

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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 UNITED STATES OF AMERICA, : 23-CR-146(DG)  
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 :  
 -against- : United States Courthouse  
 : Brooklyn, New York  
 :  
 :  
 RACHEL CHERWITZ : Thursday, April 4, 2024  
 and NICOLE DAEDONE, : 11:00 a.m.  
 :  
 Defendants. :  
 - - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE DIANE GUJARATI  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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 Eastern District of New York  
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## A P P E A R A N C E S: (Continued.)

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1 (In open court.)

2 COURTRROOM DEPUTY: United States against Rachel  
3 Cherwitz and Nicole Daedone.

4 Government ready?

5 MS. ELBERT: Yes.

6 COURTRROOM DEPUTY: Appearances.

7 MS. ELBERT: Lauren Elbert, Jon Siegel, and  
8 Gillian Kassner.

9 Mr. Siegel has another court appearance at noon so  
10 he may have to step out at some point.

11 THE COURT: That's fine. Thank you. Good morning  
12 to everyone.

13 COURTRROOM DEPUTY: Defendants ready?

14 MS. KRAMER: Good morning, your Honor. Jenny  
15 Kramer from the firm of Alston & Bird. I am joined by my  
16 colleague Rachel Finkel and my client Rachel Cherwitz.

17 THE COURT: Good morning to all of you.

18 MS. GATTO: Julia Gatto from Steptoe for Nicole  
19 Daedone.

20 THE COURT: And good morning to both of you.

21 MR. PELLETIER: Paul Pelletier, Counsel for the  
22 non-party One Taste, Inc.

23 THE COURT: Good morning to you as well.

24 You're going to be comfortable, Mr. Siegel?

25 MR. SIEGEL: I'll make do.

1 THE COURT: We're convened today for a conference  
2 and I'm going to begin today by taking up the pending motion  
3 to compel brought by the Government. I'll then take up the  
4 pending motion to dismiss and for a Bill of Particulars  
5 that's been brought by defendants Cherwitz and Daedone.

6 But turning to the motion to compel: On  
7 February 8, 2024, the Government moved to compel  
8 One Taste, Inc., a non-party to this criminal case, to  
9 comply with a grand jury subpoena dated January 2, 2024.  
10 The Government's motion is ECF No. 73. The subpoena is  
11 Exhibit E to that motion which is ECF No. 73-5. One Taste  
12 has opposed the motion. Its opposition is at ECF No. 78.  
13 The Government's reply is at ECF No. 79. And the  
14 Government's ex parte letter of March 14, 2024, which was  
15 submitted at the Court's direction is ECF No. 81.

16 As everyone is aware, or as everyone, all the  
17 relevant parties, are aware, there was prior litigation  
18 regarding subpoenas issued to One Taste. And I will assume  
19 everyone's familiarity with the details of that prior  
20 litigation, both the litigation before me and the litigation  
21 before Judge Chen.

22 Currently, the only pending subpoena-related  
23 motion is the motion to compel that I mentioned. And,  
24 again, that is ECF No. 73.

25 In connection with the motion to compel, the

1 Government argues that the January 2, 2024, subpoena was  
2 properly issued as part of an ongoing grand jury  
3 investigation and the Government seeks an order compelling  
4 One Taste to comply with the subpoena within 30 days.

5 The Government asserts that it is not the case  
6 that the sole or dominant purpose of the subpoena is to  
7 obtain additional evidence to prepare an already pending  
8 indictment for trial. Rather, the Government asserts that  
9 the challenged subpoena was properly issued as part of an  
10 ongoing grand jury investigation.

11 The Government has provided some information about  
12 that investigation in its motion and reply briefing and has  
13 provided additional information about that investigation in  
14 its ex parte letter. The Government points in part to the  
15 history of its issuance of grand jury subpoenas to  
16 One Taste, and the Government's communications with counsel  
17 for One Taste over the last few years, to support the  
18 Government's position that it did not issue the January 2,  
19 2024, subpoena for the sole or dominant purpose of obtaining  
20 additional evidence for the already charged case. The  
21 Government also points to the content of the subpoena  
22 itself.

23 Is it going to be Ms. Elbert?

24 MS. ELBERT: Yes.

25 THE COURT: Have I accurately stated your position

1 and arguments in general terms, of course?

2 MS. ELBERT: Yes, your Honor.

3 THE COURT: In opposing the motion to compel,  
4 One Taste argues that the January 2, 2024, subpoena's  
5 primary purpose is an improper one. Specifically, that the  
6 primary purpose is not investigative, but rather, is to  
7 obtain additional evidence to support an already indicted  
8 case. One Taste argues that it has overcome the presumption  
9 of regularity that normally attaches to grand jury  
10 proceedings, that the burden has been shifted to the  
11 Government to demonstrate a proper purpose for the subpoena,  
12 and that the Government falls short of meeting its burden.

13 Like the Government, One Taste points to the  
14 content of the subpoena itself and to the history of the  
15 grand jury subpoenas issued to One Taste and the  
16 communications that counsel for One Taste has had with the  
17 Government over the last few years to support its position.  
18 One Taste, of course, asks the Court to draw different  
19 conclusions than the Government asks the Court to draw.

20 One Taste argues that what the Court must  
21 determine is not whether the Government was entitled to  
22 subpoena materials previously but whether the Government is  
23 entitled to do so now.

24 And Mr. Pelletier, have I accurately stated your  
25 position and arguments in general terms?

1 MR. PELLETIER: In general terms you have. I  
2 would just also note for the Court. When the Court  
3 referenced our pleading, attached to that pleading is an  
4 extensive declaration.

5 THE COURT: Yes.

6 MR. PELLETIER: That is absolutely our position.

7 THE COURT: Yes, I was using that docket that  
8 number to encompass everything under docket number but thank  
9 you for raising that.

10 It doesn't appear that the parties dispute the  
11 applicable legal standards governing the issue before the  
12 Court. And, in any event, the applicable law is well  
13 settled.

14 As a general rule, the grand jury process is  
15 afforded a presumption of regularity. See United States  
16 v. Calk, 87 F.4th 164 at 186. Second Circuit 2023.  
17 However, courts may not ignore possible abuse of the grand  
18 jury process. Again see United States v. Calk, 87 F.4th at  
19 186.

20 And it is improper for the Government to use the  
21 grand jury "for the sole or dominant purpose of preparing  
22 for trial under a pending indictment." See United States  
23 v. Calk, 87 F.4th at 186, quoting United States v. Leung, 40  
24 F.3d, 577 at 581. Second Circuit 1994. See also  
25 United States v. Punn, 737 F.3d 1 at 6. Second Circuit

1 2013. And In Re: Grand jury Subpoena Duces Tecum dated  
2 January 2, 1985 (Simels), 767 F.2d 26 at 29. Second Circuit  
3 1985.

4 To determine whether trial preparation is the sole  
5 or dominant purpose for a grand jury subpoena, the  
6 Second Circuit has set forth that a burden shifting  
7 framework applies. See United States v. Calk, 87 F.4th at  
8 186 describing the burden shifting framework.

9 And, again, I think the parties are in agreement  
10 about what the applicable law itself is here.

11 As I noted earlier, the parties rely in part on  
12 the content of the subpoena itself. The Court has  
13 considered the subpoena itself and the parties' respective  
14 arguments about what the subpoena demonstrates. As I also  
15 noted earlier, the parties also rely on the history of the  
16 issuance of subpoenas to One Taste and the Government's  
17 communications with counsel for One Taste over the last few  
18 years to support their respective positions. The Court  
19 agrees with the parties that the history has relevance to  
20 the instant motion. The Court has considered that history  
21 and has considered the parties' respective arguments about  
22 what that history demonstrates.

23 The Court also agrees with the separate point made  
24 by One Taste that the issue that the Court must determine is  
25 whether the Government is entitled to subpoena the materials



1 now, not whether it was entitled to do so in the past.

2 Based on the record before the Court, the Court  
3 finds that One Taste has not met its burden to overcome the  
4 presumption of regularity with respect to the subpoena here.

5 One Taste has not identified a sufficient basis  
6 for the Court to question the Government's purpose for  
7 issuing the grand jury subpoena. But in any event, the  
8 Government has made a sufficient showing that the subpoena  
9 was not motivated by an improper purpose.

