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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 23-CR-146(DG)

-against- : United States Courthouse
Brooklyn, New York

RACHEL CHERWITZ, et al., :
Defendants. : January 7, 2025
11:30 o'clock a.m.

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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE DIANE GUJARATI
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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5 Proceedings recorded by mechanical stenography, transcript
6 produced by computer-aided transcription.

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10 THE CLERK: Your Honor, this is United States of
11 America against Rachel Cherwitz and Nicole Daedone.

12 Is the government ready?

13 MS. KASSNER: Yes, Your Honor. Good morning.

14 Gillian Kassner, Kayla Bensing, Sean Fern, Nina Gupta, joined
15 by Paralegal Specialists Liam McNett and Marlane Bosler for
16 the government.

17 THE COURT: Good morning, everyone.

18 THE CLERK: Is the Defendant Cherwitz ready?

19 MS. COHEN: Good morning, Your Honor. Celia Cohen,
20 acting as independent Curcio counsel, on behalf of
21 Ms. Cherwitz. Good morning.

22 THE COURT: Good morning.

23 MR. AIDALA: Good morning, Your Honor. Arthur
24 Aidala and Michael Jaccarino.

25 THE COURT: Good morning.

1 MS. BONJEAN: Good morning, Your Honor. Jennifer
2 Bonjean on behalf of Nicole Daedone.

3 THE COURT: Good morning. And good morning to
4 Ms. Cherwitz and Ms. Daedone as well.

5 So I have been briefed on the hearing before
6 Judge Marutollo this morning. I understand that he made a
7 finding of disqualification as to Mr. Jaccarino only. I also
8 understand that certain issues were left open, namely, whether
9 Mr. Jaccarino's disqualification must lead to the entire
10 Aidala firm being disqualified and, separately, whether
11 Mr. Aidala must be relieved as counsel on a separate basis,
12 namely, relating to his relationship with his client.

13 If I have any of that wrong, somebody should speak
14 up now.

15 MR. AIDALA: No, Your Honor.

16 MS. KASSNER: No, Your Honor, that's correct.

17 THE COURT: Okay. I am going to require any motion
18 or any submission at all on the two issues I just identified
19 to be made in writing by 6 p.m. today.

20 To the extent that anyone needs to file something
21 and doesn't know how to do it, doesn't have proper access,
22 please reach out to my courtroom deputy before 5 p.m. today,
23 but I will expect any filing on either of these issues to be
24 made by 6 p.m. today in writing.

25 I am going to schedule a conference for noon

1 tomorrow.

2 I am not relieving Ms. Cherwitz's counsel of record
3 at this time, pending the submissions.

4 We will continue at this time with certain other
5 matters.

6 MS. COHEN: Your Honor, can I just be heard on that
7 one point?

8 We would ask, in light of the request for the papers
9 to be by tonight, that we'd also be able to have an in camera
10 ex parte meeting with Your Honor with just myself as Curcio
11 counsel and Ms. Cherwitz to explain some details that would
12 like to be ex parte and out of Mr. Aidala as well. I do have
13 case law that supports that.

14 THE COURT: That's fine but it can be in writing and
15 still achieve the same result in terms of just being seen by
16 me.

17 MS. COHEN: Yes, Your Honor. I think the reason
18 we're requesting in person is our information, information I
19 have, that is, of course, privileged, must remain privileged.
20 We want to be able to engage with Your Honor to the extent
21 that you may have certain questions that you can or
22 Ms. Cherwitz would feel comfortable answering.

23 THE COURT: I'd like it in writing and if I have any
24 follow up, I know where to find you.

25 MS. COHEN: Thank you, Your Honor.

1 THE COURT: Okay.

2 Turning to the parties' pending requests for relief,
3 some of which were filed as motions, others of which were not.
4 By letter motion filed on December 30, 2024, defendants move
5 the court for an adjournment of the trial scheduled to begin
6 on January 13, 2025. Defendants' motion is at ECF Number 241.
7 By letter filed on December 31, 2024, at ECF Number 244, the
8 government opposes the motion, arguing in some detail that the
9 cited bases for the motion do not withstand scrutiny and
10 arguing that a continuance of the trial at this late stage
11 would seriously prejudice the government.

12 Upon consideration of the parties' submissions on
13 the motion and of the record to date, defendants' motion for
14 an adjournment of trial is denied. That is the motion that is
15 filed at ECF Number 241 that I am talking about now. Nothing
16 presented to the court convinces the court that an adjournment
17 is necessary or appropriate here on the grounds raised by
18 defendants in their motion. Indeed, the record before the
19 court largely undercuts defendants' arguments.

20 I will address some of the specific issues raised by
21 the parties shortly in connection with discussing other
22 pending requests for relief.

23 Turning to defendants' third motion to dismiss,
24 defendants seek dismissal of portions of the indictment that
25 allege that the defendants threatened or used nonphysical acts

1 to coerce labor and services.

2 Defendants argue, one, that the part of 18 U.S.C.
3 Section 1589 that criminalizes threats or use of nonphysical
4 harm to coerce labor and services exceeds Congress's authority
5 under the Thirteenth Amendment and, two, that the definition
6 of serious harm in 18 U.S.C. Section 1589 is void for
7 vagueness in violation of the Fifth Amendment's due process
8 clause. Defendants indicate that at this stage, they are
9 bringing facial challenges.

10 Defendants' motion is filed at ECF Number 222, the
11 government's opposition is filed at ECF Number 230, and
12 defendants have filed both a motion for leave to file a reply
13 and a reply.

