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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE SALLIE KIM

TRANSGENDER LAW CENTER, AND)
JOLENE K. YOUNGERS, AS PERSONAL)
ADMINISTRATOR FOR THE WRONGFUL)
DEATH ESTATE OF ROXSANA HERNANDEZ,)
PLAINTIFFS,)

VS.)

NO. 19-CV-03032 SK)

UNITED STATES IMMIGRATION AND)
CUSTOMS ENFORCEMENT; UNITED)
STATES DEPARTMENT OF HOMELAND)
SECURITY; OFFICE FOR CIVIL RIGHTS)
AND CIVIL LIBERTIES -)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY,)

DEFENDANTS.)

SAN FRANCISCO, CALIFORNIA)
MONDAY)
APRIL 13, 2020)

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND

RECORDING 1:44 P.M. - 1:51 P.M.

APPEARANCES:

FOR PLAINTIFF

SHAWN THOMAS MEERKAMPER
TRANSGENDER LAW CENTER
P.O. BOX 70976
OAKLAND, CALIFORNIA 94612

BY: SHAWN THOMAS MEERKAMPER, ESQUIRE

(FURTHER APPEARANCES ON FOLLOWING PAGE)

**TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR
RETIRED OFFICIAL COURT REPORTER, USDC**

APPEARANCES (CONTINUED) :

FOR PLAINTIFFS

LAW OFFICE OF R. ANDREW FREE
P.O. BOX 90568
NASHVILLE, TENNESSEE 37209

BY: ROBERT ANDREW FREE, ESQUIRE

FOR DEFENDANT

UNITED STATES ATTORNEY'S OFFICE
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

**BY: JEVECHIUS DOHERTY BERNARDONI, AUSA
GIOCONDA R. MOLINARI, AUSA**

1 MONDAY, APRIL 13, 2020

1:44 P.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

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6 ELECTRONICALLY RECORDED PROCEEDINGS

7 **THE COURT:** CALLING CIVIL CASE 19-3032, TRANSGENDER
8 LAW CENTER, ET AL. VERSUS UNITED STATES IMMIGRATION AND CUSTOMS
9 ENFORCEMENT, ET AL.

10 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE
11 RECORD, BEGINNING WITH PLAINTIFFS.

12 **MR. FREE:** GOOD AFTERNOON, YOUR HONOR. THIS IS
13 ANDREW FREE FOR THE PLAINTIFFS.

14 **THE COURT:** I'M SORRY. WHO IS THIS?

15 **MR. FREE:** THIS IS ANDREW FREE.

16 **THE COURT:** OKAY. THANK YOU.

17 AND FOR THE DEFENDANTS?

18 **MR. BERNARDINO:** FOR DEFENDANTS, THIS IS JEVECHIUS
19 BERNARDONI. GOOD AFTERNOON, YOUR HONOR.

20 **THE COURT:** GOOD AFTERNOON.

21 SO, SOUNDS LIKE PLAINTIFFS ARE GOING TO CHALLENGE THE
22 PRODUCTION, AND WE JUST NEED TO HAVE THE SUMMARY JUDGMENT
23 MOTIONS FILED. IS THAT CORRECT?

24 LET ME HEAR FIRST FROM MR. FREE, AND THEN I'LL HEAR
25 FROM MR. BERNARDONI.

1 **MR. FREE:** THAT'S CORRECT, YOUR HONOR. WE'RE
2 CONFERRING WITH DEFENDANT -- COUNSEL FOR DEFENDANTS ON A COUPLE
3 OF LOOSE ENDS AS TO THE SCOPE OF THE CHALLENGE TO THE AGENCY'S
4 PRODUCTIONS, AND WE HOPE TO HAVE SOME CLARITY ON WHAT'S COMING
5 AND WHAT'S NOT THIS WEEK. AND, SO, THE BRIEFING SCHEDULE WE
6 PROPOSED IN THE CASE MANAGEMENT STATUS UPDATE IS NOW STALE
7 BECAUSE WE DIDN'T FILE ON FRIDAY.

8 **THE COURT:** OKAY.

9 **MR. FREE:** BUT WE PROPOSE BACKING THOSE DEADLINES UP
10 TWO WEEKS, OR 14 DAYS.

11 **THE COURT:** ALL RIGHT.

12 **MR. FREE:** SO WE WILL FILE BY APRIL 24TH WITH THE
13 RESPONSE MAY 15TH AND REPLY ON MAY 29TH.

14 (SIMULTANEOUS COLLOQUY.)

15 **MR. FREE:** -- SET IT FOR HEARING.

16 **THE COURT:** CAN YOU START -- (INDISCERNIBLE).