10 The Government has made a sufficient showing that  
11 there is an ongoing grand jury investigation and that the  
12 subpoena was issued for the purpose of furthering that  
13 investigation.

14 The Government has made that showing in the papers  
15 that One Taste has seen; for example, on Pages 7 and 14 of  
16 the Government's motion. And the Government has further  
17 strengthened that showing in the ex parte letter, in which  
18 the Government provides additional detail about the grand  
19 jury investigation.

20 The Government has set forth the nature of the  
21 crimes being investigated, and in the ex parte submission,  
22 has provided names of those under investigation, has  
23 provided information about particular conduct being  
24 investigated, and has provided a transcript of certain grand  
25 jury testimony relevant to crimes being investigated.

1           Here, the record before the Court does not reflect  
2 that the sole or dominant purpose of the January 2, 2024,  
3 subpoena is to obtain additional evidence to prepare for  
4 trial on the pending indictment. The record before the  
5 Court does not reflect an abuse of the grand jury process in  
6 connection with the issuance of the January 2, 2024,  
7 subpoena.

8           The Government's motion to compel is granted.  
9 One Taste shall comply with the subpoena by May 6, 2024.

10           Before I turn to oral argument on the motion to  
11 dismiss and for a Bill of Particulars, I will address the  
12 pending sealing requests with respect to the documents filed  
13 in connection with the motion to compel; namely, ECF Nos.  
14 73, 78, 79, and 81. And, again, I mean those to include the  
15 documents that were filed at those numbers. All of the  
16 documents filed at those numbers.

17           Although a presumption of public access ordinarily  
18 attaches to judicial documents, sealing or redacting such  
19 documents can be justified when necessary to protect  
20 countervailing interests. See Lugosch v. Pyramid Company of  
21 Onondaga, 435 F.3d 110 at 120. Second Circuit 2006.

22           In light of the content of the information  
23 contained in ECF Nos. 73, 78, 79, and 81; namely,  
24 information relating to an ongoing grand jury investigation,  
25 including information about those under investigation, and

1 in consideration of the relevant legal standards, the Court  
2 will permit those filings to remain under seal.

3 Turning now to the motion to dismiss and for a  
4 Bill of Particulars.

5 On January 16, 2024, defendants jointly moved to  
6 dismiss the indictment or in the alternative for a Bill of  
7 Particulars. Defendants' notice of motion is at ECF No. 68,  
8 and defendants' memorandum of law in support of the joint  
9 motion is at ECF No. 69. Defendants requested oral  
10 argument. The Government has opposed the motion and its  
11 opposition is at ECF No. 77. Defendants' reply is at ECF  
12 No. 80.

13 I have read all of the filings in connection with  
14 the defendants' motion, and I've given a lot of thought to  
15 those filings, but you did ask for oral argument and I want  
16 to hear you out today on anything that you'd like to raise  
17 with me. And, of course, hear the Government out as well.

18 There are certain, of course, themes that are  
19 running through the filings. The Government has taken the  
20 position that through the indictment and through discovery  
21 and other information including detention memoranda that  
22 they have provided what they refer to as a "roadmap" to the  
23 defense. The defense has argued that, notwithstanding all  
24 of the discovery that's been produced, and notwithstanding  
25 what the Government points to, the defendants believe that

1 they're still unable to prepare a defense.

2 I guess I would start with the defendants. And I  
3 don't know whether you are both going to be arguing. Why  
4 don't you tell me how you plan to do this.

5 MS. GATTO: So what we hope to do. Our motion to  
6 dismiss is grounded in both the Fifth Amendment and the  
7 Sixth Amendment. And so, I would ask that I would argue the  
8 Fifth Amendment issue and Ms. Kramer would argue the  
9 Sixth Amendment issue and also our alternative request for a  
10 Bill of Particulars.

11 THE COURT: That's fine. However you want to do  
12 it is fine. I will have some questions and you can decide  
13 who or both of you should be answering it.

14 I guess I'd just like you to start with what are  
15 the specific elements of the charged crime that you do not  
16 feel you have enough notice of, or information on, to be  
17 able to prepare your defense, your respective defenses.

18 MS. KRAMER: Thank you, your Honor. And we  
19 appreciate the time here today to be heard on this.

20 Your Honor's question appears to be directed to  
21 the Sixth Amendment component of our motion to dismiss. And  
22 to be really clear, we believe that the overwhelmingly vague  
23 indictment, opaque indictment, and the failure of the  
24 Government to particularize that indictment to date is in  
25 and of itself a sufficient basis for dismissal. In the

1 alternative, of course, we're asking for a Bill of  
2 Particulars.

3           So to respond to your Honor's question, the Sixth  
4 Amendment to the United States Constitution, it guarantees,  
5 it is not a suggestion, it's not a hint, it guarantees an  
6 indicted defendant with the ability to be provided with  
7 notice, the nature and the cause of the accusation that they  
8 face.

9           And why they is that guarantee so sacrosanct? Why  
10 is it so important? It is so that our clients here,  
11 Ms. Daedone and Ms. Cherwitz, can properly defend against  
12 this charge. The presumption of innocence should not be  
13 lost in any of this, I'm not saying it has been. But the  
14 very critical mandate, not suggestion, of the  
15 Sixth Amendment to properly put an indicted individual or  
16 entity on notice of exactly what it is that they have been  
17 charged with so that they can sufficiently prepare to defend  
18 against that allegation is critical.

19           So, to begin, and to give a little bit more around  
20 the atmospheric and the backdrop. By the Government's own  
21 admission, they have characterized the investigation and  
22 this alleged crime as a sweeping conspiracy that has spanned  
23 more than 12 years in time. More than that, your Honor, the  
24 Government spent more than half of a decade, and I know  
25 we've raised this in the status conferences along the way,

1 this is really our first opportunity to talk to the Court  
2 about what has, in fact, transpired along the way.

3 On top of the sweeping alleged 12-year-long  
4 conspiracy, the Government has spent five-plus years  
5 investigating the case and ultimately returning an  
6 indictment that was under seal a year ago. I think it was  
7 yesterday was the one-year date. It was unsealed in June of  
8 2023.

9 And throughout the course of that  
10 five-plus-year-long investigation. The Government conducted  
11 its investigation. The Government interviewed witnesses.  
12 They obtained documents. And they did what the Government  
13 does in any investigation. And all of this culminated in a  
14 single-count conspiracy charge. A conspiracy, an alleged  
15 illicit agreement, that's the crime being charged here, an  
16 agreement. It's not a drug case, it's not a straightforward  
17 bank robbery, it's an illegal agreement to force people into  
18 labor. That is what is the culmination and resolution of a  
19 five-plus-year-long investigation alleging a 12-year-long  
20 conspiracy. And what we are left with is a 14-paragraph  
21 indictment, three to five of those paragraphs set forth this  
22 particular conspiracy charge.

23 And I have to say, and I mean this when I say it,  
24 I spent lots of time as an AUSA myself. Ms. Gatto and I  
25 have been sitting here for the better part of the last year

1 scratching our heads as to how we properly defend against  
2 this charge and here's why. Because the nature of the  
3 charge is criminalizing an agreement, we are entitled,  
4 constitutionally entitled, to know details about that  
5 agreement. And since the unsealing of the indictment, we've  
6 been asking the Government for help in that regard. We have  
7 requested a Bill of Particulars.

8           Your Honor rightly noted at the last status  
9 conference you had inquired whether there had been meet and  
10 confers. There have been. And those requests, those  
11 constitutional demands, have been met with silence or a  
12 refusal to particularize. And your Honor did something  
13 really, really wonderful at the last hearing when your Honor  
14 asked the Government. You said, have you directed the  
15 defense to, in all of the discovery that you've provided,  
16 those materials or information that would inform them, that  
17 would let them know what you deem to be so important, so  
18 that they can appropriately prepare their defense? And the  
19 Government said we will take that into consideration. That  
20 has never happened.

21           And, you know, put discovery aside, which we  
22 shouldn't have to, but putting everything aside, we are left  
23 with this. This is what we are dealing with after an  
24 alleged 12-year-long conspiracy.