14 I reluctantly grant the request for leave, which is
15 at ECF Number 234, and I have considered the reply, which is
16 at ECF Number 234-1. I did not need a reply, which I made
17 clear at a prior conference.

18 At prior proceedings, in connection with defendants'
19 first and second motions to dismiss, I set forth the
20 applicable law governing motions to dismiss and I incorporate
21 that here. I also incorporate the prior discussion regarding
22 the first two motions to dismiss, including as to the relevant
23 motion filing deadlines that had been set in this case.

24 Defendants bring the instant motion to dismiss
25 pursuant to Rule 12(b)(2), and they argue that the motion is

1 timely filed under that rule. Defendants argue in the
2 alternative that, assuming arguendo that the motion is not
3 properly filed under Rule 12(b)(2), the court should find that
4 there is good cause to excuse defendants' untimeliness and
5 allow defendants to file the motion under Rule 12(b)(3) at
6 this stage, pursuant to 12(c)(3).

7 Could you just confirm, counsel for the defendants,
8 that that is an accurate summary of the motion?

9 MR. JACCARINO: Yes, Your Honor.

10 MS. BONJEAN: I believe it is, Your Honor. Yes,
11 Your Honor.

12 THE COURT: Mr. Aidala?

13 MR. AIDALA: Yes, Judge.

14 THE COURT: Okay.

15 On the issue of good cause, defendants reference the
16 government's memorandum filed at ECF Number 169. Notably,
17 that document was filed on October 11, 2024, which was almost
18 two months prior to the filing of the instant motion to
19 dismiss.

20 The government argues that the motion is not
21 properly brought pursuant to Rule 12(b)(2), that the entirety
22 of the motion to dismiss is untimely, and that defendants have
23 not shown good cause to excuse their untimeliness.

24 Have I accurately stated the government's position?

25 MS. KASSNER: Yes, Your Honor.

1 THE COURT: As the parties agree, to the extent that
2 the motion is made under 12(b)(3), it is untimely. Indeed,
3 the briefing deadlines set have long since passed.

4 In addition, in light of the nature of the specific
5 arguments being made by defendants and in light of the
6 applicable law, the court is not convinced that the motion is
7 properly brought under Rule 12(b)(2). The motion, therefore,
8 likely is untimely in its entirety.

9 To the extent that the motion is untimely either in
10 whole or in part, defendants have not shown good cause such as
11 to excuse their untimeliness. Indeed, their good cause
12 arguments are utterly unpersuasive and are belied by the
13 record.

14 It appears to the court that what happened here is
15 not that defendants belatedly recognized alternative bases for
16 bringing a motion to dismiss, either because of government
17 briefing or otherwise. Rather, defendants simply decided to
18 try to take a third bite at the apple of dismissal after their
19 first and second motions were unsuccessful.

20 Notwithstanding any untimeliness, however, out of an
21 abundance of caution, the court has considered the third
22 motion to dismiss in its entirety on its merits and does not
23 find that defendants have met their burden of demonstrating
24 that dismissal is warranted on any ground raised by
25 defendants.

1 The arguments defendants advance in support of their
2 Thirteenth Amendment facial challenge are not persuasive here
3 and the authority cited by defendants does not compel the
4 court to rule in defendants' favor on this issue. The court
5 declines defendants' invitation to conclude that Congress
6 exceeded its constitutional authority under the Thirteenth
7 Amendment to enact 18 U.S.C. Section 1589(c).

8 Similarly, the arguments defendants advance in
9 support of their Fifth Amendment facial challenge are not
10 persuasive here. Again, the authority cited by the defendants
11 does not compel the court to rule in defendants' favor on this
12 issue. At this stage, the court declines defendants'
13 invitation to conclude that the definition of serious harm
14 runs afoul of the Fifth Amendment. The motion to dismiss,
15 ECF Number 222, is denied.

16 Turning to the government's motion in limine filed
17 at ECF Number 225 in which the government seeks a ruling
18 "requiring the parties to refer to certain witnesses by their
19 first names or pseudonyms only and keeping other personal
20 identifiers confidential at trial." The government specifies
21 that such information would include address, present place of
22 employment but not type of employment, and full names of
23 family members.

24 Defendants' opposition to the motion is filed at
25 ECF Number 233. Defendants oppose the motion on both First

1 Amendment and Sixth Amendment grounds.

2 It does not seem that the parties disagree about the
3 applicable legal standards; just where application of those
4 standards should lead in this case.

5 Is that correct in your view, Ms. Bonjean?

6 MS. BONJEAN: Yes, Your Honor.

7 THE COURT: And Mr. Aidala?

8 MR. AIDALA: Yes, Judge.

9 THE COURT: And for the government?

10 MS. KASSNER: That's correct, Your Honor.

11 THE COURT: The court has considered and weighed the
12 competing interests at issue in the context of the particular
13 circumstances here. And the court has considered the
14 information that has been presented by the parties as to each
15 of the ten witnesses at issue.

16 As I noted at a prior conference, in briefing on the
17 various motions, the parties have cited to cases that they
18 believe support their various positions but the parties have
19 yet to cite to a case that is so closely analogous to this one
20 as to make the rulings in such case perfectly transferable to
21 this case. That holds true for the instant motion. This case
22 is, in certain important respects, unique.

23 Having considered the applicable law, including the
24 Crime Victims' Rights Act, 18 U.S.C. Section 3771 and Federal
25 Rule of Evidence 611, having considered the parties'

1 submissions on the motion and having considered the record to
2 date, the government's motion is denied.

