'm not understanding your testimony
11 quite the same way as I understood what Ms. Sta.Ana said.

12 Were they saying that one or more of the defendants was
13 going to report them to immigration, or were they saying that
14 the Department of Labor was going to report them to
15 immigration?

16 THE WITNESS: They stated that the Department of
17 Labor was gathering information to send to immigration.

18 THE COURT: All right. So none of the defendants
19 were threatening to send anything to immigration?

20 THE WITNESS: But on another occasion they said that
21 their immigration status was -- was compromised, but they
22 didn't say how.

23 THE COURT: Okay. So they're not saying that any of
24 the defendants were going to compromise or do anything to
25 compromise their immigration status. They were saying that

1 they thought the Department of Labor was going to do that?

2 THE WITNESS: Yes, that the Department of Labor was
3 going to forward information to immigration.

4 THE COURT: Okay.

5 THE WITNESS: And to not speak to us, the Department
6 of Labor.

7 THE COURT: Well, okay. I understand that. That's
8 something different than what I understood Ms. Sta.Ana was
9 suggesting.

10 MR. PARKER: Correct. I think the fourth time the
11 testimony has changed.

12 THE COURT: Well, she's pretty clear right now.

13 MR. PARKER: Yeah.

14 THE COURT: I don't know that the testimony changed.
15 I don't know that she ever said that the defendants were going
16 to compromise the immigration status. I think this witness has
17 been consistent. It's not quite what I was told by the
18 government before the witness took the stand, though.

19 MR. PARKER: I would agree with you.

20 THE COURT: All right.

21 Q. BY MR. PARKER: Ms. Alfaro, the statements that you feel
22 are threatening based on immigration status all occurred after
23 the complaint was filed, right?

24 A. Correct.

25 Q. The threatening comments about people's jobs, everybody

1 eats and lives for this job and we all need to support Eduardo.
2 That happened after the complaint got filed, right?

3 A. After the complaint, but Eduardo also made comments during
4 the investigation to the employees stating that -- that they
5 owed him by lying to the Department of Labor because he gave
6 them employment.

7 Q. You didn't follow up with any of these employees and test
8 these statements they made, did you?

9 A. What do you mean "test them"?

10 Q. You didn't ask them if anybody has been fired, right?

11 A. I have not.

12 Q. You didn't ask if anyone has been reported, right?

13 A. I have not.

14 Q. You didn't ask them if they lost hours, right?

15 A. Well, they did say that they are all shorted hours due to
16 the change of paying practice, because apparently since the
17 complaint -- it wasn't until the complaint that Eduardo did
18 change his scheduling and pay practices.

19 Q. What I'm asking you is you didn't ask them, "Did you get
20 your hours reduced because you participated in the DOL
21 investigation," right?

22 You didn't ask that?

23 A. Specific -- specifically, no.

24 Q. Why didn't you ask any of that if you're trying to
25 investigate and understand whether retaliation or interference

1 with the FLSA has occurred?

2 A. I don't know.

3 Q. The Department filed a Rule 11 pleading in May, and all of
4 these statements you're attributing to them happened after that
5 complaint is filed.

6 What statements do you feel were retaliatory before the
7 Rule 11 pleading was filed?

8 MS. STA.ANA: I would just like to clarify. The
9 investigator might not understand what Rule 11 is.

10 THE COURT: He's talking about the complaint.

11 THE WITNESS: Well, the fact that the -- the priest
12 coming in to -- to hold confessions for the employees at the
13 restaurant, that was an act of intimidation, I believe.

14 THE COURT: Did you look into that to see whether
15 there was any truth to that?

16 THE WITNESS: It was multiple employees that told me
17 this, and I did try to locate the priest, but I could not. And
18 I was told that it's a friend of the employer's.

19 THE COURT: There was really a priest or not?

20 THE WITNESS: I don't know if he's really a priest.
21 But the employees -- all the employees that told me this, they
22 said that they are practicing Catholics, and they have never
23 experienced a confession like that one. They thought it was
24 very strange.

25 Q. BY MR. PARKER: Well, I'm glad you brought that up because

1 earlier I heard you say you reviewed for at least an hour or
2 more your declaration?

3 A. Uh-huh.

4 Q. Right?

5 A. Correct.

6 Q. With access to your notes, correct?

7 A. Correct.

8 Q. And with the intention of providing the Court everything it
9 needed to know in order to consider the temporary restraining
10 order based on allegations of intimidation or retaliation.

11 That's correct, right?

12 A. Correct.

13 Q. And your declaration doesn't say anything about a priest,
14 correct?

15 A. Correct.

16 THE COURT: Why not? Sounds to me like it is pretty
17 important from what you just said here today. As a matter of
18 fact, it's something you regard as one of the most important
19 things that necessitated this hearing, right?

20 THE WITNESS: Correct.

21 THE COURT: So why not?

22 THE WITNESS: I am not sure why I didn't add it into
23 the declaration.

24 Q. BY MR. PARKER: Ms. Alfaro, the priest, do I now have all
25 of the instances before the complaint was filed by the

1 government, all of the instances that you felt were or you
2 heard about that you think were retaliatory or interfering?

3 A. Well, I also know that the employees felt intimidated
4 because meetings with yourself or your counterparts were held
5 at the restaurant, and that did make the employees feel uneasy.
6 Multiple employees mentioned that to me.

7 Q. Did you ask any employees whether they felt intimidated by
8 your interviews?

9 A. No.

10 Q. Okay. So the intimidation that you think occurred was the
11 priest and interviews with attorneys that were investigating
12 the allegations by the Department; is that correct?

13 A. Well, it is the meetings that were held at the restaurant.

14 Q. Ma'am, I'm trying to know the universe of things before the
15 Department filed this complaint against my client. What I've
16 heard is the priest and the meetings with the attorneys that
17 were looking into what the Department said was wrong.

18 Are there any other acts that you feel were intimidating or
19 retaliating before May of 2022 when this complaint was filed?

20 A. Yes, Eduardo had meetings with employees at the restaurant
21 as well to go over what they needed -- what he wanted them to
22 tell the Department of Labor, and told them that he had
23 attorneys and that the truth would come out. And that whoever
24 was speaking to the Department of Labor needed to stop because
25 it would be found out.

1 Q. Great. And now do I have everything?

2 A. I believe so.

3 Q. Okay. Did you ask how many meetings there were?

4 A. There's only one that I recall.

5 Q. One meeting --

6 A. Correct.

7 Q. -- that was reported to you?

8 A. Correct.

9 Q. And how many people attended it?

10 A. It was, I believe, four or five employees.

11 Q. Okay. There's more than four or five employees at the Howe
12 location, correct?

13 A. Correct. But that's the only one that I was informed of.

14 Q. Right. You know of one meeting with four or five people
15 and apparently a bunch of employees that didn't attend, right?

16 A. Correct. It happened -- correct.

17 Q. And did -- how many of the witnesses told you about this
18 meeting?

19 A. More than three.

20 Q. Okay. You didn't talk to all of them that attended? All
21 of the people that attended, right?

22 A. No.

23 Q. And as an investigator, that's what you would want to do,
24 right?

25 A. Correct.

1 Q. So you could get everybody's perspective, correct?

2 A. Correct.

3 Q. You didn't ask my client what was said about the meeting,
4 right? What was said at the meeting?

5 A. Correct.

6 Q. You didn't look to get their perspective and see if it was
7 different than the recollection of anybody else, correct?

8 THE COURT: You shouldn't talk to other people's
9 clients about their presence.

10 MR. PARKER: Your Honor, this is before we ever came
11 on the scene.

12 THE COURT: I thought you said it was after the
13 complaint was filed.

14 MR. PARKER: No, this is all before. I'm looking at
15 the justification the government has to file this pleading, and
16 it seems awfully thin.

17 THE COURT: I thought you were talking now about
18 after the complaint was filed.

19 Q. BY MR. PARKER: Do you remember when this meeting occurred?

20 A. It was around the beginning of the investigation.

21 Q. Sometime in May of 2022 or '21?

22 A. Possibly May.

23 THE COURT: Wait, I thought the business about the
24 priest was recent. Now are we talking about two different
25 things? When we talk about a meeting, are you talking about

1 the meeting where they told you that the priest came around and
2 took confessions and they thought it was highly unusual?

3 THE WITNESS: So -- he's asking me about the meeting
4 with the employer and the employees. But the meeting with the
5 priest occurred -- I don't recall when, but it was after my
6 final conference, and my final conference was in November of
7 2021.

8 THE COURT: I know it occurred after November 2021.
9 I thought earlier you said that this information that you heard
10 about the priest came very recently. As a matter of fact, I
11 was thinking that it was being offered by the Secretary to show
12 why they didn't come in earlier to ask for the temporary
13 restraining order.

14 So in my -- in my understanding, that whole information --
15 set of information -- set of facts that you got about the
16 priest was something you learned very recently.

17 Was I wrong?

18 THE WITNESS: No. The priest occurred a couple
19 months ago.

20 THE COURT: Okay. Then what are you talking about
21 now? You're talking about a different conversation?

22 THE WITNESS: He's asking me about the employer
23 having a meeting with the employees during the investigation.

24 THE COURT: All right.

25 Q. BY MR. PARKER: The meeting -- no one has ever come to you

1 after May of 2021 and said the owner had another meeting where
2 he said, "Don't cooperate with the government," right?

3 A. No. It was not Eduardo. Alejandro started telling the
4 employees that.

5 Q. Ma'am, you told me there was one meeting just less than
6 five minutes ago.

7 A. Correct.

8 Q. Are you changing that testimony?

9 A. No. I'm saying --

10 Q. Okay. So no one ever came to you after May of 2021 and
11 said there was another meeting where they were told not to
12 cooperate, right?

13 A. I'm saying -- Eduardo did not have a conversation with
14 anybody regarding that after that.

15 Q. Ma'am, why can't you answer my question?

16 A. I am.

17 MS. STA.ANA: Objection. You're misstating
18 testimony.

19 Q. BY MR. PARKER: You said there was one meeting where
20 employees were told -- four or five employees were told don't
21 cooperate; is that correct?