25           THE COURT: I don't know what you are holding up,

1 is it the indictment?

2 MS. KRAMER: It is the indictment, I apologize.  
3 For the record, it's the indictment.

4 THE COURT: Okay.

5 MS. KRAMER: We are left with three to four  
6 paragraphs that provide us absolutely nothing. Now, on that  
7 basis alone, we are, at the very least, entitled to a Bill  
8 of Particulars. But, again, our position is that dismissal  
9 is the appropriate remedy here.

10 This case is about far more than the allegations  
11 of an illicit agreement that spanned longer than 12 years.  
12 It's about the assault on a legitimate business that is  
13 still very much in effect where people, the cornerstone of  
14 the business, of which it's consent and volition. It's  
15 about a business where people come together communally and  
16 of their own volition and consensually engage in  
17 philosophical and meditative practices that maybe the  
18 Government's uncomfortable with.

19 And the reason we are asking for a Bill of  
20 Particulars is not because it's a run-of-the-mill request,  
21 we're not checking a box here. If ever there was a case  
22 where dismissal was present because of the  
23 unconstitutionally opaque indictment, this is that case.  
24 And the case law, your Honor, supports this. And this is  
25 really critical that I now talk about this other component



1 which is we're entitled to dismissal without getting into a  
2 discussion of the discovery. But we've had the benefit of  
3 receiving what we believe is almost complete discovery in  
4 this case.

5           And what that is, your Honor, is more than two  
6 terabytes of information, 90 percent of which is a  
7 regurgitation of the information provided to the Government  
8 by One Taste, Mr. Pelletier is counsel for One Taste. So  
9 we've received in this robust discovery process the  
10 company's own information that the company provided to the  
11 Government and pepper on top of that some raw footage from  
12 the NetFlix documentary and bank records.

13           THE COURT: And weren't there 20 witness  
14 statements or portions of witness statements?

15           MS. KRAMER: You are so ahead of me, your Honor,  
16 this is fantastic. I'm getting to that next. That was not  
17 provided --

18           THE COURT: But I do want to get the answer to the  
19 question I asked, actually, which was about the elements;  
20 right?

21           MS. KRAMER: Yes.

22           THE COURT: So keep going. It sounds a bit like  
23 you're trying to make an opening statement but I will let  
24 you go for a little bit longer but I do want the answer to  
25 my question.

1 MS. KRAMER: I appreciate that indulgence, your  
2 Honor. The backdrop and the opening statement part of this  
3 is absolutely necessary to explain why we believe that we're  
4 entitled to dismissal in the first instance and a Bill of  
5 Particulars in the second.

6 THE COURT: Go ahead.

7 MS. KRAMER: So after reviewing the discovery  
8 which did not contain those statements, your Honor is  
9 thinking about the Brady letter and I'm getting to that just  
10 momentarily.

11 In all of that discovery, we've been still unable  
12 to better understand the particulars of the indictment.  
13 Adding to that, the 30-page, 30-page tome that was provided  
14 to us the night before the October status conference in  
15 which the Government identified no less than 70 people, all  
16 of whom, each of whom I should say, were summarized to have  
17 said positive things, exculpatory information. So in all of  
18 this provision of information: Discovery, Brady, what we've  
19 seen is information that undermines the indictment and is  
20 exculpatory in nature.

21 So that begs the question --

22 THE COURT: Was the material provided to you as  
23 Brady material or not?

24 MS. KRAMER: So the 30-page letter was provided as  
25 potential Brady. The discovery was -- and there was a --

1 thank you four reminding me of that -- there was a 10-page  
2 letter that followed that initial 30-page letter. Both of  
3 those were letters were described and characterized as  
4 Brady.

5           And another note before I get to answering your  
6 very specific question is that this business has been in  
7 existence for years and years and there's an international  
8 footprint.

9           Now, I'm getting to the answer.

10           More than 30,000 people have crossed the threshold  
11 of the business. And, again, the cornerstone of the  
12 business is consent. The cornerstone is exercising  
13 sovereignty over the decisions that these consenting adults  
14 make about what they want to do with their lives, with their  
15 time, and the philosophies that they want to subscribe to.

16           How are we, when it comes to the who, what, where,  
17 when, why. How are we to prepare a defense to a one-count  
18 indictment after a five-plus-year-long investigation that  
19 simply characterizes the alleged criminal conduct as  
20 Ms. Daedone and Ms. Cherwitz at some point in time agreeing  
21 with a criminal purpose, mind you, agreeing among each other  
22 to force people into labor.

23           When we've asked for the Bill of Particulars, and  
24 we've asked for the information and the help from the  
25 Government in understanding this, the reason why we're

1 getting silence as a response, the reason why the Government  
2 isn't leading us in the right direction and isn't providing  
3 the particularization is because the Government can't do it  
4 because the information is not there and that is the answer  
5 to your Honor's excellent question.

6           We need to be able to prepare for trial, it's that  
7 simple. This is a one-count conspiracy case. We need to  
8 know who are the people the Government is claiming are the  
9 alleged victims here. The case law supports identifying  
10 victims. If ever there was a case where that's appropriate,  
11 it's here. Who is saying that they were forced into labor?  
12 What was the force? Where did this take place? Is it any  
13 number of the 30,000 people. Do we have to boil the ocean?  
14 That's not what is constitutionally required. We should not  
15 be required to have to do the Government's work for them.

16           THE COURT: So both the defense and the Government  
17 cite the Court to cases where a Bill of Particulars or  
18 motions to dismiss were requested where there were  
19 conspiracy charges. Now, some of the cases, I think, had  
20 substantive charges as well and some did not. I think I  
21 need to hear from the parties more on what you think those  
22 cases say where we're talking only about a conspiracy.

23           MS. KRAMER: That is a wonderful question. And if  
24 you will -- I can actually direct your Honor. Page 10 of  
25 our reply brief, and I'll walk through this just for the

1 purpose of the record. This is specifically addressing your  
2 Honor's question. This case is no different ultimately than  
3 the cases I'm going to cite. United States v. Wilson,  
4 F. Supp. 2d 364 at 373. Eastern District of New York, 2006.  
5 In that case, the Government was ordered to turn over the  
6 defendant identities of alleged victims in the charged  
7 conspiracies.

8 United States v. Urso which is also a very  
9 meaningful as is Tomasetta. That's at 369 F. Supp. 2d 254,  
10 272. Eastern District of New York, 2005. In that case, I  
11 believe that was a racketeering case, the Court ordered a  
12 Bill of Particulars specifically including the identity of  
13 the victim or victims, individual or business, of the  
14 alleged conspiracy.

15 United States v. Avellino, 129 F. Supp. 2d, 214 at  
16 221, Eastern District of New York, 2001. In a conspiracy  
17 case, the Government must identify, among other particulars,  
18 the identity of the victim.

19 United States v. Davidoff, 845 F.2d, 1151 at 1154.  
20 Second Circuit, 1988. There, finding the district court  
21 abused its discretion by denying defendant's request for a  
22 Bill of Particulars on a RICO conspiracy count because  
23 disclosure of victims' identities during jury selection and  
24 file was not adequate, an adequate substitute for a  
25 straightforward identification in a Bill of Particulars of

1 the identity of victims of offenses that the prosecution  
2 intends to prove. See also, United States v. Orena, 32  
3 F.3d, 704, 714 to 715. Second Circuit, 1994. In a  
4 conspiracy case noting, "An indictment should name the  
5 persons defrauded when they are known by the Government."

6 So those are just a few. But, more importantly.  
7 Tomasetta is a case, I believe it's District of  
8 Massachusetts, is squarely on all fours with a case such as  
9 this. This is a unique case. It's is really a novel theory  
10 what the Government is pursuing.

11 This is a case about communication. It's a case  
12 about alleged threats. Threats to any number of the 30,000  
13 people who were part of One Taste and it's philosophical  
14 practices. It's a case about what those communications  
15 were? What was the labor? What was the force? Who are the  
16 people? And without knowing those very critical details,  
17 our clients are being constitutionally deprived of their  
18 ability to properly defend against this case.

19 THE COURT: But is it your position that in none  
20 of the -- what sounds like quite extensive discovery that is  
21 produced, are you given any information relevant to those  
22 issues that you're saying you don't have information about?