17 **MR. FREE:** SURE. PLAINTIFFS WOULD FILE THEIR MOTION
18 FOR SUMMARY JUDGMENT BY APRIL 24TH.

19 **THE COURT:** OKAY.

20 **MR. FREE:** WITH THE RESPONSE AND OPPOSITION DUE ON OR
21 BEFORE MAY 15TH.

22 **THE COURT:** OKAY.

23 **MR. FREE:** AND THE REPLY DUE ON OR BEFORE MAY 29TH.

24 **THE COURT:** OKAY. SO APRIL 24TH --

25 **MR. FREE:** AT THE COURT'S CONVENIENCE.

1 **THE COURT:** OKAY. APRIL 24TH, MAY 15TH, AND MAY
2 29TH. AFTER I GET THE PAPERS, I'LL SET A HEARING DATE, OR, IF
3 I DON'T NEED A HEARING DATE, I'LL LET YOU KNOW, BUT THAT SHOULD
4 WORK OUT FINE. OKAY?

5 **MR. FREE:** THANK YOU.

6 **THE COURT:** I'M NOT GOING TO SET ANOTHER CMC DATE
7 JUST BECAUSE USUALLY THE SUMMARY JUDGMENT MOTION IS DISPOSITIVE
8 IN THESE KINDS OF MATTERS, UNLESS PEOPLE WANT ME TO SET A CMC
9 DATE. DO YOU FOLKS HAVE A FEELING ABOUT THAT? I'LL HEAR FIRST
10 FROM MR. BERNARDINO AND THEN I'LL HEAR FROM MR. FREE.

11 **MR. BERNARDINO:** YOUR HONOR, IF I COULD BRIEFLY
12 ADDRESS THE SUMMARY JUDGMENT ISSUE? THE GOVERNMENT IS
13 CONCERNED THAT WE'RE SETTING UP A BIFURCATED OR TWO SEPARATE
14 SUMMARY JUDGMENT PROCEEDINGS HERE.

15 PLAINTIFFS HAVE TOLD US THAT THEY ARE GOING TO
16 CHALLENGE EACH AND EVERY WITHHOLDING. I, AS OF THIS MOMENT,
17 DON'T KNOW THE BASIS FOR THAT. AND THEY'VE ASKED US TO PREPARE
18 A VAUGHN INDEX ON EACH AND EVERY WITHHOLDING.

19 IF THAT'S REALLY WHAT THE PLAINTIFFS WANT TO DO -- I
20 DOUBT THAT THEY HAVE A GOOD FAITH BASIS TO CHALLENGE EACH AND
21 EVERY WITHHOLDING, AND, LIKE I SAID, I DON'T KNOW ON WHAT
22 BASIS, BUT WE WOULD NEED MORE TIME THAN THAT TO PREPARE A
23 VAUGHN INDEX.

24 SO, YOU KNOW, IF THEY'RE GOING TO BE FILING SOMETHING
25 IN APRIL, IT WOULD BE ON SOME SUBSET OF WHATEVER IS STILL AT

1 DISPUTE. WE HAVEN'T HAD A CHANCE TO MEET AND CONFER ON ANY
2 OUTSTANDING ISSUES AT THIS POINT, AND I'M CONCERNED IT WILL
3 JUST END UP BEING DUPLICATIVE BRIEFING FOR THE PARTIES.

4 **THE COURT:** WELL, WHAT SCHEDULE DO YOU PROPOSE FOR
5 SUMMARY JUDGMENT?

6 **MR. BERNARDINO:** I DON'T HAVE A SCHEDULE AT THE
7 MOMENT. I DON'T KNOW IF THEY ARE GOING TO INSIST ON A VAUGHN
8 INDEX FOR EACH AND EVERY WITHHOLDING. WE WOULD NEED TO PUSH
9 OUT THE CURRENTLY EXISTING SCHEDULE, WHICH IS, I BELIEVE, ON
10 JUNE 1ST, AND WE WOULD HAVE TO PUSH THAT OUT BY MONTHS TO BE
11 ABLE TO PREPARE THAT VAUGHN INDEX FOR A REVIEW OF 3,000 PAGES.

12 **THE COURT:** SO, THAT'S NOT HELPFUL FOR ME, TO SAY YOU
13 WANT TO MOVE IT OUT BUT YOU DON'T HAVE A SPECIFIC DATE. IF YOU
14 DON'T GIVE ME A DATE, I'M JUST GOING TO PICK SOMETHING, BECAUSE
15 I DON'T WANT THIS LANGUISHING ON MY DOCKET. SO, I'M CONCERNED
16 YOU DON'T HAVE A SPECIFIC IDEA OF WHEN YOU WOULD LIKE TO GO
17 FORWARD ON THE SUMMARY JUDGMENT SCHEDULE.