22 A. Correct.

23 Q. And that's the only meeting you ever heard about where
24 there was a meeting with four or five employees or multiple
25 employees about that, right?

1 A. No.

2 Q. There were multiple. When was the next one?

3 A. Most recently in June, I believe, with Alejandro telling
4 the employees not to talk to the Department of Labor, not to
5 talk to the news, and that the investigation was over, and that
6 Eduardo's attorneys were handling it. And that any information
7 that the Department of Labor is trying to gather is for
8 immigration.

9 Q. Okay. So no other meetings before the complaint was filed?

10 A. Not that I can recall.

11 Q. Right. And the statement about your investigation being
12 over as of June of 2021, that's an accurate statement, right?

13 A. My portion of the investigation is over, correct.

14 Q. The Department's investigation is over. It's now in
15 litigation, right?

16 A. Correct.

17 Q. So saying that the investigation is over is factually
18 correct information, right?

19 A. Correct.

20 Q. Now, the priest information that you received, you received
21 that in November of 2021, right?

22 A. No, I don't recall what month I -- I said it was after
23 November.

24 Q. Okay. You don't recall the month?

25 A. No, I don't.

1 THE COURT: Just -- you know, didn't you just tell me
2 a minute ago that it was in the last couple of months?

3 THE WITNESS: It was this year, but I don't know what
4 month it was.

5 THE COURT: Hold on a second.

6 "A couple months ago." You just said that.

7 THE WITNESS: Okay. A couple months -- well, it was
8 this year, but it was --

9 THE COURT: I know. This is July.

10 Okay, go ahead.

11 Q. BY MR. PARKER: You were told about it a couple months ago,
12 right?

13 A. Correct.

14 Q. They didn't tell you when the actual meeting took place,
15 right?

16 A. I possibly have it in my notes.

17 Q. And despite the allegation there was a priest and everybody
18 felt it was weird and intimidating, the Department didn't go in
19 for a temporary restraining order at that point, right?

20 A. Because the --

21 Q. Is that correct?

22 MS. STA.ANA: Calls for a legal conclusion.

23 THE WITNESS: Correct.

24 Q. BY MR. PARKER: How many employees had to talk with the
25 priest?

1 A. I don't know how many spoke with him, but I know of three
2 or four, I believe.

3 Q. Three or four that did speak to the priest?

4 A. Correct.

5 Q. Okay, great. Did you ask for the priest's name?

6 A. They did not know his name.

7 Q. Did you ask for a description of him then, as the
8 investigator?

9 A. Description, no. I asked for a name or what parish he was
10 from. Follow-up information/description, no, I did not.

11 Q. Did you ask what he was wearing?

12 A. No, I did not.

13 Q. You didn't ask if he was dressed like a priest?

14 MS. STA.ANA: Relevance, your Honor.

15 THE COURT: I think before we're finished with the
16 preliminary injunction, I'd like to learn more about the
17 priest. So bear that in mind on both sides. And the reason
18 I'm asking the questions about it is it has to do with, A,
19 whether this was intimidation, in other words, did they bring
20 in someone who was not a priest and hold him out to be a
21 priest, or did they bring in a priest and instruct him to ask
22 questions that would be either intimidating or otherwise
23 outside the scope of his ordinary role.

24 And then, B, it might explain why the government is
25 concerned now about future intimidation. So I think that's

1 something I'd like to learn more about.

2 MR. PARKER: Or, your Honor, where this witness has
3 signed a declaration that mentions no priest --

4 THE COURT: Right.

5 MR. PARKER: -- yet went ahead and tried to go ahead
6 and give you everything to make your decision based on the
7 priest was left out. It may not have occurred.

8 MS. STA.ANA: Your Honor, this was an urgent brief,
9 and we concentrated on the most recent events.

10 THE COURT: Yeah, I know you concentrated on the most
11 recent events. And one of the most recent events was the
12 priest.

13 MR. PARKER: And, your Honor, that's testimony from
14 counsel. The witness has said she's added everything she felt
15 you needed to make this decision based on it.

16 THE COURT: I understand all of that. I've been here
17 for the last hour.

18 But that's my point. I want to learn more about the
19 priest. You make a note of it, okay, that's the next time we
20 come back for the hearing on the preliminary injunction.

21 MS. STA.ANA: Will do.

22 Q. BY MR. PARKER: The first employee that told you they spoke
23 with the priest, what did they say they told the priest?

24 A. They said that they started off the confession normally
25 with a prayer, and that the priest asked them if they -- how

1 long -- how long did they work for Eduardo and if they've ever
2 stolen from Eduardo. I'm trying to remember specifics. I
3 can't remember specifics right now, but I do know that it
4 was -- it had to do with their -- with that employee's loyalty
5 to Eduardo and to the restaurant.

6 Q. Ma'am, despite straying from my question about what the
7 employee said, you told me everything you can recall the priest
8 saying, how long they worked for Eduardo and have you ever
9 stolen anything, correct?

10 A. Correct.

11 Q. You don't remember any other specific statements by the
12 priest, right?

13 A. No.

14 Q. And what were the employees' responses to those questions?
15 What was the first employee you spoke to about it, what was
16 their response?

17 A. The employee -- I don't remember right now.

18 Q. Did they say anything else to you about that confession,
19 the first employee?

20 A. I would have to look on my notes.

21 Q. You don't recall any other?

22 A. No, I just generally remember the conversation generally.

23 Q. Right. Generally, you've told me everything you can recall
24 about what the employee told you, the first employee you spoke
25 to about the priest situation?

1 A. Correct.

2 Q. You told me everything, right?

3 A. Correct.

4 Q. And so they didn't tell you they felt it was intimidation
5 or that they felt fearful, right?

6 A. They did -- she --

7 Q. Ma'am, I just asked you have you told me everything, and
8 you said you did, but you hadn't said that.

9 A. Regarding the conversation with the priest, but the
10 conversation with me, yes, the employee did tell me that they
11 found it strange. They did tell me that they never had a
12 confession like that prior to this, and that they did feel that
13 Eduardo brought the priest to intimidate them.

14 Q. Well, despite your offering of that, I had asked you did
15 they -- what else -- did you now tell us everything that they
16 told you about that first instance they talked with the priest,
17 and you didn't say that in the first instance, did you?

18 A. No.

19 Q. And so the answer to my specific question, the employee --
20 first employee you spoke to -- never said they felt intimidated
21 by the meeting with the priest, right?

22 MS. STA.ANA: Asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: Can you repeat the question, please.

25 Q. BY MR. PARKER: The first employee never said to you that

1 they felt intimidated by having to talk with the priest, right?

2 A. They felt that it was intimidating.

3 Q. The employee never said they felt fearful, correct?

4 A. Regarding that instance, no.

5 Q. Did the employee say that talking with the priest was
6 voluntary?

7 A. Yes.

8 Q. So someone volunteered to go speak with the priest?

9 A. Correct.

10 Q. This person?

11 How long before you spoke with the second person that spoke
12 with the priest?

13 A. I do not remember.

14 Q. What did that person say to the priest?

15 A. I do not remember what was said to the priest, but what I
16 do remember is that the questions were similar to what the
17 previous employee told me.

18 Q. How long have you worked and did you steal anything, right?

19 A. And also if the employee ever drank excessively or if the
20 employee ever drank and drove drunk.

21 Q. Okay. Well, those are new, right?

22 A. Correct.

23 Q. Unrelated to the Department of Labor's investigation,
24 right?

25 A. Correct.

1 Q. Stealing from the employer, that's unrelated to the
2 investigation, right?

3 A. Correct.

4 Q. So the statements to the priest that you can recall -- or
5 the statements from the priest, the questions were unrelated to
6 the Department of Labor, correct?

7 A. Those statements, yes.

8 Q. All the statements you can recall from the first two
9 because you've told me all of them, right?

10 A. That I can recall, yes.

11 Q. How long before the third person that you spoke to about
12 the priest situation?

13 A. I don't know.

14 Q. Do you remember anything different about the questions the
15 priest asked the third person?

16 A. Not at this time.

17 Q. Okay. So, again, nothing related to the Department of
18 Labor, correct?

19 A. That I can recall at this time.

20 Q. Okay. At the time of your testimony, you can't recall any
21 other statements?

22 A. I don't have my notes with me.

23 Q. Right, you didn't bring your notes. And you didn't include
24 any of this in your declaration when you had access to the
25 documents?

1 MS. STA.ANA: Argument.

2 THE COURT: Overruled.

3 Q. BY MR. PARKER: The fourth person that you spoke to, the
4 questions by the priest were the same, right?

5 A. I believe so.

6 Q. And those are the -- that is all of the conversations you
7 had with any employees about the priest, right?

8 A. That's all that I can recall at this moment.

9 Q. And so all of the statements that you recall under oath
10 that the priest made to employees were not about the Department
11 of Labor, correct?

12 A. The Department of Labor was not mentioned in the
13 confessions directly from what I recall, but they were
14 regarding their loyalty to Eduardo as an employer.

15 Q. Well, you didn't say anything about the word "loyalty"
16 being used. You had told me about the questions drinking,
17 stealing, and how long you've been here.

18 MS. STA.ANA: Misstates testimony.

19 Q. BY MR. PARKER: But Ms. Alfaro --

20 THE COURT: I don't remember her saying anything
21 about loyalty other than those examples. Were there any other
22 things they said about loyalty to Eduardo?

23 THE WITNESS: I did mention loyally previously in
24 my --

25 THE COURT: I know -- well, you just mentioned the

1 conclusion loyalty. Were there any questions they said the
2 priest asked that related to loyalty to Eduardo?

3 THE WITNESS: I don't remember specific questions. I
4 need to look at my notes.

5 Q. BY MR. PARKER: Ms. Alfaro, loyalty is your conclusion
6 about what the meeting was about, right?

7 MS. STA.ANA: Argumentative.

8 THE COURT: I would just try to find out if she
9 said -- if she said they made any statements about what the
10 priest said concerning loyalty, and I'm hearing she can't
11 recall any.