23 MS. KRAMER: That is our position.

24 We do not believe we've been given -- there's been  
25 no identification, you know, in concrete way of this is the

1 alleged victim telling us as the Government has in their  
2 opposition brief: Categorically, we think the labor is  
3 cleaning toilets; we think the labor is putting coffee urns  
4 out. We think the labor is, you know, is this that and the  
5 other categorizing the types of labor that gets us no closer  
6 to the ability to properly defend as we are constitutionally  
7 entitled to do so.

8 THE COURT: Is there anything else the defense  
9 wants to raise before I turn to the Government? You want to  
10 turn to a different amendment?

11 MS. GATTO: Yes, I do.

12 THE COURT: Yes, go ahead.

13 MS. GATTO: I think it dovetails nicely.

14 It's the same problem. It's this inscrutable  
15 indictment: 12 years, 30,000 people where, when, how? All  
16 of that is missing. The Sixth Amendment problem is we can't  
17 prep for trial.

18 It is impossible to prep for trial and I'll bring  
19 it to the most practical level. It actually is impossible  
20 to prep for trial. We don't know if the allegations are.  
21 These two women agreed to coerce someone using psychological  
22 abuse to clean a toilet in their own house, or whether it's  
23 economical threat to somebody to do A/V work in Colorado.  
24 We need to be able to confront that at trial.

25 THE COURT: And if the answer from the Government,

1 if they were to give you an answer, it's all of it.

2 Do you have an issue with that?

3 MS. GATTO: Yes, of course, I would have an issue  
4 with that because what're saying is they went into the grand  
5 jury, which goes right in the Sixth Amendment, so it's a  
6 perfect question for me.

7 If they went into the grand jury and they  
8 presented a case and what was in a the grand jury's mind is  
9 that these two women conspired against 30,000 people to  
10 do -- to compel all kinds of labor; in fact, their list of  
11 labor, which is their only attempt to particularize, is  
12 meaningless. What it is, is this is telling me I have a  
13 company, I have some people who work in the kitchen, I have  
14 some who work in the main area, and have some people who  
15 work in the attic. And they say, we'll particularize it for  
16 you by telling you, you coerced labor for some subset of  
17 30,000 people who worked on all three floors. It's  
18 meaningless, we need more.

19 And the Sixth Amendment now to take -- the  
20 Fifth Amendment is super important and I'm not checking a  
21 box with the Sixth Amendment, with the Fifth Amendment.  
22 That is not a fussy pleading rule, it is the -- I would  
23 submit, one of the most important rules because it's what  
24 separates ordinary citizens from untethered, overzealous,  
25 overreaching prosecutions. The rule is, you don't get to



1 secure this inscrutable indictment that says nothing. So we  
2 have no idea what's in the jury's mind when they return it.  
3 And then between now and the trial, spend time -- and that  
4 is what's going on, your Honor, this isn't a theoretical  
5 problem. First of all, even if it were theoretical, that's  
6 what the Fifth Amendment says, it can't be.

7 But what is happening here is there is this  
8 inscrutable indictment that means nothing. We have no idea  
9 what was presented to the grand jury. We can't even -- the  
10 Court can't even look at this indictment and determine  
11 whether it's legally sufficient. Because it's, again, it's  
12 meaningless. It's saying that two people agreed to do  
13 something somewhere against someone. And what is happening  
14 is between the indictment and the trial, the Government is  
15 now whether I understand your ruling on the grand jury, but  
16 what whether through subpoenas or, as we are learning doing  
17 our own work here, unscrupulous investigative techniques.  
18 They are filling trying desperately to fill in gaps.

19 THE COURT: Let me stop you there. You just made  
20 quite an allegation. Why don't you flesh that out for me.

21 MS. GATTO: I will. I talked to the Government  
22 about it. They are, and I'm going to use this word, they  
23 are conjuring up victims, your Honor.

24 So what is happening post-indictment, and we have  
25 spoken to witnesses ourselves about this. Their agents are

1 re-interviewing people, who, in the initial stage of their  
2 interview told them we are not victims of anything. We are  
3 not victims of these two women. We were part of One Taste,  
4 we were in the victims there. And they are reaching out to  
5 these women saying, me, federal agent, with all the  
6 authority that means, you are a victim. Here is mental  
7 health services for you. You are a victim, and if you're  
8 not a victim, then this is a sweeping conspiracy involving a  
9 lot of people. The Government throws around the word  
10 "co-conspirator" so often --

11 THE COURT: Let me stop you for a moment.

12 MS. GATTO: Yes.

13 THE COURT: You talk about the Government. I need  
14 you to be more specific.

15 MS. GATTO: This prosecution, your Honor. Agents  
16 of this prosecution.

17 THE COURT: That's what I'm asking you. Are you  
18 accusing these prosecutors of something?

19 MS. GATTO: I am telling.

20 THE COURT: You used the word "unscrupulous."

21 MS. GATTO: Yes, your Honor.

22 THE COURT: And I want to know who you are  
23 accusing of being unscrupulous.

24 MS. GATTO: The case agent in this case, we have  
25 been told by witnesses, has done exactly what I said.

1 THE COURT: Okay. Go ahead.

2 MS. GATTO: Which is identify people who have told  
3 this case agent: I am not a victim, I want to be left  
4 alone. Reaching back out to them post-indictment and  
5 saying, you are a victim, here's victim services. And that  
6 is coercive and that's not interviewing that's conjuring up  
7 victims.

8 Additionally, and I alerted the Government to  
9 this, we've asked for more discovery on it. They have  
10 interviewed a prior counsel to One Taste knowing that that  
11 individual was prior counsel and elicited privileged  
12 information from him. I reached out to the Government, I  
13 asked for further discovery, we haven't heard back from them  
14 on that.

15 THE COURT: Go ahead. Let's get back to this  
16 motion.

17 MS. GATTO: So, again, your Honor, it is not a  
18 theoretical problem we're facing, it is very realistic  
19 situation here.

20 I'll go back to the indictment I think your first  
21 question was just tell me what you need, what do you think  
22 is missing from it? From a Fifth Amendment --

23 THE COURT: Let me just maybe clarify. It sounds  
24 -- well, there's obviously a distinction -- but there's a  
25 distinction between knowing what the nature of the crime

1 charged is and knowing all the evidentiary detail. So what  
2 I'm getting at is what is it about the crime charged that  
3 you think you don't know, you have not been put on notice  
4 of, such as to be able to defend yourself?

5 MS. GATTO: Yes, and that's the notice but I think  
6 it fits into what the grand jury knew.

7 It is the details of who were the targets, okay?  
8 Who were the targets of this forced conspiracy. And if I  
9 could take a step back, I know you want an answer so I'll  
10 give it to you. Who was the target? Where were they  
11 located? Where was the labor supposedly coerced to be  
12 performed? When in the 12-year period? So, for example,  
13 was it presented to the grand jury? It doesn't seem based  
14 on this indictment that the object of the conspiracy was to  
15 force people living in an owned house in Colorado to cook  
16 communal meals, right? That's the information we need to  
17 know. And the law on this, on the Sixth Amendment, is that  
18 you need as much -- not need -- the Government is required  
19 under the constitution to give as much factual particularity  
20 as necessary for the nature of the case and the  
21 peculiarities of the defense.

22 And I think it's helpful, your Honor, to address  
23 your question, and just kind of square us all in this. The  
24 nature of this case is as follows.

25 There are a huge number of people who walk through

1 One Taste's door because they, on their own volition, want  
2 to explore a meditative practice that involved stroking  
3 clitorises. And this huge group of people also engages with  
4 the surrounding philosophy of that meditative process. And  
5 that, and I don't want to kind of oversimplify what the  
6 philosophies are, but it includes exploring and  
7 experimenting with sexual boundaries. This is the group of  
8 people we're talking about.

9           The Government's allegations and, again, this is a  
10 guess because we really don't know. But what it sounds like  
11 is the Government's alleging that these two women somehow  
12 *Svengalied* some small portion of these people. And we know  
13 it's some portion, not all of them, to go to your original  
14 question because the Government has given us 70 witnesses  
15 who were not coerced.