3 The government has not demonstrated that the relief
4 requested is warranted under the circumstances here.

5 Although the court recognizes that certain testimony
6 is likely to involve highly personal matters, indeed matters
7 that are often kept as private matters, and that there may be
8 some negative consequences of the public airing of those
9 matters, the court is not convinced on the particular
10 circumstances of this case that those factors outweigh the
11 relevant Sixth Amendment considerations here and general
12 considerations of fairness.

13 Under the particular circumstances of this case,
14 defendants' argument that it is "far easier to come to court
15 and lie anonymously than it is to stand on testimony with
16 one's true name" has some force.

17 The government has not sufficiently demonstrated
18 that the relief requested is warranted under the circumstances
19 of this case. I do note that certain information referenced
20 by the government in its motion may not be information that
21 would be relevant at trial. For example, the full names of a
22 witness' family members. Any evidence admitted, of course,
23 must be relevant.

24 The parties will want to take care not to
25 gratuitously elicit private information that is irrelevant in

1 the context of this case.

2 Let me make something else very clear to the
3 parties.

4 This is the ruling at this stage based on the record
5 before the court.

6 As everyone knows, trials are dynamic events.
7 Something could come to light before or during trial that
8 changes the analysis or something could happen before or
9 during trial that changes the analysis.

10 Just as one example, if a witness testifies under
11 the witness' true name and after doing so is the subject of
12 threats or harassment, that could very well affect whether I
13 require a subsequent witness to testify using the witness'
14 true name, depending, of course, on the circumstances of any
15 such threats or harassment. And the threats or harassment I
16 am talking about are not limited to threats or harassment by
17 the defendants here.

18 In light of the fact that subsequent events could
19 change the court's analysis, the name of any of the ten
20 individuals should not be used in publicly filed documents or
21 in court unless and until that witness testifies at trial
22 under the witness' true name.

23 Finally, for record completeness, I note that I did
24 not find at all persuasive defendants' race based arguments.
25 No part of my ruling on this motion is based on those

1 arguments. Nor did I find certain of defendants' arguments
2 with respect to the Crime Victims' Rights Act persuasive.

3 Turning to defendants' requests for various relief
4 relating to Special Agent McGinnis. The requests are
5 contained in various documents, including the motions filed at
6 ECF Numbers 227 and 242, and are opposed by the government in
7 various documents, including those filed at ECF Numbers 232,
8 244 and 246.

9 I have considered all of the requests and all of the
10 responses regardless of what document they are contained in.

11 As the government notes, some of defendants'
12 arguments are ones that they have raised before and that the
13 court did not find persuasive, as evidenced by prior rulings.
14 The court still does not find those arguments persuasive.

15 Other arguments are new arguments or more developed
16 versions of prior arguments. The court does not find these
17 arguments persuasive either. Notably, certain of defendants'
18 arguments appear to be based largely on speculation and others
19 appear to be based on inaccurate information and/or
20 mischaracterization. The court is focusing on the record
21 before it, not on any party's characterization or spin.

22 Defendants continue to seek certain information that
23 they are not entitled to under the applicable law. For
24 example, a list of all witnesses Agent McGinnis communicated
25 with by e-mail, text or messaging application.

1 The government shall continue to produce any
2 material required to be produced, including under Rule 16,
3 18 U.S.C. Section 3500, Brady and Giglio. To the extent
4 defendants seek materials beyond that which the law requires
5 the government to produce, their requests are denied. And no
6 hearing is warranted on the record before the court with
7 respect to the McGinnis related requests.

8 Turning to the defendants' motion filed at
9 ECF Number 248 on January 2, 2025. That motion seeks certain
10 particulars.

11 I will hear the government's response, because I
12 don't believe the government put in a response, but I will not
13 be ruling at this time because I do think that I might need
14 some more information and I am mindful of the fact that I will
15 be getting submissions today on the attorney related issues
16 that we spoke about earlier, but let me hear if the government
17 wants to respond to anything in the defense submission at
18 ECF Number 248 at this time.

19 MS. KASSNER: No, Your Honor.

20 I mean the one thing I'll note is that the
21 government reads the responses -- sorry, the motion as a
22 request for a reconsideration of the Court's previous ruling
23 denying a motion for a bill of particulars quite early on in
24 the case. I don't think anything that's been raised in this
25 most recent motion is particularly new.

1 I don't think that under the well-established case
2 law that the government has previously cited that any
3 particulars are warranted under the law and, therefore, the
4 government didn't put in a motion simply because, a response
5 because we believe that our prior responses to virtually
6 identical requests cover our position on this.

7 THE COURT: Do you want to speak to the, one of the
8 issues raised which was about the start date of the charged
9 conspiracy?

10 I can tell you more specifically, if that would be
11 helpful, what I'm asking you. And I'm just summarizing and
12 paraphrasing, I'm not quoting the defense on this, but I
13 understand one of their arguments in that submission to be
14 that there were essentially only two people involved in the
15 company in 2004. They raise an issue about what is your proof
16 in terms of who other co-conspirators were with respect to
17 that early time frame.

18 Ms. Bonjean, do you want to let me know if I, in
19 general terms, stated that correctly?

20 MS. BONJEAN: That's correct, Your Honor. Of the
21 unidentified co-conspirators' list that we received, yes,
22 correct.

23 MS. BENSING: So, Your Honor, a couple of things.
24 Kayla Bensing for the government.

25 As the government noted in its proposed jury

1 instructions as to conspiracy, certain members of the
2 conspiracy need not be a member of the conspiracy the entire
3 time. For example, co-conspirators can join after. And so
4 even though, for example, Ms. Cherwitz was not a member of
5 OneTaste or a member of the conspiracy at the very beginning
6 of the charged time period, that doesn't bear on the jury's
7 finding as to her, as to her guilt or innocence of --

8 THE COURT: I think the larger issue though is maybe
9 much more basic that I think the defense was making which is
10 do you have two people in 2004 who had a meeting of the minds.