12 Q. BY MR. PARKER: How long have you been an investigator for
13 the Department?

14 A. About 12 years.

15 Q. You've heard before that employers might investigate
16 employee theft, right?

17 A. Okay.

18 Q. You've heard and been involved in conversations with people
19 where that's been the subject of statements of employees have
20 made?

21 A. Correct.

22 Q. So it is not uncommon for you to hear that maybe an
23 employer was asking questions about employee theft, correct?

24 A. I've just never heard of an employer bringing a priest to
25 their establishment.

1 Q. A reported priest, right, that you didn't even ask what the
2 person looked like or what they were wearing?

3 THE COURT: That's argumentative.

4 Q. BY MR. PARKER: Ms. Alfaro, just to be clear, there were no
5 statements or questions from the priest where the word
6 "loyalty" was used that were reported to you, right?

7 A. I need to check my notes.

8 Q. There's nothing you can recall here testifying under oath,
9 right?

10 A. Correct.

11 THE COURT: How much more do you have with this
12 witness?

13 MR. PARKER: Your Honor, I don't have much more.

14 Q. BY MR. PARKER: The employees prior to the complaint being
15 filed also said that an attorney showed up and had a meeting
16 with the owners; is that right?

17 A. Multiple meetings.

18 Q. Okay. And did they report that they were talked to?

19 A. No.

20 Q. Did they report that their managers pointed the attorneys
21 out?

22 A. No.

23 Q. All they reported to you is there's a meeting with
24 attorneys and the owners; is that right?

25 A. Correct.

1 Q. Did they say anything about -- anything else about those
2 meetings?

3 A. No.

4 Q. When were the meetings reported to you?

5 A. I don't remember the date right now.

6 Q. So no employee reported to you they felt
7 fearful/intimidated as a result of meetings with owners and
8 attorneys?

9 A. Employees stated that they felt their meetings were held at
10 the restaurant as a form of intimidation.

11 Q. What question did you ask about the meetings?

12 A. I asked if they were spoken to, and they said no. I mean,
13 there wasn't much for me to ask because they weren't spoken to
14 so I didn't -- I didn't explore it further.

15 Q. My point, Ms. Alfaro, is you asked did they feel
16 intimidated, right?

17 MS. STA.ANA: Misstates testimony.

18 THE COURT: They called me to tell me they felt
19 intimidated.

20 Q. BY MR. PARKER: They said that?

21 A. Correct.

22 Q. How many of them were there?

23 A. I believe three that I can recall right now.

24 Q. When was the first report of these meetings?

25 A. I don't know the dates.

1 Q. Did they identify when the meeting occurred?

2 A. It was during their shift, but I don't -- I don't remember
3 the date.

4 Q. Did you pull any time records or request any time records
5 to verify they were working during this supposed meeting they
6 observed?

7 A. I did not.

8 Q. You could have, right?

9 A. I guess, yes, I could have.

10 Q. And you didn't ask my client about the meeting and whether
11 it was to intimidate anybody, right?

12 A. Correct.

13 Q. You just took the employee at their word, right?

14 A. Correct.

15 Q. How long until the second employee you spoke to about those
16 meetings?

17 A. I don't recall the exact date.

18 Q. How long after the first one was it?

19 A. I don't -- I don't know. I just know that I spoke to
20 multiple employees probably within the same week, whenever that
21 date occurred.

22 THE COURT: So multiple employees called you each
23 individually to tell you they had been present when the
24 defendants conferred with their attorneys?

25 THE WITNESS: Yes.

1 THE COURT: All right.

2 Q. BY MR. PARKER: And none of these employees said they could
3 hear what was discussed, right?

4 A. Correct.

5 Q. If you took the employees at their word that this was
6 active intimidation, why didn't you further investigate that?

7 A. I forwarded the information to our solicitor's office when
8 the employees contacted me. That's -- that's what I did. My
9 portion of the investigation was over and this happened --
10 well, actually, that -- because there's multiple times that
11 they mentioned that these meetings occurred at the
12 establishment.

13 THE COURT: More than one meeting?

14 THE WITNESS: Yes.

15 THE COURT: All right. We spent a lot of time on
16 this.

17 MR. PARKER: I have a couple --

18 THE COURT: I just have to comment. You initiate a
19 lawsuit against somebody, and then you're intimidated because
20 they're consulting an attorney about the lawsuit that you
21 initiated against them. That's where we are.

22 I'm not really that concerned about that. I don't think
23 there's anything wrong, and I'll go on record as saying that.
24 Nothing wrong with consulting an attorney at your place of
25 business when your employees have caused you to be sued by the

1 United States government, nothing wrong period.

2 Let's go on to the next issue. What I'm trying to decide
3 right now is whether to take a break for noon and wrap this up
4 after noon or to see if we can wrap it up before we break.

5 MR. PARKER: Your Honor, I only have a couple more
6 questions.

7 THE COURT: All right.

8 Q. BY MR. PARKER: Ms. Alfaro, as an investigator for the
9 Department of Labor, you investigate retaliation claims or
10 complaints about intimidation under the FLSA, right?

11 A. Correct.

12 Q. Employees have the right to make those complaints, right?

13 A. Correct.

14 Q. They can make them online, correct?

15 A. I'm not sure if they're able to make them online. I know
16 that they're able to call and make complaints.

17 Q. Okay. They can make them to you, right?

18 A. Correct.

19 Q. Okay. You closed your investigation about the wage and
20 hour matters in November of 2021, correct?

21 A. Correct.

22 Q. No determination about intimidation at that point, correct?

23 A. Correct.

24 Q. As an employee of the United States Department of Labor,
25 are you telling me that employees made complaints to you in

1 2022 about acts of intimidation and you did not initiate an
2 investigation about it?

3 A. I forwarded all information to -- to our solicitor's office
4 and to -- and my manager was aware as well.

5 Q. That's not my question, ma'am.

6 A. I personally did not initiate a retaliation investigation.
7 I forwarded the information to who I was supposed to forward
8 the information to.

9 Q. And you are trained by the Department of Labor that any
10 time an employee makes a complaint to you, you are supposed to
11 initiate an investigation, right?

12 MS. STA.ANA: Objection, your Honor. This was
13 already under litigation at that point.

14 THE COURT: That's true.

15 MR. PARKER: Your Honor --

16 THE COURT: And I've already said -- I'll go on
17 record and I'll make this determination right now. It is not
18 an act of intimidation to consult with an attorney at your
19 place of business after your employees have initiated a suit by
20 the United States government against you.

21 So that's not intimidation --

22 MR. PARKER: Yep.

23 THE COURT: -- and she doesn't have to report it to
24 anybody because it's not intimidation.

25 MR. PARKER: Well, your Honor, I agree with you

1 wholeheartedly.

2 THE COURT: All right. Then we don't have to discuss
3 it any further.

4 MR. PARKER: But, your Honor, this goes to the
5 reliability of the witness, and she has testified she felt it
6 was an act of intimidation in addition to the priest.

7 THE COURT: Yes, but the other thing that she said
8 was the matter was in litigation.

9 MR. PARKER: Your Honor, this is all before the
10 litigation is filed.

11 THE COURT: No, she said it was turned over to the
12 solicitor to the Department of Labor.

13 MR. PARKER: The original investigation was in that
14 determination about the wage and hour matter.

15 THE COURT: But this is part of that. This is
16 intimidation that you're talking about.

17 MR. PARKER: Your Honor, when my client is being
18 accused of something by the Department --

19 THE COURT: We're finished with this hearing.

20 MR. PARKER: Yeah.

21 THE COURT: Now, do you have any redirect?

22 MS. STA.ANA: I do have redirect, your Honor.

23 THE COURT: We'll take it up after lunch. Do you
24 want to come back at 1:00 or 1:30?

25 MS. STA.ANA: I can come back at 1:00.

1 MR. PARKER: Your Honor, 1:00 is fine with me.

2 THE COURT: 1:00. 1:00.

3 (Recess taken, 11:43 a.m. to 1:01 p.m.)

4 THE CLERK: Please remain seated. Come to order,
5 this court is now in session.

6 THE COURT: You don't both have to be at the podiums.
7 When the other one is questioning the witness that's taking
8 some time, you can be seated at your table.

9 MS. STA.ANA: Thanks for saying that, your Honor.

10 THE COURT: All right. Ms. Sta.Ana, you may proceed
11 with the redirect.

12 REDIRECT EXAMINATION

13 Q. BY MS. STA.ANA: Just to make the timeline clearer here.
14 You mentioned something called an initial conference. As an
15 investigator, what is an initial conference?

16 A. The initial conference is the first meeting with the
17 employer where we ask specific information regarding the
18 business, pay practices, information regarding the
19 investigation.

20 Q. And when did that happen?

21 A. In May 2021.

22 Q. So you testified that you spoke to workers. When did that
23 happen in relation to that initial conference?

24 A. I spoke to the employees following the initial
25 conference -- following receiving the records from the

1 employer.

2 Q. And you spoke to the workers at that time period about
3 hours and pay; is that right?

4 A. Correct.

5 Q. What did the workers say, if anything, about interference
6 of an investigation?

7 A. Employees told me Eduardo had given them blank time cards
8 to fill out because those are the time cards that he was going
9 to produce for me. They took -- there were so many time cards
10 that they had to take them home and fill out the time stating
11 that they only worked 40 hours a week.

12 Q. How many workers told you that?

13 A. More than four employees.

14 Q. You mentioned something called a final conference as well.
15 What is a final conference?

16 A. A final conference is when we present the findings to the
17 employer.

18 Q. And when did that occur?

19 A. That occurred in November of 2021.

20 Q. After that final conference occurred, did you talk to
21 workers after or before in relation to the final conference?

22 A. I did speak with workers before and after the final
23 conference.

24 Q. So I want to just concentrate on the -- close to the final
25 conference. Did you speak to any workers -- let me rephrase

1 it -- after the final conference?

2 A. I did speak with employees after the final conference.

3 Q. How close to that final conference?

4 MR. PARKER: Been asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: I wouldn't -- not too long after the
7 final conference.