16           So it's some portion who were *Svengalied* in some  
17 unidentified way to force this small portion that we don't  
18 know to perform labor we don't know in some place.

19           So when you kind of put it under the umbrella of  
20 this Sixth Amendment standard, it's hard to imagine a nature  
21 of a case and the peculiarities of a defense that scream  
22 more out for additional information that the Sixth Amendment  
23 requires.

24           So, with that backdrop, this is exactly we want to  
25 know. What was the agreement? The object of the agreement

1 was to coerce who, whom, to do what, where, and when? And  
2 we're not asking for the intimate details of all of it. It  
3 does feel a little bit like why are we have hiding the ball  
4 from the defense here? Is it some desire to move forward  
5 with trial by ambush? I don't think that's it. I think  
6 there actually is no meat to the bones of this case. And  
7 the Government should not be allowed, since the grand jury  
8 didn't return any of these factual details in the  
9 indictment, to scramble around. I don't think they'll find  
10 it but to scramble around and fill in the gaps.

11           That's whole point of the Sixth Amendment. It's  
12 the who, what, where, when, and why but not in the typical  
13 sense like where Ms. Kramer said, you're charged with a bank  
14 robbery and the conspiracy to rob 10,000 banks in 10,000  
15 locations. The nature of this case, in that circumstance  
16 would scream out for more details, too. But here the nature  
17 of the case is so amorphous, unclear, not logical, and also  
18 against everything we're seeing. So we don't have any  
19 documents that are inculpatory in the discovery. All we  
20 have from the Government, other than the recycled subpoena  
21 returns from One Taste is 70 witnesses who say what the  
22 Government said happened didn't happen.

23           So if the Government presented to the grand jury  
24 that more of it happened, they should have put it in here,  
25 they haven't. This indictment fails to meet the standards

1 of the Sixth Amendment and it should be dismissed.

2 THE COURT: Let me turn to the Government.

3 MS. ELBERT: Yes, your Honor.

4 So the law is clear that in order for an  
5 indictment charging the offense of conspiracy to be  
6 sufficient, it need only identify the offense that was the  
7 object of the conspiracy. And we cited a number of cases in  
8 our papers to that effect.

9 The indictment in this case goes far further. It  
10 doesn't just identify the offense, it identifies the entity  
11 through which the defendants were accused of carrying out  
12 the crime. It identifies the places where that entity  
13 operated. It provides the dates. It provides specifics as  
14 to the various ways in which the conspiracy operated, the  
15 means and methods, the types of coercive conduct that were  
16 used in order to obtain the forced labor of the group of  
17 One Taste victims that are the object of the conspiracy. So  
18 it clearly passes constitutional Sixth Amendment muster.

19 There can't be a requirement that the indictment  
20 name specific offenses to a conspiracy count because the  
21 Government need not prove that anyone was, in fact,  
22 victimized by a conspiracy. They need only prove that an  
23 agreement existed to victimize somebody through forced labor  
24 which is what the indictment here says.

25 So in terms of the initial motion that the

1 defendants filed notably, and I think this is very telling,  
2 didn't specify any particulars at all that they needed in  
3 order to prepare for trial. It was just a blanket, we need  
4 a Bill of Particulars which is exactly what's prohibited,  
5 right? You can't use a Bill of Particulars as a general  
6 investigative tool to get a preview of the Government's  
7 case. Then, as we anticipated on reply, they seemed to have  
8 to some degree narrowed their request to fall into generally  
9 two categories: Identification of the type of the victims  
10 and more specific identification of the methods of force  
11 used.

12           And, in this case, your Honor, we submit that  
13 particulars requiring an identification of victims is  
14 premature. This is a case involving high profile  
15 allegations in which there has been extensive litigation  
16 pursued by the company and individuals affiliated with the  
17 company against parties that have spoken out about One Taste  
18 in the media. We believe that that could be potentially  
19 intimidating to victims. We think that the appropriate time  
20 for disclosure of the identities of victims would be closer  
21 in time to trial.

22           THE COURT: The defense in their papers are  
23 arguing that they need to know more about what the serious  
24 harm that was threatened was without -- that doesn't  
25 necessarily rely on naming any particular victim, right?



1 MS. ELBERT: Right.

2 I would submit, your Honor, that that's really  
3 laid out in the indictment in sufficient detail for them to  
4 prepare for trial. There's a paragraph with an itemized  
5 list of the types of abusive and coercive conduct in which  
6 the parties engaged starting at Paragraph 7 continuing  
7 through Paragraphs 8, 9, and 10. We submit that's  
8 sufficient to put them on notice of the type of serious harm  
9 and coercive tactics that were employed in furtherance of  
10 the conspiracy.

11 THE COURT: Give me one moment, please.

12 (Pause in the proceedings.)

13 THE COURT: You are talking about surveillance,  
14 collecting sensitive information, demanding absolute  
15 commitment.

16 Is that what you're referring to?

17 MS. ELBERT: Correct.

18 Specifically, Paragraph 10, it alleges that  
19 resistance to the directives of the defendant was not  
20 tolerated and that the defendant subjected One Taste members  
21 to public shame, humiliation, workplace retaliation if they  
22 failed to adhere to their directives as well as harassment  
23 and coercion to intimidate and attack One Taste members  
24 perceived to be enemies or critics of Daedone and One Taste.

25 So we would contend that that's been alleged with

1 sufficient particularity. We did, in our memorandum in  
2 opposition, and in an effort to resolve this dispute to  
3 include some categories specifying the types of labor that  
4 were the object of the conspiracy. I understand that the  
5 defense's argument is that this list is insufficiently  
6 particular. Your Honor asked a good question about what if  
7 the Government says, it's all of it, and I think the answer  
8 is it is all of it. Different people were directed to  
9 perform different types of labor in different ways. And so,  
10 it is an extensive list because the One Taste members who  
11 were the object of this conspiracy were directed to provide  
12 labor falling into a number of categories and that's the  
13 nature of the scheme.

14 THE COURT: Let me ask you: In your papers, you  
15 represent that you anticipate disclosing well in advance of  
16 trial, I think those were the words you used, the 3500  
17 material and trial exhibits. Of course, the Court will be  
18 setting some schedules, but what do you envision -- what is  
19 your view of "well in advance of trial"? And I know that's  
20 a separate issue from the issue the defendants are raising  
21 about constitutional notice and Bill of Particulars, but I  
22 want to know what the Government is thinking because you did  
23 raise that as an argument.

24 MS. ELBERT: Yes, and I think this is a case where  
25 much of the evidence at trial is going to be victim

1 testimony which is why I think it is an appropriate case to  
2 have a somewhat advanced disclosure for witness statements.  
3 If you give me one moment, your Honor, I can just confer.

4 THE COURT: That's fine.

5 (A brief pause in the proceedings was held.)

6 MS. ELBERT: We were thinking somewhere in the  
7 ballpark of 60 days in advance of trial, your Honor.

8 THE COURT: And that's you're contemplating for  
9 3500 material?

10 MS. ELBERT: Correct.

11 THE COURT: And trial exhibits?

12 MS. ELBERT: Yes.

13 THE COURT: And I'm not setting any schedule right  
14 now.

15 MS. ELBERT: Understood.

16 THE COURT: I want to understand what your  
17 argument is.

18 MS. ELBERT: I can hear the defense commenting to  
19 one another next to me. I mean, as your Honor is aware,  
20 what --

21 THE COURT: I don't want to hear what they're  
22 talking about with each other.

23 MS. ELBERT: Understood. That's quite an advanced  
24 schedule compared to a typical case in this district.

25 THE COURT: You estimated at least a six-week

1 trial which, frankly to me, sounds a bit long.

2 MS. ELBERT: I think we submitted our case would  
3 be --

4 THE COURT: I mean the whole trial.

5 MS. ELBERT: Yes.

6 THE COURT: So it may or may not be a long lead  
7 time and it depends on the number of witnesses, the victim  
8 witnesses, that you are planning to call.

9 Okay. Go ahead.

10 MS. ELBERT: And just to be clear, too, your  
11 Honor, this is a case sometimes in our office we disclose  
12 3500 material in excess of just the people we intend to call  
13 but to include all witness interviews gathered in connection  
14 with the case, and this is a case in which we would intend  
15 to deploy that practice and produce 3500 material beyond our  
16 actual witness list.