11 MS. BENSING: Well, Your Honor --

12 THE COURT: And it may be something you don't want
13 to respond to or can't respond to, but that's the issue that
14 I'm flagging for you.

15 MS. BENSING: Well, Your Honor, I'm just pulling up
16 the indictment because I want to make sure that I have this
17 perfectly accurate, but I believe that with respect to 2004 --

18 THE COURT: It's earlier than the charged
19 indictment; is that what you are going to flag?

20 MS. BENSING: Yes, Your Honor. And I just want to
21 make sure I get it exactly right, exactly what the indictment
22 says with respect to time period.

23 It says, "In or about and between 2006 and May of
24 2018, both dates being approximate and inclusive."

25 So, in 2006, Your Honor --

1 THE COURT: Sorry. Did I misstate the year? Is it
2 2006?

3 MS. BONJEAN: Yes. It is 2006. It's the same issue
4 but it's 2006.

5 THE COURT: I apologize. I didn't mean to inject
6 confusion but 2006, are there two people is what, I think, the
7 argument is. My apologies.

8 MS. BENSING: Yes, Your Honor. And, again, we have
9 outlined in our motions in limine, we have outlined in the
10 indictment, they have the 3500 material at this point. Like,
11 I don't think that there can be any dispute that they don't
12 have information as to the nature of the individuals involved
13 in 2006 including certain of the co-conspirators identified in
14 the government's motion.

15 So, again, as a factual matter, I don't see a basis
16 for additional provision of materials. I think that the
17 parties dispute the existent information of the conspiracy
18 which is something that obviously the jury will have to decide
19 at trial.

20 THE COURT: I can hear you, although I did say I was
21 not going to be ruling on this.

22 MS. BONJEAN: Yes.

23 THE COURT: But I'm happy to hear anybody from the
24 defense that would like to be heard.

25 MS. BONJEAN: Just quickly, Your Honor, just to

1 clarify any confusion, I believe the date that was identified
2 in the indictment is different than the date they identified
3 in the motion in limine so there was some confusion about
4 that, hence, the years, and I will leave it at that. I think
5 we just disagree.

6 I -- you know, I don't believe that they have
7 identified even -- they provided a list and I can't figure out
8 who it is that they think Ms. Daedone -- I mean that's what it
9 comes down to. It's as simple as that. Since Rachel Cherwitz
10 wasn't around, the theory has to be that she had a meeting of
11 the minds with some unindicted co-conspirator in that early
12 phase and I'm not seeing it.

13 MS. BENSING: So, again, I think the parties dispute
14 the criminal liability and that's why we're proceeding to
15 trial, but in terms of just making a clear factual record
16 about what they've been provided which is the motion before
17 the Court as to additional disclosures, they have been
18 provided with significant material, really, like, all of the
19 3500 in the case to date has largely been produced,
20 Your Honor, and so they have a very large body on which to
21 make an assessment including, obviously, the government's
22 motions in limine.

23 And just for the record, in case there was any lack
24 of clarity, the government has provided the names of the
25 co-conspirators to defense counsel, the specific names of the

1 co-conspirators identified.

2 THE COURT: Have you told them who you think was in
3 agreement with Ms. Daedone, if anyone, in 2006?

4 MS. BENSING: I don't know that we have specifically
5 answered that question with respect to that specific year.

6 THE COURT: Is there any reason not to do that?

7 MS. BENSING: Your Honor, we're happy to speak to
8 them. Again, I think that there may be continued factual
9 disputes as to whether or not a conspiracy existed, who joined
10 the conspiracy, the nature of the formation of the conspiracy
11 which --

12 THE COURT: But I think the defense is asking a more
13 threshold question.

14 I assume the next step in their analysis would be if
15 you gave them the name, they would say no, no, they didn't
16 agree with Ms. Daedone or with anyone else, maybe, but I think
17 she's really or both defendants are asking a much more
18 threshold question.

19 You may argue that you don't have to tell them that
20 information but I'm not sure it's in your interest, at this
21 point, to be playing everything so close to the vest.

22 MS. BENSING: Your Honor --

23 THE COURT: And I know from some of the
24 communications between the parties, perhaps the parties are
25 not meeting and conferring in the way that the court, frankly,

1 if not expected, had at least hoped the parties would in the
2 interest of efficiency.

3 Go ahead.

4 MS. BENSING: Your Honor, we will meet and confer
5 with the defendants on this issue.

6 THE COURT: Okay. Again, I'm not going to rule on
7 that, but I would encourage the government to recognize that
8 we are on the eve of trial and you are going to have to do
9 more than you've done unless you want to have certain requests
10 for delays or, you know, whatever may follow.

11 All right. I'll leave it at that.

12 Turning to -- give me one moment.

13 (Pause.)

14 THE COURT: Turning to the remaining requests for
15 relief by defendants, which appear largely to involve
16 Ms. Blanck and her journals, although not exclusively. I,
17 again, am not going to be ruling today because I need a clear
18 item by item articulation of the relief defendants are seeking
19 by way of your various filings, to the extent that I've not
20 already addressed the relief sought. And when I say item by
21 item, I need a description, I need to know the timing of when
22 you may have requested certain materials or may have received
23 materials that you believe are not sufficient. I also need to
24 know, of course, the basis and, you know, if there's a
25 government response, if you made requests and the government

1 has said no.