8 Q. BY MS. STA.ANA: And when was that, if you can recall?

9 A. November 2021.

10 Q. The incident about the priest. In relation to the final
11 conference, when did you hear about that?

12 MR. PARKER: Your Honor, asked and answered.

13 THE COURT: Well, if she says anything other than the
14 last two months, I'm going to be a little disturbed about it.
15 But go ahead, have her answer the question. Because she told
16 me twice it was within the last two months.

17 THE WITNESS: I didn't say it was the last two
18 months. I know that it was after the final conference in
19 November 2021, and it was a couple months back, so between
20 November 2021 and a couple months back. I don't remember the
21 exact date that they told me about that.

22 Q. BY MS. STA.ANA: I'm just trying to clarify timeline here.

23 So as you know the complaint was filed in May 2022. Did
24 workers contact you the very next day the complaint was filed?

25 A. I was contacted after the complaint was on the news.

1 Q. And when was that, can you recall?

2 A. I believe it was the day after the complaint was filed.

3 Q. When -- at that time did a worker who was fired ever
4 contact you?

5 A. After the complaint was filed, yes.

6 Q. What did they say to you?

7 MR. PARKER: Your Honor, this is beyond the scope of
8 the direct.

9 THE COURT: Well, it seems to be the same thing we've
10 heard before on cross-examination. I had not heard about it
11 being in the news on either direct or cross-examination, but we
12 went through all the different communications she had with
13 different anonymous employees. Is this something different?

14 MS. STA.ANA: Counsel mentioned firings during his
15 cross, and I want to ask Ms. Alfaro here about information that
16 she knows about it.

17 THE COURT: What did he ask about firing on cross?

18 MS. STA.ANA: He made assumptions that no one was
19 ever fired.

20 THE COURT: He didn't ask her about that. Did you
21 ask her about that?

22 MR. PARKER: Your Honor, for the record I asked her
23 is she aware of any of the people that she spoke to --

24 THE COURT: Oh, okay.

25 MR. PARKER: -- that she thinks are fearful were

1 fired --

2 THE COURT: All right.

3 MR. PARKER: -- and her answer was no.

4 THE COURT: So let's find out. The objection is
5 overruled.

6 Q. BY MS. STA.ANA: So I'm going to ask you again to clarify
7 on the record.

8 Did any employees approach you who said that they were
9 fired?

10 A. Yes.

11 Q. And what was shared with you?

12 A. The employee informed me that she was fired via text by
13 Alejandro, I believe, in February.

14 THE COURT: February of what year?

15 THE WITNESS: 2022.

16 THE COURT: Well, now we ought to be able to identify
17 this employee if she's saying she was fired by Alejandro. She
18 can be identified.

19 MS. STA.ANA: So, you know, in reflecting on what was
20 said today, you know, we're not going to try to hide anybody.
21 But the ask here is for a TRO so employees feel safe to testify
22 and to be witnesses.

23 THE COURT: Listen, don't jerk me around. You're
24 saying -- you still should protect the identity of this --

25 MS. STA.ANA: I didn't say that.

1 THE COURT: Okay. Tell me the name of this employee.

2 THE WITNESS: Maria Parra.

3 THE COURT: Maria what?

4 THE WITNESS: Parra, P-A-R-R-A.

5 THE COURT: All right. Thank you.

6 Q. BY MS. STA.ANA: Okay. She told you in February that she
7 was fired in February 2020. What did Ms. Parra -- why did
8 Ms. Parra think she was fired? Did she say that to you?

9 A. She believed that Eduardo and Alejandro thought that she
10 was the one giving information to the Department of Labor
11 regarding the investigation.

12 Q. Did Ms. Parra eventually come back to work at Che
13 Garibaldi?

14 A. Yes.

15 Q. When did she come back?

16 A. April 2022 Eduardo told her that he was short-staffed and
17 needed help. So she went back to work, I think, a couple days.

18 Q. A couple days. What does that mean?

19 A. I believe it was on the weekends because she had another
20 job.

21 Q. Did she still work at Che Garibaldi?

22 A. No.

23 Q. How did her employment end at Che Garibaldi the second
24 time?

25 A. Following the complaint filed in May 2022, Eduardo called

1 Maria and told her that they no longer needed her.

2 THE COURT: So they fired her again in May?

3 THE WITNESS: Yes.

4 THE COURT: Eduardo did?

5 THE WITNESS: Yes.

6 Q. BY MS. STA.ANA: So you then heard from an employee again
7 in mid-June, correct?

8 MR. PARKER: Your Honor, leading and vague.

9 THE COURT: Yes. Sustained.

10 Q. BY MS. STA.ANA: When was the last time you heard from
11 workers?

12 A. June 2022.

13 MR. PARKER: Asked and answered, your Honor.

14 THE COURT: Overruled.

15 MS. STA.ANA: And --

16 THE COURT: I don't have a clue. If you think it's
17 been asked and answered, I don't know what the answer is. When
18 was the last time you heard from workers?

19 THE WITNESS: June 2022.

20 Q. BY MS. STA.ANA: And you testified earlier that workers are
21 scared, and why do you think that?

22 A. Because of the comments that Alejandro has made to the
23 employees.

24 MS. STA.ANA: I have no further questions, your
25 Honor.

1 THE COURT: Any re-cross on this limited subject of
2 the firing of Maria Parra?

3 MR. PARKER: Yes, your Honor.

4 RE-CROSS EXAMINATION

5 Q. BY MR. PARKER: I'd like to start with understanding when
6 in June you last heard from employees?

7 A. I would say mid-June 2022.

8 Q. Are you able to be any more specific than mid-June?

9 A. I don't remember the exact date.

10 Q. Within the last 30 days, you don't remember the exact date?

11 A. I don't remember the exact date.

12 Q. When Ms. Parra first came to you, it was February 2022,
13 correct, about being fired?

14 A. Correct.

15 Q. And she directly reported to you as an investigator with
16 the Department of Labor that she believed she was fired because
17 she talked with the Department of Labor?

18 A. That was her understanding.

19 Q. And under your regulations you're supposed to open up an
20 investigation when that occurs, right?

21 MS. STA.ANA: Objection, your Honor. The litigation
22 was already in progress during that conversation.

23 THE COURT: Overruled.

24 THE WITNESS: I forwarded the information to the
25 solicitor's office and to a manager.

1 Q. BY MR. PARKER: I didn't ask you what you did. I asked you
2 under the regulations when someone reports that to you and a
3 federal complaint has not been filed yet, you are supposed to
4 open up an investigation, right?

5 A. The Department of Labor is supposed to open an
6 investigation if -- well, there's a procedure to opening
7 investigations.

8 Q. Right. And you, as the person that it was reported to,
9 were supposed to do that, right?

10 A. No. I can take a complaint, but I cannot open an
11 investigation.

12 Q. Okay. You submitted to someone that is supposed to start
13 an investigation?

14 A. I forwarded the information.

15 Q. And is that what the procedure is, to initiate an
16 investigation once you've taken the complaint?

17 A. There's different steps to initiate an investigation, and
18 to be honest it's not my scope of employment so I don't know
19 what the exact process is. I know what I'm supposed to do.

20 Q. You're supposed to take in the information, and then you're
21 supposed to submit it somewhere to initiate the investigation?

22 A. I forwarded the information.

23 Q. I know what you did. But you're supposed to forward it to
24 someone who is going to initiate the investigation --

25 A. Going to --

1 Q. -- absent litigation already started, correct?

2 A. Analyze whether it is a valid complaint or not, and then
3 take the proper steps moving forward.

4 Q. What did you do to validate the complaint?

5 A. I forwarded the information to who I was supposed to.

6 Q. You just said you're supposed to evaluate it. What did you
7 do to --

8 A. That's not part --

9 Q. -- validate the complaint that you received?

10 A. That's not part of my job to validate the complaint. I
11 forward the information or take -- or enter the complaint. I
12 don't validate the complaints, the managers do.

13 Q. Did you ask her if she had been told any reason for her
14 termination in February?

15 A. She said that's what she believed it to be.

16 Q. My question is not what she said --

17 A. I did ask. That was her answer.

18 Q. -- my question is what you asked her as the investigator
19 for the Department of Labor. Did you ask her why -- what they
20 said she was fired for?

21 A. I did ask her.

22 Q. What did she say?

23 A. She said that she believed she was terminated because she
24 felt that Alejandro and Eduardo believed her to be the one
25 informing the Department of Labor.

1 Q. So did you then ask her again, "Please answer my question
2 because you didn't"?

3 If your question is, "What did they say?" And she said "I
4 feel this," she didn't answer your question. So did you follow
5 up --

6 A. She forwarded text messages.

7 Q. Did you follow up and say, "What did they tell you the
8 reason for your termination is?"

9 A. I did, and she forwarded the text messages to me.

10 Q. Great. You don't have them here today?

11 A. No.

12 Q. Well, what did they say?

13 A. The text messages did not specifically say anything
14 regarding the DOL investigation.

15 Q. Great. That saves my follow-up question. I asked you what
16 they did say. They didn't say anything about the DOL
17 investigation, right?

18 A. No.

19 Q. And you never disclosed to my clients that Maria was
20 involved, right?

21 A. Correct.

22 Q. You never did anything to indicate anything about her
23 involvement, right?

24 A. Correct.

25 Q. You were fearful that she would be subjected to retaliation

1 if you somehow indicated that she was the person cooperating,
2 right?

3 A. Correct.

4 Q. And so you made sure to deprive my client of that
5 knowledge, right?

6 MS. STA.ANA: Objection. Argumentative.

7 THE COURT: Sustained.

8 Q. BY MR. PARKER: They couldn't have fired her for
9 participating because they didn't know if she did, right?

10 MS. STA.ANA: Objection. Personal knowledge.

11 THE COURT: That's a good question. No, that's a
12 very good question. Does she have any reason to know that the
13 defendants knew if or whether Ms. Parra was cooperating with
14 the DOL.

15 THE WITNESS: I don't know if they did.

16 Q. BY MR. PARKER: You didn't ask her how or why she thought
17 that Alejandro was firing her and Eduardo was firing her
18 because she participated, right?