17 THE COURT: That's helpful to know. Thank you.

18 MS. ELBERT: There were obviously a number of  
19 allegations about unscrupulous conduct lodged at us as well.  
20 To the extent the defense wants to file a motion about that  
21 and put themselves on the record in writing, we'll be happy  
22 to respond.

23 And otherwise, you know, many of their arguments  
24 seem appropriate for summation at trial and we certainly  
25 look forward to trial and presenting our case and they can

1 make their arguments at the appropriate time. But at this  
2 stage --

3 THE COURT: Let me ask you. You used the word,  
4 the term, "roadmap." What's the roadmap that you think  
5 you've given, or what road are they going to follow to  
6 prepare their defense?

7 MS. ELBERT: Sure.

8 I think the indictment really sets out a roadmap.  
9 I mean, the defense cited the case in -- the Ranieri case,  
10 the NXIVM matter that was before Judge Garaufis a couple of  
11 years ago where the indictment was not a speaking indictment  
12 at all, so just by contrast of the.

13 Here, this case, we indicated to them what the  
14 company was that they engaged in the forced labor conspiracy  
15 through. We explained to them in the indictment the nature  
16 of the tactics. So there will be evidence detailing the  
17 various techniques described in Paragraph 7 as to how they  
18 perpetrated the forced labor conspiracy. There will be  
19 evidence as described in Paragraphs 8 through 10 about the  
20 types of harm that were threatened against the members who  
21 did not wish to participate in the forced labor conspiracy  
22 the way this they directed them to.

23 And so, in sum, the indictment itself gives a  
24 pretty clear roadmap. And I think we did do a very  
25 extensive pretrial disclosure of certain witness statements.

1 And while they're correct that the portions that we provided  
2 were generally intended to be what could arguably be useful  
3 to the defense, I think it gives a sense to them of the  
4 nature and scope of the conspiracy in terms of the types of  
5 people that were interviewed, the types of interactions that  
6 they were speaking about in terms of their past dealings  
7 with the company.

8 THE COURT: When you give over discovery, how  
9 detailed are your letters or indices?

10 MS. ELBERT: We have provided indices with the  
11 discovery. As they've noted themselves, much of the  
12 discovery that we have and have disclosed has been  
13 productions from the company with which it seems the  
14 defendants are already quite familiar.

15 But to the extent that they would like some  
16 additional indexing, if the problem is that they're not  
17 what's produced where, that's something that we can work out  
18 with them but I don't think that's the nature of the  
19 complaint.

20 THE COURT: Let me ask you a question about the  
21 term "members" because the parties seem to dispute whether  
22 there were members. I think there's maybe, in the defense  
23 briefing somewhere, and maybe there's mention that, with  
24 certain exceptions, there were no members but there were a  
25 couple of people referred to as members, I don't know,

1 somebody needs to clarify that. And I'm not sure how much  
2 it matters but I want to make sure that I understand what  
3 the parties' positions are on this.

4 MS. ELBERT: Yes.

5 So the defendants' company obtained labor from a  
6 number of individuals, some of whom were full-time  
7 on-the-books employees. Some of whom were contract  
8 employees. Some of whom were simply people who were part of  
9 the One Taste community and adherents to the philosophy  
10 propounded by the defendants and other leadership of the  
11 organization.

12 And so, our use of the term "One Taste members" is  
13 intentionally broad because they obtained labor both from  
14 paid employees in excess of what those employees were being  
15 paid to do as well as contract employees, as well as people  
16 who weren't employees at all. So it spans a number of  
17 different categories. So to call them -- to limit it to  
18 "One Taste employees," for example, wouldn't be accurate,  
19 it's broader than that.

20 THE COURT: Can you speak to the cases that your  
21 adversaries have raised where Bills of Particular were  
22 ordered in conspiracy cases?

23 MS. ELBERT: So a number of those items --

24 THE COURT: You've addressed some of the case law  
25 in your papers.

1 MS. ELBERT: Yes.

2 I'm not prepared to address them in detail today,  
3 but I'd be happy to put in a supplementary surreply letter  
4 if you'd like. I know that a number of those cases involve  
5 both conspiracy and substantive counts. In particular,  
6 Ms. Kramer referred to a RICO conspiracy. Those typically  
7 include as predicate acts certain substantive offenses but I  
8 would have to look at that more closely to be prepared to  
9 give you a detailed response, your Honor, I'm sorry.

10 THE COURT: That's okay.

11 Is there anything else you'd like to say?

12 MS. ELBERT: I don't think so, your Honor. I  
13 think that's it unless you have further questions.

14 THE COURT: Let me turn back to the defendants if  
15 they want to briefly be heard in response.

16 MS. GATTO: Your Honor, I know Ms. Kramer has some  
17 replies to the presentation by the Government. I just want  
18 to address this question, which we're so thrilled that you  
19 asked about what does it mean to be a One Taste member.  
20 This is a word entirely made up by the government.

21 One Taste, and it's important, your Honor, to  
22 understand what this is. There is a business, it's  
23 One Taste. It's a legitimate business. It was a growing  
24 business, it was a successful business. It has an army of  
25 lawyers and accountants and it uses Sales Force Software.



1 It is a business.

2           The business is in teaching, training, and  
3 introducing people to this meditative practice, which is a  
4 scientifically backed practice, that lives in the space of  
5 yoga and meditation. And people who take the classes, do  
6 the training, many of them become practitioners. And then  
7 just like any other kind of successful wellness business,  
8 and I'm thinking of SoulCycle or CrossFit, they meet and  
9 they are like-minded people and they are elevating their  
10 practice together and they join together.

11           This isn't like membership in some secret society,  
12 this is community developing around like-minded people who  
13 are introduced. The word "member," and the Government use  
14 it is repeatedly for the purpose to make it sound like  
15 something to isn't, is wrong. There were opportunities to  
16 do training at a membership level, there's a very small  
17 number, that's not what they're using it as. They're using  
18 it to make it sound like this is some nefarious group with  
19 the puppeteers at the top pulling the strings. But none of  
20 that is factually correct, in fact, it's the opposite. And  
21 it actually goes to this whole idea of particularization  
22 again, your Honor, and the nature of the case and the  
23 uniqueness of it because it's not, I'm hearing it, and  
24 again, I don't know because the indictment doesn't say it  
25 and the discovery doesn't that the targets of the

1 conspiracy, I think the Government says, are people who  
2 worked for the company.

3           But now it sounds like this also includes people  
4 who don't work for the company but who practice the  
5 meditative practice. Practice the practice, adopt the  
6 lifestyle, which makes the need for particularization not  
7 only for us to prepare the defense and also to understand  
8 what the grand jury thought, but also to evaluate the legal  
9 sufficiency. Because if it is the case that they're -- the  
10 Government's case is there was an agreement to compel labor  
11 from people who were not even associated with the company  
12 which now they say they have particularized as the corporate  
13 vehicle through which the conspiracy happened.

14           So I'm happy to really try to put to bed this  
15 total misnomer of member which is made up from the  
16 Government. But I also think it really highlights how  
17 unparticularized this is and how flying in the dark we are,  
18 and it sounds like maybe even the Government, too.

19           THE COURT: Ms. Kramer.

20           MS. KRAMER: Thank you, your Honor. And very  
21 briefly, I promise.

22           So Ms. Gatto was just talking a bit about  
23 terminology and members. I also just, you know,  
24 atmospherically wanted to bring up part of this terminology,  
25 or the terminology that the Government has been the victims,

1 who are the victims? And what I understand, I was not prior  
2 counsel, but Ms. Cherwitz herself was previously identified  
3 as a victim and here she sits as an indicted defendant in a  
4 criminal matter.

5           The Government also raises as an argument why  
6 victims should not be identified, the idea of intimidation.  
7 Well, let's be clear. This process is a two-way street.  
8 The Government presented a case to a grand jury that  
9 returned an indictment and Ms. Daedone and Ms. Cherwitz sit  
10 here, presumed innocent, presumed innocent. And they have  
11 the constitutional protection and requirement that they be  
12 able to mount a defense in this matter and we are still in  
13 the dark.