2 Again, I would be taking all of that up today but I
3 think in light of the submissions I'm going to be getting this
4 evening, that that's not the better course now, unless anyone
5 wants to be heard on any of this.

6 I do want to mention one item with respect to
7 Ms. Blanck's hard drive and that is that her counsel, on
8 December 31, 2024, submitted a letter with respect to the hard
9 drive, and it is notable that although the letter sets forth
10 that Ms. Blanck does not waive privilege, the letter does not
11 establish any privilege with respect to any particular
12 material.

13 The letter I'm talking about is at ECF Number 245.
14 And, of course, the parties are aware that I entered a
15 Rule 502(d) order on December 23rd and that's at
16 ECF Number 240.

17 So I will ask the government to speak to the issue
18 just briefly of this hard drive in light of the absence in the
19 record before the court of any establishment of privilege with
20 respect to the items that the government indicated have been
21 isolated. I believe it's 1,331 or something like that.

22 MS. KASSNER: Yes, Your Honor.

23 The government intends to produce the 1,331, I'll
24 call them documents, pursuant to this court's order. I
25 don't --

1 THE COURT: Okay, but why has it not been done?

2 The order was issued on December 23rd. We're now
3 January 7th. Trial is scheduled for January 13th. What was
4 the delay? The court promptly gave you the order you
5 requested.

6 MS. KASSNER: Yes, Your Honor. We wanted to give
7 the privilege holder an opportunity, as we requested in our
8 letter, an opportunity to weigh in. We didn't know what
9 Your Honor's findings may be. We have them prepared for
10 production.

11 For what it's worth, Your Honor, these materials, I
12 believe, are largely irrelevant to the case at hand. We
13 are -- we had to review them and that took some time given
14 that they needed to cross a firewall which actually does take
15 a matter of days over the holidays. We promptly reviewed
16 them. They have very little to do with this case. There are
17 an isolated number of documents that are attorney/client
18 communications that do have to do with OneTaste, in
19 particular, but the vast majority of these materials, frankly,
20 they're junk mail or machine language documents.

21 We're going to produce them but I don't expect it
22 will take very long for anyone to look at them and I don't
23 think they'll have -- you know, frankly, I don't know if any
24 of them would be admissible or usable. I'm happy -- we will
25 produce them, but if your question is why did it take so long,

1 the answer is, frankly, once you have something firewalled, it
2 actually takes a matter of time to mechanically transfer it
3 over.

4 THE COURT: I don't need to be schooled in
5 firewalls. I'm quite familiar. Thank you. But we have a
6 trial scheduled and this is information they've been asking
7 for. It needs to go over to the defense.

8 MS. KASSNER: Understood, Your Honor. We'll get it
9 over today.

10 THE COURT: Does anyone on the defense want to be
11 heard on this?

12 MS. BONJEAN: No, Your Honor.

13 THE COURT: Is there still any issue on the
14 additional hard drive belonging to the additional, the other
15 person? I think everyone knows what I'm talking about.

16 MS. BONJEAN: Yes. Yes. We did get a response.
17 The government filed an opposition. I just wanted to be clear
18 about one thing.

19 This hard drive that sort of mysteriously appeared
20 in our offices with a password without any explanation, we did
21 follow up and we were eventually advised that it's these
22 materials that were apparently obtained from this one
23 individual and then we were told that it's largely duplicative
24 to what was produced in Rule 16.

25 I just want the Court to be aware that while that

1 may be true, it is incredibly difficult with a terabyte of
2 information to go through and figure out, you know, compare it
3 against what was actually previously produced and what then
4 came in this hard drive. To go through that -- and I'm only
5 letting the Court know what the issue was. We kind of have to
6 take their word for that and the reason is there was no clear
7 way to compare.

8 There were materials that were not previously
9 produced. So we have hundreds of thousands of Bates stamped
10 documents that then we have to compare to this hard drive and
11 there are materials in there that were not previously
12 produced. So it's, like, you know, looking at a needle in a
13 haystack trying to pull it out. So we're doing that.

14 If the government is representing they've produced
15 the entirety of it and has given us as much information as
16 they can so we can discern what was previously produced versus
17 what is new, then we have to accept them at their word on
18 that, but to be clear, that was an incredibly burdensome thing
19 that happened there and so I think they've explained it in
20 their letter.

21 THE COURT: Okay. There's no outstanding issue on
22 this, is that correct?

23 MS. BONJEAN: As far as I can tell, we're still
24 going through it but, you know, we'll let the Court know if
25 there is.

1 THE COURT: Mr. Aidala?

2 MR. AIDALA: I concur.

3 THE COURT: One area that the defense didn't respond
4 to is, and maybe it was because it came in a response, I don't
5 remember exactly what filing it was in, but the government set
6 forth the law and stated their position that they cannot give
7 you a clone of the hard drive because not all of the material
8 is material that the government legally can have and turn
9 over.

10 So I think that issue probably has been resolved but
11 I'm not entirely certain. There were a lot of filings and I
12 think sometimes the parties were responding to some things in
13 different filings than what was obvious from the record.

14 MS. BONJEAN: So it's partially resolved insofar as
15 the government has indicated that they're going to produce the
16 material that was potentially privileged and that was one of
17 the reasons that they stated for not providing a clone.

18 That being said, I think we also raised the point
19 that the search warrant allegedly gave the FBI authority to
20 look at certain materials from this hard drive under certain
21 parameters and dates, but then we noticed there were materials
22 from dates that went outside the parameters. So that is one
23 of the bases for the clone.