19 A. Can you repeat that?

20 Q. Yeah. You did not ask her during this conversation about
21 the February termination, "How do you know that Alejandro and
22 Eduardo supposedly fired you for cooperating or giving
23 information to DOL"?

24 A. I don't -- I don't have that answer.

25 Q. You passively took in her information and restated it here

1 in court as truth, right?

2 A. No. I have notes from their conversations, and that's the
3 information that I recall at this moment.

4 Q. My point is, Ms. Alfaro, since you didn't open an
5 investigation and you didn't conduct any investigation into
6 these allegations, you made no determination about whether this
7 occurred or not, did you?

8 MS. STA.ANA: Objection. This was during litigation.

9 THE COURT: Well, she apparently made a determination
10 that Ms. Parra was fired, but did she make a determination that
11 Ms. Parra was fired for cooperating with the DOL or for some
12 other reason, and I think she said that Ms. Parra provided her
13 with some emails that contained the ostensible reason why she
14 was fired. Now, it would be relevant for the Court to know
15 what those emails said about why she was fired.

16 THE WITNESS: The text messages stated just -- it was
17 Alejandro asking her to -- to return her uniform shirt, and she
18 asked why she was being fired, and Alejandro did not give her a
19 specific reason.

20 THE COURT: Oh, all right.

21 Q. BY MR. PARKER: Your declaration contains none of this
22 information about an allegation that a termination occurred as
23 a result of participation in the Department of Labor, right?

24 A. Correct.

25 Q. Has Maria Parra been an informant for the DOL?

1 MS. STA.ANA: Objection, your Honor. That falls into
2 the government informant's privilege.

3 THE COURT: Overruled.

4 THE WITNESS: Maria Parra is one of the employees
5 that I contacted to interview.

6 Q. BY MR. PARKER: Is she the person that you saw when you
7 were in the facility and then the first person you called?

8 A. No.

9 Q. Okay. And I'm not going to ask at this point who that is;
10 I think I'm entitled to the information.

11 But what specifically is it that Ms. Parra reported other
12 than her termination about the alleged intimidation by my
13 client?

14 THE COURT: Well, if this is different from the fact
15 that she was fired, I think it's already been covered both on
16 direct and cross.

17 MR. PARKER: Your Honor, I would submit that since I
18 did not have the knowledge of who made various statements, I
19 don't know which statements are attributable to this employee,
20 and they may suffer from a lot of credibility if there are
21 legitimate reasons for her termination.

22 THE COURT: They may be, but we can't go on forever
23 here. I guess you, since I've gone this far, you can finish up
24 on this subject.

25 MS. STA.ANA: I'm just going to say, you know,

1 objection given the fact that, like, information that she did
2 receive -- or that Ms. Alfaro did receive from Ms. Parra
3 leading up to the complaint is still protected by informants
4 privilege.

5 THE COURT: Well, so this so-called informants
6 privilege is going to be the subject of some further discussion
7 when we get to the preliminary injunction. But if it is
8 anything like *Roviaro*, which I do understand and I am very
9 familiar with, her identity is already here; we already know
10 who she is.

11 MS. STA.ANA: With information that she has known.

12 THE COURT: Overruled.

13 Once we know who she is, there's no reason why we can't go
14 into further details of what she said since we have already
15 talked at some length about everything else she said.

16 Go ahead.

17 THE WITNESS: Can you repeat the --

18 THE COURT: I'm not sure how much it is going to help
19 me with this motion. But you can't just arbitrarily say, "Oh,
20 because we call it the informants privilege it is beyond
21 reach."

22 No, you've already talked about her, you've already had
23 testimony about what she told this witness, and this is just
24 some more information that she may or may not have given this
25 witness.

1 So go ahead.

2 Q. BY MR. PARKER: What was it that Ms. Parra reported other
3 than the termination regarding alleged intimidation by my
4 clients?

5 A. Maria was one of the employees that took part with the
6 confession with the priest. Maria also alleged the issue with
7 immigration and Alejandro threatening employees about
8 immigration.

9 She also said that -- she also said that a lot of people at
10 the restaurant were fearful for the immigration status because
11 Eduardo is the one who brought them from Mexico illegally.

12 She said that she was scared to share this information with
13 me because she didn't want it to get back to Alejandro -- I
14 mean, Eduardo that she was telling us this information. And
15 she was a shift manager and had a lot of information regarding
16 the scheduling and the payments, and she did tell us about
17 Eduardo and Alejandro giving the time cards to the employees to
18 take home and redo their time cards stating that they only
19 worked the 40 hours.

20 Q. Is there any employee that's giving you more information
21 than Ms. Parra?

22 A. The information is similar.

23 Q. They all had access to all of these time cards and
24 information as a shift leader?

25 A. Well, they were sent home with time cards to redo at their

1 own homes.

2 Q. Fair to say in her position she's been --

3 A. In her position --

4 Q. -- able to provide you the most information compared to the
5 other employees you've spoken with, right?

6 A. Yes.

7 Q. And when she recently contacted you again, did she call
8 from the same phone number?

9 A. No.

10 Q. Did she tell you where she's working now?

11 A. I don't remember if she told me the place; the name where
12 she was working.

13 Q. She provided you updated contact information for your
14 phone, right?

15 A. Yes.

16 Q. And do you remember any of it as you sit here today?

17 A. Her contact information?

18 Q. Yes.

19 A. I have it in my notes.

20 Q. So you don't remember any of the contact information as you
21 sit here today?

22 A. I don't memorize her information, no.

23 Q. Okay. And she got re-hired by the company at some point?

24 A. Yes. Eduardo said he was short-staffed and needed her
25 help.

1 Q. Okay. And the Department of Labor matter was not over at
2 that time, right?

3 A. That was prior to the complaint being filed.

4 Q. Correct. But the -- the legal proceeding, the litigation
5 was still underway at that point, correct?

6 A. My investigation was concluded.

7 Q. I know. I thought I've heard you say because I pointed out
8 that you didn't begin an investigation like you're trained to
9 do when this was reported to you, you handed it over to the
10 attorneys because this was in litigation --

11 THE COURT: All right. This is highly repetitious.
12 How much longer do you think you're going to take?

13 MR. PARKER: Five minutes, your Honor.

14 THE COURT: All right. Give you five more minutes.

15 Q. BY MR. PARKER: So she told you why she was re-hired in
16 April?

17 A. Yes.

18 Q. Okay. And then at some point later she called you back
19 from a different contact information and told you she was let
20 go again?

21 A. I don't recall when it was she -- she had a different phone
22 number.

23 Q. Okay.

24 A. But, yes, she contacted me to tell me that Eduardo told her
25 "You're no longer needed here."

1 Q. Okay. And so the second time no mention of the Department
2 of Labor was made when they fired her, right?

3 A. No.

4 Q. And no mention of the investigation by the Department of
5 Labor or the litigation was mentioned, right?

6 A. No.

7 Q. Did you ask her during that time, "Why do you believe that
8 you were let go because of the complaint"?

9 A. I did.

10 Q. Okay. What did she say?

11 A. She believed it was because of the news coverage and the
12 complaint that was filed.

13 Q. Did you ask her why she felt that they targeted her
14 specifically?

15 A. She believed that she was the informant -- that she
16 believed that Eduardo and Alejandro believed she was the person
17 that was contacting the Department of Labor and informing us
18 with information.

19 Q. What did she say that was based on since you hadn't told
20 them? What did she say that was based on?

21 A. She didn't.

22 MR. PARKER: She didn't. That's all I have, your
23 Honor.

24 THE COURT: All right. Any more questions?

25 MS. STA.ANA: No, your Honor.

1 THE COURT: All right. Thank you, Ms. Alfaro, you
2 may step down.

3 Now, before we terminate the hearing, I would be interested
4 to know, Mr. Parker, from you what is your understanding of
5 whether Ms. Alfaro was fired, and if so, the reasons for it.

6 MR. PARKER: Your Honor, I do not have any
7 information to provide on that at all.

8 THE COURT: Why not? Why not?

9 MR. PARKER: This wasn't even in the declaration or
10 the application. This is brand new --

11 THE COURT: Right. You didn't --

12 MR. PARKER: -- this afternoon.

13 THE COURT: You didn't bring any representative of
14 your clients here?

15 MR. PARKER: I did not, your Honor.

16 THE COURT: All right. I would have thought you
17 would.

18 MR. PARKER: I have their -- I have their --

19 THE COURT: That they'd be at least interested in
20 what's going on.

21 MR. PARKER: They're very interested, your Honor.

22 THE COURT: Well, when you're interested you might
23 want to show up. This is a public proceeding.

24 MR. PARKER: I understand that, your Honor. What
25 we've done on this emergency basis, since there is a business

1 to run, is we've actually provided first party testimony about
2 this information.

3 THE COURT: I know. I know you have, and you don't
4 have any first party testimony on whether or why Ms. Parra was
5 fired.

6 MR. PARKER: Your Honor, I would point out that since
7 we do know her identity, any statements that she's made are
8 absolute hearsay and not subject to the exception here.

9 THE COURT: Well, that's not true, Mr. Parker.
10 Because the secretary is very aware of the fact and points out
11 to the Court that hearsay is admissible in a hearing on a
12 motion for a temporary restraining order. So I can't say that
13 I will reject anything just because it's hearsay. If I said
14 that, it would be reversed on appeal. The only thing I can say
15 is what credence I give to any hearsay that's presented and
16 whether I find it's reliable. That's all I can say.

17 MR. PARKER: And --

18 THE COURT: So right now I'm not going to reject what
19 she said about Ms. Parra, but I'm going to give it such weight
20 as I think it deserves.

21 MR. PARKER: And, your Honor, the evidence that you
22 do have contradicts the statement that she was let go and
23 fired. That's direct examination that is not hearsay.

24 THE COURT: Where is the evidence that she was not
25 fired?

1 MR. PARKER: In the declarations that my clients have
2 gone ahead and submitted.

3 THE COURT: Which part of the declarations establish
4 that she was not fired?

5 MR. PARKER: Paragraph six of the declaration of
6 Hector Manual Martinez Galindo states that "Since the
7 Department of Labor began its investigation in May of 2021, the
8 company has not terminated a single employee nor has the
9 company ever called immigration authorities on any of its
10 employees."