14           So talking about intimidation, Ms. Cherwitz, when  
15 she was arrested, helicopters descended upon her home.  
16 People came out with guns drawn. Guns drawn. And this  
17 isn't in a case where she was previously identified as a  
18 victim, that's intimidation.

19           But more to the point about the Government's  
20 arguments.

21           What I heard the Government saying in its argument  
22 was, I wrote it down, the indictment clearly passes  
23 constitutional muster. Well, your Honor, respectfully to  
24 the Government that's why we're here. That's why we're  
25 before the Court. That's your Honor's decision to make, not

1 the Government's unilateral statement to make.

2 The Government also said that giving this kind of  
3 necessary information is premature. How is it premature?  
4 This investigation lasted for more than half of a decade.  
5 We are a year out of indictment. What's premature about any  
6 of this? And to Ms. Gatto's earlier point, what is there to  
7 hide? What is the actual harm? And I want to leave the  
8 Court with this one/.

9 THE COURT: They've identified one concern they  
10 have, if I understood Ms. Elbert correctly, is witness  
11 intimidation.

12 Did I understand your argument?

13 MS. ELBERT: Correct, your Honor.

14 MS. KRAMER: Yes.

15 And the response to that, your Honor, again is:  
16 It is a two-way street, and if the Government chooses to  
17 charge this case as a one-count conspiracy to commit forced  
18 labor, we must know the who and that is where I was going to  
19 bring your Honor.

20 THE COURT: Go ahead.

21 MS. KRAMER: The Sixth Amendment guarantee, again,  
22 is not a suggestion, it's an absolute requirement and it's a  
23 protection that's afforded our clients. In U.S. v.  
24 Tomasetta, that was a conviction for violating loansharking  
25 protections at Title 18 Section 894.

1           At bottom, the case was about threats, it was an  
2 extortionate threats case. That's what this case is  
3 alleging. That Ms. Daedone and Ms. Cherwitz, through threat  
4 of force, the "or else," which we still don't know what is  
5 the "or else," we have no idea what that is. But through  
6 threats of intimidation, coercion, manipulation, they were  
7 somehow able to have people engage in forced labor. I don't  
8 even know how to articulate it which is embarrassing at this  
9 stage of the case. That is what the Government's case is,  
10 it's a threats case.

11           And in Tomasetta there has already been a  
12 conviction, this was on appeal. The indictment there, your  
13 Honor, was more particularized than the indictment we are  
14 contending with. And, in that case, the indictment filed to  
15 name the victim and failed the name of the location of the  
16 offense with specificity. And most critically, which is  
17 what we're also asking for, failed to describe with  
18 particularity the extortionate means charged.

19           And what is the question? What's the analysis  
20 here? The question is whether the indictment as a whole, in  
21 its entirety, conveys sufficient information to properly  
22 identify the conduct relied upon by the grand jury in  
23 considering the charge. That is the analysis. That is what  
24 this court must ask itself and that is what we're asking  
25 ourselves. And the answer uniformly, overwhelmingly,

1 steadfastly, is it does not. And the reason the indictment  
2 does not contain those particularized facts to inform us and  
3 enable us to prepare a defense is because the facts are  
4 simply not there.

5 And with all of those reasons in mind, your Honor,  
6 we respectfully request --

7 THE COURT: Is it that you're arguing the facts  
8 are not there or there's too many facts; that you would have  
9 to defend against too many things and that's a different  
10 argument.

11 MS. KRAMER: So it's both, your Honor.

12 Because as the Government suggests, it's  
13 everything. Why is the Sixth Amendment in place? How do we  
14 go to a trial with everything? So we are to boil the  
15 motion? We are to guess who of the 30,000 individuals who  
16 have been part of the One Taste, you know, philosophy and  
17 who have been engaged with Ms. Daedone and Ms. Cherwitz.  
18 How do we possibly prepare for that? And I love the idea of  
19 early disclosure of Jencks and Giglio, and the Government's  
20 right, to the extent this even proceeds to trial which we do  
21 not believe it should. We think dismissal is warranted with  
22 on Fifth and Sixth Amendment grounds. But to the extent  
23 that this does happen, we would ask for much earlier  
24 disclosure than that.

25 THE COURT: When you say "much earlier," what

1 would you be asking for?

2 MS. KRAMER: With a trial date in January, six  
3 months at least. At least.

4 It shouldn't be an argument for the federal  
5 government after a half-decade-long investigation to say,  
6 you know, "it's all of it." It's not too many facts. It's  
7 that we don't know what the fact are. We don't know what  
8 we're defending against. We are shadowboxing and that is  
9 unconstitutional.

10 And for that reason, your Honor, we ask that the  
11 indictment be dismissed. It's an easy call on both Fifth  
12 and Sixth Amendment grounds. And we thank you very much for  
13 giving us the opportunity.

14 THE COURT: Does the Government wish to be heard  
15 further?

16 MS. ELBERT: I don't think so, your Honor. Thank  
17 you.

18 THE COURT: Give me a moment, please.

19 (A brief pause in the proceedings was held.)

20 THE COURT: Thank you for the arguments. I did  
21 find them to be helpful. I found the briefing to be  
22 helpful. I'll take the defendants' joint motion under  
23 advisement.

24 Let me turn to a few remaining matters.

25 There was a letter submitted by defendant Daedone

1 requesting a briefing schedule for an anticipated motion to  
2 vacate a warrant. That's at ECF No. 83.

3 Is that something the Government wants to comment  
4 on, there was no response to the letter, there didn't need  
5 to be, but why don't I hear you on that.

6 MS. ELBERT: Since that time, your Honor, we have  
7 engaged in some discussions with defense counsel with the  
8 possibility of being able to avoid the motion. They  
9 presented some additional information to us. We have  
10 presented some additional information to them. And so, I  
11 defer to Ms. Gatto, she feels prepared to set a briefing  
12 schedule at this stage, or if she would rather let the  
13 discussions play out a bit longer before we commit.

14 MS. GATTO: No, your Honor, I would like to set a  
15 motion schedule.

16 Since that letter, one, we've had confirmation in  
17 writing from the bank that it was due to government action  
18 in January that the account was restricted which is  
19 one -- it was there is two, kind of, parts. There's a lot  
20 going on with the seizure warrant, your Honor. I've laid it  
21 out in my letter and I'm happy to do it again.

22 THE COURT: I would like to hear it and then I  
23 would like to hear the Government's response.

24 MS. GATTO: I'd be happy to do that.

25 So, at the start of the case as you might recall,



1 the Government seized every penny that Ms. Daedone had. We  
2 engaged in negotiations and we reached an agreement where  
3 they returned some of the money so that Ms. Daedone could  
4 pay for counsel.

5           During that time, there was one account with  
6 Ms. Daedone's name on it as trustee. This is something the  
7 Government has known about since the beginning. It is a  
8 trust set up for Ms. Daedone's 81-year-old mother. And if  
9 you look at the bank account statements, which presumably  
10 the Government has, you see once a month, a check goes out,  
11 or a wire goes out, to Ms. Daedone's landlord. That happens  
12 every month.

13           Some of the accounts that Ms. Daedone had seized  
14 were at the same bank where the trust account was. And so,  
15 what happened, whether directly or indirectly because of the  
16 Government action, the bank kicked the trust out. They  
17 didn't want anything to do with it since they had this whole  
18 government intervention with other accounts with  
19 Ms. Daedone's name on it.

20           So the trust found a new bank, Schwab Bank, and  
21 moved there. Ms. Daedone was listed as the trustee. Then,  
22 lo and behold, having nothing to can with the trust request  
23 for anything, the trust gets a letter from the bank saying  
24 you're out, we're no longer interested in having this  
25 account. Either tell us where to wire the money or issue

1 a -- we're going to issue a certified check.

2           And it's very difficult for Ms. Daedone to find a  
3 bank, even though this is a trust. So the check was issued,  
4 and this is extremely important. It wasn't purchased, it  
5 wasn't t Ms. Daedone or trust's request, it was issued. A  
6 certified check is sent, not to Ms. Daedone in her  
7 individual capacity as the seizure warrant says, but to  
8 Ms. Daedone, logically, as the trustee. And, in fact, the  
9 Government must know that because the bank would never issue  
10 a certified check from a trust to someone in their  
11 individual capacity.