24 It seems as if we're not getting the whole thing and
25 that they actually did look at material that was outside the

1 date of the search warrant. So I don't know if that makes
2 sense.

3 For instance, and I can't remember, there's material
4 in there that we found, text messages from, like, 2015 which,
5 by the way, is a very, very critical time as it relates to
6 Ms. Blanck because that's the time where she alleges all of
7 these terrible things were happening and when she departed
8 under these circumstances, but I think, and I may have the
9 dates a little off, the government, I'm sure, will correct me,
10 but I was under the belief that they were only searching
11 within certain parameters and, yet, we were getting stuff from
12 outside.

13 So I think that's one of the reasons we thought,
14 well, we believe a clone would be appropriate, not just
15 because of the privileged material.

16 MS. KASSNER: So, Your Honor, I think we set forth
17 in our filing our position on this, but we believe the
18 Fourth Amendment precludes us from producing things that we
19 have not lawfully seized.

20 To the extent that there might be material that
21 falls slightly outside the time range in the search warrant,
22 that has to do with the way communications can be pulled. So,
23 sometimes, you pull the relevant portion of a communication
24 and it pulls the full text thread. As a matter of practice,
25 we don't usually, like, cut it off or redact it.

1 So what I can represent to the Court is what we
2 seized pursuant to the warrant, once we produce these
3 additional 1,331 documents that we screened, we will produce
4 the full set of materials that we seized pursuant to the
5 warrant and that we were authored to seize and authorized to
6 share.

7 THE COURT: Is this the first time you're hearing
8 about the way the government -- I'm looking at both Mr. Aidala
9 and Ms. Bonjean -- the first time you're hearing that this is
10 why there may be some information outside the date range?

11 MS. BONJEAN: Yes.

12 THE COURT: Okay. So why aren't the parties talking
13 to each other?

14 MS. BONJEAN: I --

15 THE COURT: Let me stop you.

16 I understand the parties want to present issues to
17 the court. The court will rule on issues that are raised with
18 the court, but this is one of the most inefficient ways to be
19 doing this, and the court has been saying this for quite some
20 time. I think I said very early on it's clear the parties are
21 not getting along with each other. Put it aside. Put it
22 aside and start working with each other within your respective
23 roles, of course, to get things done efficiently.

24 Okay. Turning to the government's request with
25 respect to Rule 26.2 material and defense exhibits, I'm not

1 going to rule on this. I also think that -- in light of the
2 filings that I expect later today or the submissions -- but if
3 there's an update that the government wants to give or the
4 defense wants to give, I know that the government has
5 indicated or reminded the court which, of course, the court
6 didn't need reminding because the court was here, that
7 Ms. Bonjean had made certain statements about production.

8 So is there any update on this?

9 Have the parties been able to at least deal with
10 each other enough to make some progress on this on the eve of
11 trial?

12 MS. KASSNER: Your Honor, I will represent to the
13 Court that we have repeatedly brought this up and to date,
14 we've received nothing further, and that's all I can
15 represent, Your Honor.

16 MS. BONJEAN: Your Honor, we have, we have had
17 meet-and-confers and conversations about this matter. We did
18 make a production of 26.2 material. We did discuss the fact
19 that we have a differing of opinion about what is required
20 under 26.2 since they're asking for materials that relate to
21 their own witnesses which is not 26.2 material. So we have a
22 little bit of a differing view.

23 I did represent and I continue to represent that as
24 material becomes available to me, and I have a clear
25 understanding of who the actual 60, of the 60 witnesses or 40

1 witnesses, I don't know what it is, but it is certainly not
2 the number of witnesses that the government has any intention
3 of calling at trial, although I understand their right to, you
4 know, reserve their right to call witnesses has made it very
5 difficult and it feels a little bit like they're attempting to
6 get material they're not entitled to.

7 So we have been conversing. I will continue to
8 produce material as it becomes available to me, but they're
9 not entitled to statements or videos or whatever they think we
10 have of their own witnesses.

11 MS. KASSNER: Your Honor, I actually do want to
12 briefly address this.

13 We actually sent, we went through their -- we
14 actually don't even have a witness list from them. We have a
15 list of potential witnesses and other individuals who might be
16 mentioned at trial, so we're dealing with a very broad group
17 as well. We've asked for a witness list. We don't have one.

18 THE COURT: I believe at one of the last
19 conferences, maybe two conferences ago or perhaps the last
20 one, Ms. Bonjean did indicate or perhaps Mr. Aidala as well
21 that there would be that list of just witnesses produced. Was
22 that not done?

23 MS. KASSNER: No, Your Honor.

24 THE COURT: Okay.

25 MS. KASSNER: And also we went through the list that

1 we had. We went through our list to obviate this issue and we
2 informed them of the individuals that we do not plan to call
3 that might have fallen in this category so there would not be
4 a dispute.

5 You know, we haven't received anything -- we've
6 received virtually no 26.2 material. I mean we have a couple
7 of declarations.

8 THE COURT: What are you expecting to receive that
9 you think you're entitled to that you haven't received, which
10 I think I asked you last time --

11 MS. KASSNER: Yes, Your Honor.

12 THE COURT: -- but your opinion might be more formed
13 based on how things developed.

14 MS. KASSNER: Well, Your Honor, I think it's
15 actually quite voluminous.

16 As we stated at the last appearance, we are aware
17 that I believe almost every individual, if not every single
18 individual who we did receive declarations from in the form of
19 26.2 material from the defense, they've also been video
20 interviewed about their experience at OneTaste, among other
21 matters, and we understood from Ms. Bonjean that that was
22 going to be forthcoming. These interviews, the ones that
23 we've seen, and we've only seen a handful, are more than an
24 hour long per person, sometimes as long as two hours,
25 sometimes multiple parts. That's just videos.