11 THE COURT: All right.

12 MR. PARKER: The same statement is made --

13 THE COURT: All right. So that's a good point.
14 Ms. Sta.Ana, do you take the position that that is a perjurious
15 declaration?

16 MS. STA.ANA: Correct, your Honor.

17 THE COURT: Your client is in serious trouble if it
18 turns out that Ms. Parra was terminated, right?

19 MR. PARKER: Your Honor, based on a hearsay
20 declarant, I think that the representation or the allegation
21 that that's perjurious are outrageous.

22 THE COURT: Well --

23 MR. PARKER: They have no evidence to present with
24 any deal of reliability.

25 THE COURT: Somebody has -- somebody has these texts,

1 and I would be within my authority if I just insisted that you
2 bring those texts to me and show them to me. Now, I don't want
3 to prolong this hearing any longer, but I have a serious
4 interest in whether one side or the other has committed perjury
5 in this hearing.

6 Now, where are those texts?

7 MS. STA.ANA: Ms. Alfaro's files, your Honor.

8 THE COURT: Where is her file?

9 MS. STA.ANA: They're at the Department of Labor.

10 THE COURT: Can you access it online?

11 MS. STA.ANA: I will have Ms. Alfaro answer that.

12 THE COURT: Have her tell you and then you tell me.

13 MS. STA.ANA: I think we can provide that through an
14 email.

15 THE COURT: All right. You get it to me.

16 Here is why I am making this inquiry. The closest you have
17 come to establishing actual intimidation -- or much worse and
18 more relevant, actual retaliation is in this allegation that
19 Maria Parra was terminated because she cooperated with the
20 Department of Labor in this investigation.

21 Now if there's some dispute about whether that happened,
22 that is a material dispute in this hearing. And before I rule
23 it would be nice to know who's lying and who's telling the
24 truth.

25 So how long is it going to take you to get those texts to

1 me?

2 MS. STA.ANA: Within 15 minutes, hopefully.

3 THE COURT: All right. Let's take a 15-minute break,
4 and we'll see what you give me.

5 MS. STA.ANA: Who should I email it to?

6 THE COURT: What?

7 MS. STA.ANA: Who should I send the email to?

8 THE COURT: You can send it to the clerk. Also, as
9 long as we're taking a break here, Mr. Parker, if you have any
10 more information to support the statement of your client that
11 nobody was fired. For example, records -- the defendant ought
12 to keep records of who they fire. They could have Ms. Parra's
13 employment records. If you have anything tangible to present
14 to the Court on this question and you can come up with it on
15 this break, let's do that too.

16 MR. PARKER: I will, your Honor. Thank you.

17 THE COURT: All right.

18 (Recess taken, 1:35 p.m. to 2:02 p.m.)

19 THE CLERK: Please remain seated, this court is again
20 in session.

21 THE COURT: Have both of you received the printout of
22 the texts that were provided to the Court?

23 MS. STA.ANA: Yes, your Honor.

24 MR. PARKER: I have, your Honor.

25 THE COURT: I have read the English translation. It

1 is a very bad translation. I don't know where the translation
2 came from. My law clerks said maybe you just went to Google
3 translate or something. We have experience with interpreters
4 in this court that I'm sure could do a much better job, and
5 eventually when we get to the ultimate question that we have to
6 resolve, I would urge you to get the real interpreters to give
7 us the English version of what was said.

8 But here is the way I read the English translation that was
9 provided to me. Maria sends messages to Alejandro, is that who
10 it is to?

11 MR. PARKER: Yes, your Honor.

12 THE COURT: All right. Maria sends messages to
13 Alejandro, and she says she's -- she wants to warn him of
14 something, and that's the best you can tell.

15 Now, if it was a better translation we would know more
16 about it. And they get to the point where she says, "I am only
17 warning you that you are firing me without reason. I don't
18 have any warnings."

19 And that's the first mention of any firing. There's no
20 mention by him and there's no mention that I can tell by her of
21 being fired. And then she says, "Soon you'll be talking to the
22 Labor Department on my behalf. I don't have a month of working
23 but five years."

24 So he immediately comes back and says, "No, Maria, stop
25 telling myths and talk to me."

1 So he appears to me to be denying her allegation that he
2 was firing her, that that's the way I read the first exchange
3 of texts.

4 Now, the next exchange she goes back and says, "Thank you
5 for messages accepting that you fire me without reason," but
6 yet there are no messages that say that he's either firing her
7 with or without reason that I can see.

8 So she says this. And then she says again, "Soon you will
9 talk to the Department. They take care of everything." I take
10 this as a threat by her to report something to the Department
11 that he is denying having done.

12 When she says that "soon you will talk to the Department,"
13 he immediately comes back and says, "I didn't fire you," okay?

14 So there's no statement from him anywhere in this exchange
15 of email that he is firing her. There are numerous allegations
16 that appear to me to look like she's trying to set him up for
17 something.

18 He says, "I did not fire you, but you're not going to show
19 up for work or when you're thinking of showing up."

20 Now, I think if we got the right translation of that, he's
21 asking her when she's going to show up. And she says
22 "Thursdays, as always."

23 Now, somebody that was fired -- that really thought they
24 were fired say they're going to show up "Thursdays, as always"?
25 So that's the way I read that second exchange of texts.

1 And then the third exchange she's back again and she says,
2 "Thank you for the messages of accepting that you fired me
3 without reason."

4 Again, there are no messages saying that he fired her or
5 that he fired her without reason. Just the contrary. There
6 are statements by him saying he is not firing her, and she goes
7 on to say, "Soon you will talk to the Department. They will be
8 in charge of everything." I interpret that as I see it as a
9 threat again by her to report something to the Department that
10 he is not doing.

11 He immediately comes back again for the third time and says
12 "I did not fire you. But if you are not presenting yourself to
13 work or when you are thinking of presenting yourself."

14 Now, it looks to me like colloquially he's saying, "I
15 didn't fire you, but when are you going to show up for work?"
16 And she says again, "Thursdays, like always."

17 I don't read that as somebody who thought they were fired.
18 I read that as somebody who was trying to set up the employer
19 for some kind of adverse action against the Labor Department.
20 That's the way I read it. It doesn't make me feel good about
21 the plaintiff's case.

22 So that's how I resolve this. Did you have anything to
23 add, any other information that you got ahold of in the
24 meantime here, Mr. Parker?

25 MR. PARKER: Your Honor, during the 15-minute break I

1 spoke with one of my clients who believes that Ms. Parra is
2 still working with them. I've asked for her the last time that
3 she's been paid through payroll, I don't have that information
4 at this point. I'd be happy to provide it, but given the texts
5 and the misrepresentation by the witness as to what they
6 represent, I don't think it's needed.

7 THE COURT: No, I don't think it's needed either. If
8 somebody has got a better translation of this, we'll eventually
9 get to it when we get to subsequent proceedings in this matter.

10 Now, is there any other testimony that either side wanted
11 to present today?

12 MS. STA.ANA: Not today, your Honor.

13 MR. PARKER: No, your Honor.

14 THE COURT: All right. Here is my thinking right
15 now. As I said, I think the closest that the secretary came to
16 demonstrating to this Court a risk or likelihood of retaliation
17 against any of the complainants or intimidation was this
18 allegation that they had fired Maria Parra, which I find to be
19 totally unsupported and incredibly controverted in the record.

20 Otherwise, I don't have to determine the likelihood of
21 success on the merits of each of the claims that the -- that
22 the plaintiff is making.

23 There may be, and I emphasize "may be," a likelihood shown
24 of success on one or more of the claims, but certainly nothing
25 that relates to harm that might occur to any of the

1 complainants during the time from today's date until the time
2 that we could hear the motion for a preliminary injunction on
3 its merits.

4 That is more or less reaffirmed by the delay that the
5 secretary has taken in order to bring this matter up for a
6 hearing on the temporary restraining order. I mean, this thing
7 has been on file for months. All of this information that I've
8 heard about here from the witness was available for a
9 substantial period of time before the Secretary filed this
10 motion for a temporary restraining order.

11 And I don't see anything that's likely to change the status
12 quo in any significant way that's likely to occur between now
13 and the time that we can hear the preliminary injunction. If I
14 haven't already told you, I can hear it if you're ready to
15 brief it sometime in the week after next.

16 If you can be ready, I can be ready, and I'll hear it. If
17 you can't hear it then, I do have that other trial, and I won't
18 be able to get to you until after August the 12th, but I can
19 hear it anytime after August the 12th if you either don't want
20 me to hear it or can't be ready for it before the 25th of July.

21 MS. STA.ANA: Does this also include the informant's
22 privilege briefing as well?

23 THE COURT: You can brief the informant's privilege.
24 Anything else that we've discussed now -- you know, as I told
25 you, I'm familiar with *Roviaro*, I deal with it all the time.

1 And in *Roviaro* you'll recall the Supreme Court said that the
2 privilege didn't apply because the informant was a percipient
3 witness to the crime -- was actually, as I recall, sitting in
4 the seat of the car when the deal went down.

5 And so what we usually look to when we're talking about
6 *Roviaro* is whether the informant was any kind of a percipient
7 witness to any of the events that would be relevant at the
8 trial. And if he or she was, then we require the government to
9 disclose the identity of the informant.

10 Now, the so-called informant privilege, which I've never
11 heard it called directly as such before, doesn't apply when an
12 informant goes to the government and says "I'm the victim of
13 this crime."

14 If somebody goes to the government and says, "I was raped
15 by the defendant, I was robbed by the defendant. The defendant
16 stole my property, the defendant sold drugs to me," et cetera,
17 we don't apply *Roviaro*. The government cannot keep that
18 person's identity secret from the defendant in a criminal case.

19 Now, you can brief what the Ninth Circuit in its wisdom has
20 said about the so-called privilege in civil cases, but I'm
21 going to have to be persuaded if it says somebody can
22 go to the Department of Labor or to the Department of Homeland
23 Security or anybody else and claim that the defendant did
24 something to them that constituted a violation of the laws that
25 are enforced by that Department, and that Department can keep

1 that person's identity a secret from the defendant.