12           The certified check sat there unnegotiated for  
13 some time because the trust couldn't find a bank account  
14 with Nicole Daedone's name on it. Ms. Daedone asked Charles  
15 Schwab in this period, can you send a portion of these funds  
16 to the landlord because, as you'll see from the bank  
17 accounts, as they sent from the bank accounts once a month  
18 it would go out. The bank could not do that.

19           What happened is, pursuant to the original trust  
20 document that set up the trust, I think it's 2023 all before  
21 this, Ms. Daedone stepped down as the trustee since she was  
22 having trouble finding a bank. The successor trustee  
23 accepted up as a trustee, called back Charles Schwab, and  
24 said we still are this check sitting here, would you open a  
25 bank account with me now as trustee? Here's all the

1 paperwork, this was the lawyers and accountants and all  
2 those sort of things, and Charles Schwab said okay. And  
3 then in the process of moving the funds to this new bank  
4 account that was set up, the trust was alerted no, no, this  
5 check has a stop payment on it since January, which the bank  
6 has notified was at the direction of the Government.

7 I called the Government, I learned about this, I  
8 called the Government, did you guys have a warrant? Took a  
9 couple of days for them to get back. They said, oh, we're  
10 looking into it. And finally, I got an e-mail from the  
11 Government saying, we didn't have a warrant in January but  
12 we have one now and they issued the seizure warrant.

13 As I outlined in my letter, in addition to this  
14 whole kind of long story which I think is troubling in many  
15 ways that this account that's clearly used for this  
16 81-year-old mother's shelter, was seized knowing all the  
17 time where it was and how it was. But the most troubling  
18 thing is that the search warrant affidavit by the case agent  
19 includes, and I highlighted in my letter and I sent it to  
20 you, two representations that are used then to make a very  
21 serious representation. Those two representations is that  
22 the certified check was issued to Ms. Daedone in her  
23 individual capacity, and that the certified check was  
24 purchased. And based on those two, the agents says, based  
25 on his experience, it seems consistent with money

1 laundering.

2 That's the circumstances around this.

3 THE COURT: So what is the motion you want to  
4 make?

5 MS. GATTO: It's a Franks Motion, your Honor.

6 THE COURT: Let me turn to the Government.

7 MS. ELBERT: Sure, your Honor.

8 So, first of all, I would dispute certain aspects  
9 of Ms. Gatto's factual recitation. The picture is not quite  
10 as clear as she presents. Ms. Daedone, at the closure of  
11 this trust account, directed that this cashier's check in  
12 the amount of \$200,000 be issued, sent to someone who is not  
13 a co-trustee on the account and who is a member of the  
14 leadership of the One Taste organization.

15 And so, based on that information, we became newly  
16 concerned about the possibility of these funds being used  
17 for reasons that were unrelated to the care of her mother  
18 which is what had been represented to us initially.

19 Setting aside my dispute with the factual  
20 representation, two points on the law which I can flesh out  
21 more fully to the extent that we do end up litigating.

22 First, the information that was contained in the  
23 affidavit was truthful based on what the bank had told the  
24 agent at the time. Ms. Gatto has since presented us with  
25 information we didn't have previously. So, to the extent

1 there were factual pieces that were incorrect such as the  
2 check being made out to Ms. Daedone versus Ms. Daedone as  
3 trustee, that's based on the information that they had at  
4 the time which is the first prong of the Franks analysis.  
5 It has to be a knowing misrepresentation.

6 Second, none of that information is material which  
7 is the second aspect of the Franks analysis. Even if this  
8 account were held in the name of Ms. Daedone's mother and  
9 there was no allegation of any laundering activity in it at  
10 all, if we can show that we can trace proceeds of the scheme  
11 to this account, we could seize it. And Ms. Gatto does not  
12 dispute our ability to trace the proceeds of Ms. Daedone's  
13 sale of One Taste to this account. We had just, in the  
14 past, exercised our discretion not to take it.

15 As a legal matter, these misrepresentations are  
16 also immaterial so there is really no basis for --

17 THE COURT: What's the Government's position now  
18 with respect to that account?

19 MS. ELBERT: I thought we were engaging in good  
20 faith. I haven't heard from Ms. Gatto since we last spoke,  
21 and so, I am now being accused of carrying on various  
22 misdeeds. So I don't know if I am in a position to take a  
23 position at this point.

24 MS. GATTO: Your Honor, that seems like a little  
25 dramatic. We spoke yesterday. I think it makes sense, if

1 the Government is, well, one, I hear them acknowledging that  
2 there's misrepresentations.

3 MS. ELBERT: That's not accurate.

4 MS. GATTO: Okay. Well, that was the word I  
5 thought I heard.

6 THE COURT: No, she said based on the information  
7 that the agent had at the time, it was truthful and that  
8 since there's been additional information; is that correct?

9 MS. ELBERT: That's correct, your Honor.

10 MS. GATTO: Okay.

11 I think what she's saying is it was a mistake,  
12 which, should we litigate this seems incredible to me that  
13 an agent would think or be told that a bank account for a  
14 trust, the bank issued a check in somebody's individual  
15 name, I think that that would violate many banking  
16 regulations. I also find it incredible that the agent  
17 didn't look at any of the back-up or have any kind of  
18 meaningful conversation before submitting the affidavit.

19 THE COURT: You're trying to get this money  
20 released; is that right? And the Government, she's not  
21 going to give me a position right now, because for whatever  
22 reason and I believe valid. But you don't know whether the  
23 Government is going to agree to this or not, right, I  
24 mean --

25 MS. GATTO: I agree, your Honor.

1           And should they release it and they withdraw the  
2 warrant, then how could I possibly have a motion? But, at  
3 the same time, this 81-year-old mother's rent isn't being  
4 paid and there aren't the funds. So I'm happy to engage in  
5 conversations. I'm worried that they're going nowhere based  
6 on our conversation yesterday.

7           The Government keeps providing new facts that are  
8 wrong and then I have to provide the back-up to show them  
9 that they're wrong, the agents, the investigating parties,  
10 and I don't want to leave it hanging. We could set the  
11 motion for late next week or the Monday after and I  
12 obviously will continue to engage with the Government  
13 especially since this --

14           THE COURT: That's fine. I think we can set a  
15 motion schedule. I think it doesn't seem all that likely  
16 that there will need to be a motion but that's up to the  
17 parties. So I'll set a schedule as follows: And it's just  
18 defendant Daedone?

19           MS. GATTO: It is.

20           THE COURT: So defendant Daedone's motion will be  
21 due on April 12th, a week from tomorrow. Government's  
22 response will be due April 19th, and I don't think we need a  
23 reply on this. If the Court needs more, the Court will ask.  
24 But it is my hope that the parties will continue to talk to  
25 each other in good faith. This sounds like something that

1 may very well resolve on its own.

2 MS. ELBERT: Thank you, your Honor.

3 THE COURT: Is there anything else we need to take  
4 up before I set the next conference in this case?

5 For the Government.

6 MS. ELBERT: Not from the Government, your Honor.

7 THE COURT: Defense?

8 MS. KRAMER: No, your Honor thank you.

9 MS. GATTO: No, your Honor thank you.

10 THE COURT: Again, we have a tentative January  
11 trial date, I don't expect that will change but it is still  
12 tentative at this time but nobody should be making other  
13 plans.

14 I am going to set the next status conference for  
15 May 3rd at 10:30 a.m. And time has already been excluded  
16 until the date that is the tentative January trial date and  
17 that remains appropriate here but it has already been  
18 excluded.

19 Is there anything else we need to take up?

20 MS. ELBERT: No, your Honor. Thank you.

21 MS. KRAMER: No, your Honor. Thank you very much.

22 MS. GATTO: No, your Honor. Thank you.

23 THE COURT: Thank you. We are adjourned.

24 COURTROOM DEPUTY: All rise.

25 (WHEREUPON, this matter was adjourned.)



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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.



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Anthony D. Frisolone, FAPR, RDR, CRR, CRI  
Official Court Reporter

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