1 In addition, we believe there are text
2 communications, e-mail communications, other forms of
3 communications all about these individuals' experiences while
4 they were at OneTaste. I think all of that would fall under
5 26.2 in the event these people testify.

6 We raised this issue really early because it's a
7 real concern for us that we will not meaningfully be able to
8 review this material in the middle of trial. We've received
9 representations it would be forthcoming. It is, as you've
10 said, the eve of trial. I don't know when we're expecting it
11 at this point.

12 MS. BONJEAN: Your Honor, we continue to kind of go
13 in circles on this because we have these witness lists, and I
14 think both of us have probably witness lists that are longer
15 than, and not quite as accurate as they could be, but this
16 starts with the problem of the government's very lengthy
17 witness list. So we were struggling with who is actually --
18 who are actually defense witnesses. This case is unique in
19 that we have the same witnesses on our lists so it's a little
20 difficult to parse that out. I think it's becoming a little
21 clearer. I will acknowledge that the government has removed a
22 number of people from their list.

23 Some of those people who are on our list are
24 unavailable to us, we have learned, because they're outside
25 the country. There are many people, because this case was

1 brought in the Eastern District of New York, where there
2 aren't, frankly, many witnesses that were involved. Most of
3 them are on the West Coast. Some of them are outside the
4 country. So we have been in the process, it's a tedious
5 process, of actually trying to figure out, well, who is on our
6 witness list and who can we get here.

7 I will also point out, as to these videos, the
8 government is mistaken that I have these videos. If I had the
9 videos, I would produce them. Or that my clients necessarily
10 have them in their possession. These are videos that OneTaste
11 may have and we have gone back and forth about their rights to
12 OneTaste material. They certainly could have issued a
13 subpoena to OneTaste, which they never did.

14 I did represent and I will continue to represent
15 that we will produce -- I will continue to produce videos as
16 things come into focus and we will do our best with that, but
17 it's not been because we're withholding it or trying to
18 gamesmanship. It really is a matter of trying to figure out
19 who are we putting on in our defense case and who are they
20 putting on in their case in chief because I do not believe
21 that we are obligated to give them material for witnesses they
22 intend to present themselves, the government, that is.

23 So if the Court would give us a little breathing
24 room on this, not much, we will be happy to meet and confer,
25 follow up and see where we're at on this.

1 I will say the latest issues with Counsel and the
2 Curcio issues have in the last, at least since December 31st,
3 at the minimum, been a bit of a distraction and taken our
4 focus off of things but we, the defense, would be happy to
5 confer and I will continue to do my very best to make sure
6 that they have everything that they need.

7 I know that they will move to bar witnesses,
8 potentially. That's not a sanction that we are trying to
9 invite so I'm very keenly aware of the potential consequences.

10 And I will point out that some of these materials
11 that they're seeking were ruled as previously identified as
12 privileged under the work product doctrine by a different
13 judge. That may not be the case here but it is, it's an
14 authority issue, and I think it would benefit from some
15 additional conversations.

16 THE COURT: What happens at these conversations?
17 I'm getting the sense that the parties talk past each other.
18 I'm being quite serious now. I've seen some of the
19 communications. Right? Some of the communications that, for
20 whatever reason, my staff has been cc'd on. The tone isn't
21 great.

22 So what happens at these meetings? Is any progress
23 being made here? Because I think it's in everybody's interest
24 to not give up any of the positions that you validly are
25 holding and advancing, but on some of this stuff, I mean, this

1 is absolutely absurd the way that this is, I think the parties
2 have probably interacted with each other but, again, I don't
3 have all the information. I have the pieces that are put
4 before the court.

5 MS. KASSNER: Your Honor, if I may, I will just note
6 the government does attempt at all times to be respectful in
7 its communications and I'll just leave it at that.

8 In terms of this particular issue, I do believe
9 we've given them all the information they would need in the
10 sense that there should be no open question about which
11 individuals are on their witness list that we do not intend to
12 call. So I do believe there's -- to some extent,
13 meet-and-confers can only be fruitful if there's a real
14 engagement on that.

15 And I think a lot of the filings that we have seen,
16 we've seen at the same time Your Honor has. We have addressed
17 them because we try to promptly respond but, you know, and I
18 also will note that at this point, on issues having to do with
19 the government's sharing of materials in its possession, I
20 mean, at this point, I think we've produced, with the
21 exception of this one body of documents and 3500 as we receive
22 it on a rolling basis, I think they have virtually everything
23 we have.

24 So to the extent there's an argument about us, you
25 know, we can only provide what we have. So that's often what

1 we say and we're happy to always meet and confer and to have
2 the defense view any materials that they have a right to view.
3 I don't believe we've ever said no unless we've explained
4 exactly the legal reasons why.

5 That's where I guess I'll leave it, Your Honor.

6 THE COURT: Okay. And I do note that there are a
7 few places in your submissions, I think, over some time but
8 more recently, especially, where you indicate that you made an
9 offer to have the defense come and inspect certain materials
10 and maybe it wasn't taken up on. I'm not sure.

11 I don't want to get too far in the weeds on this,
12 but what my message to the parties is -- that you're not, the
13 court perceives you not to be, proceeding in the most
14 efficient manner, and I think being more efficient would be in
15 everybody's interest.