2 I would be surprised if it does, but I would never be
3 surprised by anything that might come out of the Ninth Circuit.
4 I've got to read it first. But I would be surprised. Any more
5 than the Courts would say somebody can come to -- to the law
6 enforcement agency and claim they were robbed by the defendant
7 and they don't have to tell the defendant who the alleged
8 victim is. Let him figure it out. We're going to go to trial.
9 We're going to charge you with robbery, but you don't get to
10 know who the person was that you supposedly robbed.

11 Now, they may say that, but you're going to have to
12 persuade me, okay? So when you brief the informant privilege,
13 you can talk about that.

14 MS. STA.ANA: Yes, your Honor.

15 THE COURT: And again, the hearing on the preliminary
16 injunction is probably going to be substantially similar to
17 what we've had on the TRO because the question is almost the
18 same. The question is can we preserve the status quo between
19 the time of the hearing on the preliminary injunction and the
20 time of the final hearing on the merits? That may be a longer
21 period of time and so the issues may be a little different.

22 But I will accept your representation that the *Winter* test
23 does not include the requirement of showing irreparable harm
24 when, as here, there's a statute entitling the Secretary to
25 injunctive relief.

1 So that will be the issue when we get to the hearing on
2 preliminary injunction, is there a likelihood of success on the
3 merits.

4 Nevertheless, I think it's still relevant whether you call
5 it irreparable harm or whether you call it preserving the
6 status quo or whether you call it something else to look to the
7 question of whether it's necessary to enjoin something between
8 the time that we can hear the preliminary injunction on the
9 merits and the time that we can get to the -- to the final
10 hearing.

11 Okay. Now, you understand what we're going to be doing in
12 the hearing on a preliminary injunction. Can you do it before
13 July the 25th?

14 MS. STA.ANA: Do you expect witnesses for the PI,
15 your Honor?

16 THE COURT: Yes.

17 MS. STA.ANA: If so, the later date might have to
18 work in order to talk to the witnesses -- to any potential
19 witnesses that are willing to come forward at this point.

20 THE COURT: All right. Is that all right with you,
21 Mr. Parker?

22 MR. PARKER: Your Honor, I don't disagree with that.
23 Within our opposition we've requested expedited discovery.
24 That would include the investigator's file, her deposition, the
25 deposition of any witnesses that they're relying on. I think

1 it's incumbent upon or it sounds like the Department will
2 continue to resist the identification of those people. It
3 sounds like we'll need to brief and address the issue of the
4 so-called informant's privilege first before we can adequately
5 identify when the preliminary hearing would even happen.

6 THE COURT: No, it's not going to have -- we'll be
7 here forever. You want the cart before the horse or do you
8 want the horse before the cart? We're going to address the
9 privilege at the time of the hearing on the preliminary
10 injunction, but I've already told them what the -- what the
11 probability is that they will convince me that testimony is
12 credible when you haven't had a chance to even know who your
13 accuser is.

14 MR. PARKER: Is the Court suggesting that we'll have
15 a preliminary injunction hearing and we'll decide then and
16 there, sort of like we did today, where witnesses will take the
17 stand, my client will not have been able to adequately prepare
18 to cross-examine him?

19 THE COURT: Right. That's right. That's the way it
20 goes. That's the way it goes. What else do you suggest?

21 MR. PARKER: Today went very well, your Honor, with
22 the cross-examination. I don't think I'll have any problem
23 with that.

24 THE COURT: Yeah, that's the way it has to go.

25 The whole problem is caused by the government's reliance on

1 a doctrine that in my 32 years on this court of handling
2 literally hundreds of criminal cases and, I might add, dozens
3 and dozens of FLSA cases, I've never heard of this doctrine of
4 informant's privilege in the context of a labor case. And
5 they're very adamant that it is just a well-established concept
6 that we use all the time. They cited cases and so forth, and
7 they've come to me on one day's notice, and I don't want to be
8 wrong on this point. But yet I've got to proceed with the
9 hearing on a preliminary injunction because everybody is
10 entitled to it.

11 MR. PARKER: Your Honor, I agree with you. I'm fine
12 with that. The only additional ask that I would have then is
13 that in their briefing, so I can adequately prepare, that they
14 identify the witnesses they are going to call so that I can --
15 if they're going to waive the informant's privilege and present
16 an actual witness rather than just the investigator again, I
17 would like an opportunity to at least be able to prepare at
18 that point for the person.

19 THE COURT: That makes sense. Do you want me to set
20 a time for the briefing now then?

21 MS. STA.ANA: Yes, your Honor.

22 THE COURT: All right. Give me a suggestion from the
23 government. What's your suggestion?

24 MS. STA.ANA: In terms of briefing, we have the date
25 of August 12th for the hearing itself. Today is the 7th.

1 THE COURT: Well, no. August 12th is the last day of
2 the trial that I'm going to have.

3 MS. STA.ANA: Okay.

4 THE COURT: So you need to be sometime during the
5 week of August the 15th.

6 MS. STA.ANA: The week of August 15th. Okay.
7 Understood. In terms of any brief writing, we can have
8 something to you within two weeks from today.

9 THE COURT: Okay. So let me -- let's set a date now
10 for the hearing.

11 Karen, give us -- we have a law and motion on the 15th, I
12 assume. What date in that week is best for a hearing in this
13 case?

14 THE CLERK: Law and motion, your Honor, is the
15 following week. So that week, the week of the 15th -- one
16 moment.

17 THE COURT: We can do it on the 16th probably then.

18 THE CLERK: You can probably even do it -- let me
19 look at the 15th because that is a scheduling conference day.
20 One moment, your Honor.

21 THE COURT: It's a little early for us to say that
22 there aren't going to be any status conferences because --

23 THE CLERK: Right.

24 THE COURT: -- I have to review the reports first.

25 THE CLERK: Yes, your Honor. Okay, the 16th. Let me

1 check one more place, your Honor. The 16th is available, your
2 Honor.

3 THE COURT: All right.

4 MR. PARKER: Your Honor, for defendants that's
5 available.

6 THE COURT: All right. I left my personal calendar
7 in the chambers.

8 THE CLERK: That's what I was looking at. I didn't
9 see anything.

10 THE COURT: Nothing there? All right. Let's do it
11 then at 9 o'clock on the 16th of August. With that in mind,
12 when would you like to get the formal motion supported by any
13 and all documents that you want the Court to consider on file,
14 and then I'll ask Mr. Parker when he wants to get his
15 opposition on file.

16 MS. STA.ANA: Is August 4th okay to the Court?

17 THE COURT: Why would you want to wait that long?

18 MS. STA.ANA: In terms of trying to get the witnesses
19 to be able to testify, I want to be able to try to have that
20 amount of time, but we can do what we originally suggested to
21 do if the Court prefers.

22 THE COURT: I see. So the reason she wants more time
23 than I would otherwise think is she wants to incorporate the
24 identification of the witnesses who are going to testify in her
25 motion, and she needs the time to talk to those people and

1 decide which one she's going to call. I have a hard time
2 rejecting that suggestion. But if you didn't have to have the
3 names of the witnesses or any description of them, then we
4 could say her motion would be on file earlier, and then the
5 witnesses would not have to be identified until August the 4th.
6 Which would be your preference here, Mr. Parker?

7 MR. PARKER: Your Honor, I'll just note that that's
8 four weeks from -- four weeks from now that they would have to
9 go ahead and submit this brief, and then --

10 THE COURT: No, no, no. Wait. I didn't make myself
11 clear.

12 I said if you just want the brief, I can have her file it
13 earlier. But if you want to have the witnesses identified and
14 a summary of their testimony as part of it, then I think it's
15 reasonable to give her four weeks. Because I don't know who
16 all these people are. How many -- I mean, you have -- how many
17 employees do you have? We didn't even discuss that.

18 MR. PARKER: Your Honor, each location has
19 approximately 30 employees.

20 THE COURT: So that's a lot of people for them to go
21 out and interview and decide whether they can bring them into
22 court. They may have interviewed them already, but they've got
23 to go and hunt them down and find out whether these people will
24 give up their fears that they're saying they have and come and
25 testify.

1 MR. PARKER: Your Honor, I would -- I would be fine
2 with getting a brief earlier and then having the identification
3 of the witnesses. You know, I would suggest maybe a week
4 earlier than the 4th so that I have an opportunity to submit an
5 opposition.

6 But one additional ask I would make is that within
7 approximately a week I get a redacted version of the
8 investigative file that doesn't have any other names other than
9 Ms. Parra's in it, understanding that the ruling on the
10 so-called privilege hasn't been made yet.

11 THE COURT: All right. Other than the identification
12 of the witnesses and any summaries of their testimony, what's
13 the earliest you could get your motion on file with all the
14 other supporting documents?

15 MS. STA.ANA: Including the investigative file, your
16 Honor?

17 THE COURT: If that's what you want the Court to
18 consider.

19 MS. STA.ANA: Well, that's -- I don't think that's
20 what I was suggesting. But two weeks from today in terms of
21 brief writing and the motion.

22 THE COURT: All right. That's fair. That's fair.
23 So let's say two weeks from today is the 20th. The government
24 will get its motion.

25 THE CLERK: The 21st, your Honor. Today is the 7th.

1 Yeah, so the 21st, your Honor.

2 THE COURT: Well, excuse me.

3 THE CLERK: Well, I just wanted -- I'm sorry. All
4 right. The 21st.

5 THE COURT: By July the 21st the plaintiff will file
6 its motion for preliminary injunction in full, together with
7 any attachments, declarations, points of authorities, exhibits,
8 or anything else that the government wants the Court to
9 consider in support of its motion with the exception of the
10 identification of witnesses who will testify live at the
11 hearing and the summary of their testimony.

12 Then two weeks after that, which would be August the 4th --
13 let me modify that. Do you think you could do it by Monday,
14 August the 1st, to get those witness identification and
15 statements on file?