16 MS. BONJEAN: Judge, just briefly, on the last court
17 date, because I do take a little objection this, on the last
18 court date, we raised serious issues. We even withdraw a
19 motion based on representations made by the government in
20 court, Oh, I think we can work this out, come over. We went
21 over to their offices, had a meet and confer, we took a trek
22 down to the FBI offices, and, frankly, almost nothing was
23 accomplished.

24 I think the government typically takes a very
25 pleasant view or pleasant tone and they said, Well, Jennifer,

1 we just disagree. And, no, I don't think -- we just are going
2 to have to agree to disagree on this.

3 We write letters. We ask -- I am about as direct of
4 a person as is out there. Maybe too much so. I asked about
5 the hard drive. I've asked about the journals. I've asked,
6 you know, expressed my concerns, and I do feel that they're
7 not really being receptive. I think there's a lot of lip
8 service, but I don't think it's meaningful. And I'm not
9 trying to make personal castigations here but that is my
10 sense.

11 THE COURT: Nor is the court, but the court is
12 trying to get to the bottom of what seems to be, even in the
13 context of a case which the parties say is so unique, unusual.

14 The parties typically are able to resolve a lot of
15 these kinds of issues ahead of time without court
16 intervention. So it's notable to the court that that is not
17 happening here and I encourage the parties, as we move towards
18 trial and as we go through what the parties anticipate to be a
19 lengthy trial, that the parties start working with each other
20 in a more efficient, effective way.

21 Again, that does not mean that anybody has to give
22 up a position that they should be advancing. It just means
23 that on some of these issues, you probably need to pick your
24 battles more wisely.

25 All right. Let's turn to another matter.

1 As the parties are aware, certain materials in this
2 case have been filed under seal and/or in redacted form, for
3 various reasons. The court has already expressly addressed
4 some of these filings and has permitted them to remain under
5 seal and/or to maintain their redactions. The court also
6 recently directed the parties to file in unredacted form
7 certain materials that previously had been redacted.

8 Although a presumption of public access ordinarily
9 attaches to judicial documents, sealing or redacting such
10 documents can be justified when necessary to protect
11 countervailing interests.

12 See Lugosch versus Pyramid Company of Onondaga,
13 435 F.3d 110, at 120, Second Circuit, 2006.

14 With respect to the sealed and/or redacted filings
15 that the court has not yet expressly addressed, the court has
16 considered the content of the filings, the proffered
17 justifications for sealing and/or redaction, and the
18 applicable legal standards governing sealing and redaction,
19 and having done so, will permit the sealed filings to remain
20 under seal and the redacted filings to maintain their
21 redactions. I find that permitting the filings to remain
22 under seal and/or redacted is appropriate under the applicable
23 law in light of the nature of the filings.

24 See, again, Lugosch, 435 F.3d, at 120.

25 Should any party seek in the future to have any

1 particular document unsealed or unredacted, that party shall
2 file a letter request on the docket identifying the specific
3 filing and relief sought and providing justification for the
4 requested relief and providing the position of the other
5 parties.

6 Is there any request for relief that the court has
7 not addressed?

8 Now, I have the sense, again, that even after today,
9 there may be certain requests that were made that are
10 basically moot, for instance, if you get these 1,331
11 documents, but is there anything that is outstanding that I
12 have not at least addressed, if not expressly ruled on?

13 MS. KASSNER: The only matter that the government
14 has to discuss is the scheduling. Other than that,
15 Your Honor, I don't believe we have a substantive matter that
16 we believe Your Honor needs to take up today.

17 THE COURT: So I think I said in the beginning but
18 I'm going to have a conference tomorrow at noon, and that will
19 be after, of course, I have the relevant submissions that
20 anyone wants me to have relating to those representation
21 issues with respect to Defendant Cherwitz.

22 So we can discuss other issues tomorrow, but I would
23 like to be better informed on the issues that were, in part,
24 discussed this morning before Judge Marutollo and I want to
25 have the materials that everybody wants me to have before we

1 meet again.

2 MS. BONJEAN: Your Honor, is this just the Curcio
3 issue tomorrow or did you want us all here?

4 THE COURT: I want everyone here but it is relating
5 to the representation issue, which I think, depending on
6 resolution, will affect everybody.

7 MS. BONJEAN: Okay.

8 THE COURT: And I'm sorry to have to schedule
9 something on short notice but this is where we are.

10 Is there anything anyone thinks we need to take up?

11 And, again, let me go back to Ms. Cohen.

12 I sense perhaps a concern that you have that
13 something might be publicly filed that you don't want publicly
14 filed? Was that a concern?

15 MS. COHEN: Yes, Your Honor. That's one of the
16 concerns.

17 THE COURT: Okay.

18 MS. COHEN: I also think -- as I said, I understand
19 your position, but if we were to do that in camera, ex parte,
20 I think we can resolve it much more efficiently and quickly,
21 but I understand Your Honor's ruling and we will submit a
22 letter.

23 THE COURT: And you can, if you're concerned, I
24 think you can just send to my Chambers what it is that you
25 want us to have and we can, at the relevant time, make sure

1 that the record is appropriate.

2 MS. COHEN: Thank you, Your Honor.

3 THE COURT: But are you -- again, 6 p.m. is the
4 deadline for those submissions today.

5 I would just ask that you all be available if the
6 court has any follow up. I don't mean to come in, but I mean
7 just checking, checking the docket, checking whatever it is
8 you need to check to make sure that you're not missing
9 something that the court might need from you.

10 Okay. We will adjourn until tomorrow at noon.

11 Thank you all and thank you to the court reporter.

12 (Matter concluded.)

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

22

/s/ Charleane M. Heading

January 9, 2025

23

CHARLEANE M. HEADING

DATE

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