16 MS. STA.ANA: We'll do our best if that's what the
17 Court requires.

18 THE COURT: Okay. I will, and I'll tell you why in a
19 minute.

20 So by August the 1st the government shall file its list of
21 the names of the witnesses who it will call to testify live at
22 the hearing, together with a brief summary of the nature of
23 their testimony.

24 Now, that doesn't have to be a verbatim statement of what
25 you expect them to say or anything else. It can be very

1 summary.

2 Now, on August the 4th I'm going to suggest that the
3 defendant file its response to the motion for preliminary
4 injunction, together with any papers, including declarations,
5 points of authorities, exhibits, or anything else that it wants
6 the Court to consider in opposition to the motion, and that
7 shall also include a list of the witnesses that the defense
8 intends to call to testify live at the hearing and a brief
9 summary of the testimony of those witnesses.

10 Now, I know that's only going to give you three days from
11 the time you got the plaintiff's witnesses, but you have
12 everything else, all your other ducks in line. I don't think
13 it's unreasonable that you give me your list of witnesses by
14 that day.

15 MR. PARKER: Your Honor, that day I'll be traveling
16 from the Chianti region of Italy to Venice, Italy. I return on
17 Sunday the 7th. While I'm not -- I've already given up my 4th
18 of July weekend for this and for the government's briefing. I
19 would like to at least have our brief -- even if it means the
20 hearing goes back a week -- I would like to at least have our
21 opposition due perhaps on the 11th or 10th.

22 THE COURT: All right. Well, if I do that, I might
23 as well not even require them -- no, I've already said
24 something so I don't have to repeat myself so I'll leave it the
25 way I have it.

1 Now, if you want to do it on the 11th or 12th, then I'm not
2 going to be able to have everything together to have the
3 hearing on the 16th. So we're going to have to put the hearing
4 over a little longer.

5 MR. PARKER: Your Honor, defense are available on the
6 23rd of August.

7 THE COURT: Is that just as good for you,
8 Ms. Sta.Ana?

9 MS. STA.ANA: That's fine with me. If that's the
10 case, can we extend the time in which we reveal the names of
11 the witnesses?

12 THE COURT: Yeah, okay. Strike everything I said.

13 MS. STA.ANA: Okay.

14 THE COURT: That's what annoys me, because I try to
15 make it precise and now I haven't. And I was going to ask you
16 to get a transcript of what I'm saying here to know what you
17 have to do, so strike everything that I've said about the
18 schedule.

19 Knowing that we can't have the hearing until August, what
20 was it, 23rd? Let's take a break. I'm too confused to give
21 you an accurate statement of what I want you to do. Take a
22 ten-minute recess.

23 MR. PARKER: Thank you, your Honor.

24 THE CLERK: This court is in recess.

25 (Recess taken, 2:31 p.m. to 2:44 p.m.)

1 THE CLERK: Remain seated. This court is again in
2 session.

3 THE COURT: You understand that during the break you
4 agreed on a schedule?

5 MS. STA.ANA: Correct, your Honor.

6 THE COURT: Would you like to state that for the
7 record?

8 MR. PARKER: Counsel, would you like me to?

9 MS. STA.ANA: Sure.

10 MR. PARKER: Your Honor, if it pleases the Court, we
11 would have the plaintiff submit an opening brief by July 21st.
12 That brief would contain all evidence that they wanted the
13 Court to consider with the exception of evidence that they
14 would submit through live testimony.

15 The Department of Labor will also produce by that date the
16 full investigation file with the names redacted of individuals
17 other than Ms. Parra.

18 By August 8th, a mutual exchange of witnesses that either
19 party intends to present at the hearing would be submitted with
20 a brief summary of their testimony.

21 On August 11th, defendants would submit their opposition.
22 And if the Court would allow, the parties could appear for a
23 hearing on the 18th of August.

24 THE COURT: All right. That would be acceptable to
25 the Court. As I stated when I tried to set forth the original

1 schedule, the filing from the plaintiff should include their
2 motion for preliminary injunction, any declarations that they
3 want the Court to consider in connection with the motion, the
4 points and authorities, any exhibits and anything else other
5 than the identification of the live witnesses should accompany
6 the motion that's filed on July the 21st.

7 Is that your understanding?

8 MS. STA.ANA: That is my understanding. I do have a
9 question, your Honor. Since we're still not -- at that point
10 we're not hearing the privilege yet. In terms of the
11 declarations from any of the workers. Can those be filed under
12 seal on July -- during the July date?

13 THE COURT: During the July date?

14 MS. STA.ANA: Correct.

15 THE COURT: Well, we're going to get their testimony
16 on August the 8th anyway, aren't we?

17 MS. STA.ANA: August the 18th.

18 MR. PARKER: Your Honor, if --

19 THE COURT: What is August the 8th?

20 MR. PARKER: Your Honor, there isn't an August the
21 8th.

22 THE COURT: There is. There is. Well, hold it.
23 Hold it.

24 MR. PARKER: Did I misspeak? Oh.

25 THE COURT: There is. By August the 8th a mutual

1 exchange of witnesses that either party intends to present at
2 the hearing would be submitted with a brief summary of their
3 testimony.

4 MR. PARKER: Your Honor, I apologize. The parties
5 had agreed on August the 4th for that date, and that's what I
6 intended to state. I apologize to the Court.

7 THE COURT: All right. So let me go back then.

8 Is what you want to file under seal on July the 21st the
9 same thing that you're going to be including in your filing on
10 August the 4th?

11 MS. STA.ANA: Yes. Eventually yes, your Honor.

12 THE COURT: Well, then there's no problem. Why would
13 you even file it under seal if Mr. Parker doesn't get to see it
14 until August the 4th?

15 MS. STA.ANA: In terms of the witnesses that were
16 coming forth on the stand, your Honor, we just want to be able
17 to verify that they will be able to be there on August the
18 18th. The declarations are in support of the motion for PI.

19 THE COURT: I'm sorry, I don't understand.

20 MS. STA.ANA: I'm just anticipating whether or not
21 everybody has filed a declaration. I don't know if we can make
22 it on the August 18th date on the hearing for witnesses. That
23 is why we have that time period in which we are talking to
24 workers.

25 THE COURT: Oh, so you're going to have witnesses

1 submit declarations that you want the Court to consider even
2 though they're not called live?

3 MS. STA.ANA: If there are declarations from workers
4 who cannot -- cannot make it to the August 18th date, your
5 Honor, is what I'm concerned with.

6 THE COURT: Okay. So just so you both understand it.
7 You're saying that the Court can consider declarations in
8 addition to live testimony. I guess whether the witness
9 testifies live and is subject to cross-examination or submits a
10 declaration which is not subject to cross-examination will go
11 to the weight that you think the Court should give to it?

12 MS. STA.ANA: That is my understanding, your Honor.

13 THE COURT: Is that yours?

14 MR. PARKER: Your Honor, it is my understanding that
15 someone could submit a declaration and then later still testify
16 live, and I would have no objection to that. I would object to
17 declarations being submitted under seal. I think the more
18 appropriate thing would be that they would have the names
19 redacted and identification information redacted from the
20 declaration.

21 THE COURT: Before you get to that question. Would
22 you agree that witnesses can submit declarations and then not
23 testify live?

24 MR. PARKER: Correct, your Honor. I believe that
25 they would be able to do that.

1 THE COURT: Okay. So why would you do it under seal
2 if you want the Court to consider it?

3 MS. STA.ANA: Either way, your Honor. We can do a
4 redacted version or under seal.

5 THE COURT: Redacted. All right. That will be the
6 understanding.

7 All right. So did you want to restate this again so that
8 we have it in one place on the record? You're changing one
9 date and you're adding a provision for redacting declarations.

10 MR. PARKER: I'm happy to give it my best.

11 THE COURT: Okay. Let's do that so that there's one
12 place you can both look and not disagree on what it is that you
13 have to do.

14 MR. PARKER: Thank you, your Honor.

15 So on July 21st the parties have agreed to submit -- to
16 have plaintiffs submit an opening brief. That would contain
17 all evidence that they want to go ahead and submit for the
18 Court to consider with the limited exception of live testimony
19 by witnesses at the hearing in the matter.

20 That will also include potential declarations by the
21 plaintiff submitted that will be redacted with identification
22 information of those declarants in support of the application
23 for the preliminary injunction.

24 That same day the Department of Labor will produce the full
25 investigation file to defendants with redacted names and

1 identification information of individuals other than Ms. Parra.

2 On August 4th the parties will mutually exchange a list of
3 any individuals that they intend to call for live testimony at
4 the hearing with a brief summary of their testimony.

5 On August 11th the defendants would file their opposition
6 with any and all information that the Court -- that they want
7 the Court to consider with the exception of live testimony.

8 And that at the hearing, it would be August 18th, the Court
9 to set the time, both counsel are available and would not
10 object to individuals testifying live that have already gone
11 ahead and submitted their declarations, nor will the parties
12 object to individuals that just submit declarations without
13 going ahead and testifying live.

14 THE COURT: That sounds pretty complete.

15 Ms. Sta.Ana, do you agree with that?

16 MS. STA.ANA: I do.

17 THE COURT: All right. That's the schedule then.

18 MR. PARKER: Thank you, your Honor.

19 THE COURT: See, you can agree. Now all you have to
20 do is agree on the rest of the case and we won't even have to
21 come back.

22 MR. PARKER: We hope we could accomplish that.

23 THE COURT: I would add this. You're both vigorous
24 advocates for your clients; however, this is not a criminal
25 case. The defendants are not charged with a crime, and they

1 should not be treated as if they are criminals. They are
2 business owners, they have a disagreement with the government,
3 it will eventually be resolved either by settlement or judgment
4 in this case. But, in the meantime, they should be treated
5 like citizens by their government. All right?

6 MS. STA.ANA: Yes, your Honor.

7 MR. PARKER: Thank you, your Honor.

8 THE CLERK: Court is adjourned. Thank you.

9 (Proceedings adjourned: 2:53 p.m.)

10 ---o0o---

11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13

14 /s/ Thresha Spencer
15 THRESHA SPENCER
16 CSR No. 11788, RPR

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