18 **MR. BERNARDINO:** SO, I HAVE BEEN TOLD THAT ICE WOULD
19 BE WILLING TO PREPARE A VAUGHN INDEX AT THE RATE OF 250 PAGES A
20 MONTH. IF THAT IS THE CASE, IT WOULD TAKE US MORE THAN A YEAR
21 TO PREPARE THE VAUGHN, ASSUMING THAT THEY'RE GOING TO BE
22 CHALLENGING EACH AND EVERY WITHHOLDING IN THAT CASE. SO WE
23 WOULD HAVE TO PUSH OUT THE SUMMARY JUDGMENT BRIEFING BY ABOUT A
24 YEAR.

25 **THE COURT:** OKAY. SO HERE'S WHAT I'M GOING TO DO.

1 I'M GOING TO HAVE THE PARTIES -- I'M ORDERING YOU TO MEET AND
2 CONFER ON THIS ISSUE, ON THE SCHEDULING, AND THAT'S OBVIOUSLY
3 GOING TO TAKE INTO CONSIDERATION THE INDEX AS WELL, BUT I'M
4 GOING TO ORDER YOU TO MEET AND CONFER, AND THEN WITHIN ONE WEEK
5 EITHER GIVE ME A STIPULATED PROPOSED ORDER FOR THE SUMMARY
6 JUDGMENT SCHEDULING, OR GIVE ME PROPOSING COMPETING SCHEDULES
7 FOR SUMMARY JUDGMENT. BY THEN YOU'LL HAVE A BETTER IDEA OF
8 WHAT THE ISSUES IN DISPUTE ARE, AND YOU'LL BE ABLE TO GIVE ME
9 SOME KIND OF A PROPOSED SCHEDULE, AND THEN I'LL TAKE A LOOK AT
10 THEM.

11 **MR. FREE:** VERY WELL. THANK YOU, YOUR HONOR.

12 **THE COURT:** OKAY?

13 **MR. BERNARDINO:** THANK YOU, YOUR HONOR.

14 **THE COURT:** IS THERE ANYTHING ELSE WE SHOULD TALK
15 ABOUT WHILE WE'RE ALL ON THE LINE TODAY?

16 **MR. FREE:** YOUR HONOR, IF I COULD JUST BRIEFLY
17 RESPOND? I DON'T THINK IT CHANGES ANYTHING THE COURT SHOULD
18 ORDER, AND IT MIGHT NOT BE A GOOD USE OF THE COURT'S TIME, BUT
19 I JUST WANT TO FLAG THAT PLAINTIFFS ARE MOVING FOR SUMMARY
20 JUDGMENT ON A NARROWER SCOPE WITHIN THE ENTIRE CASE, IN
21 RESOLUTION OF THE ENTIRE CASE, BECAUSE IT'S DEFENDANTS'
22 BURDEN -- WE DON'T HAVE ENOUGH YET ABOUT THEIR WITHHOLDINGS,
23 AND WE'RE CHALLENGING THE TIMELINESS --

24 **THE COURT:** ARE YOU PLANNING --

25 (SIMULTANEOUS COLLOQUY.)

1 **MR. FREE:** -- OF THE PRODUCTION AND THE ADEQUACY OF
2 THE SEARCH.

3 WE ARE WAITING FOR -- I MEAN, TYPICALLY, IN FOIA
4 CASES, THE GOVERNMENT -- THE GOVERNMENT UNDER FOIA BEARS THE
5 BURDEN OF PROOF. SO THEY'RE THE ONES WHO FILLED SUMMARY
6 JUDGMENT. BUT THEY'RE INDICATING, YOU KNOW, THAT THAT'S NOT
7 GOING TO BE COMING FOR A YEAR.

8 SO THAT'S JUST TO BE VERY CLEAR. WE'RE SEEKING AN
9 ORDER FROM THE COURT IN SUMMARY JUDGMENT ORDERING THE
10 GOVERNMENT TO FINISH ITS PRODUCTIONS WITHIN A DATE CERTAIN AND
11 TO CONDUCT AN ADEQUATE SEARCH, BUT WE CAN PUT THAT INTO OUR
12 ORDER. I DON'T THINK IT CHANGES ANYTHING YOUR HONOR DOES.

13 **THE COURT:** ARE YOU PLANNING ON FILING MORE THAN ONE
14 SUMMARY JUDGMENT MOTION?

15 **MR. FREE:** NO, BUT I CAN IMAGINE THAT THE PLAINTIFFS
16 WOULD FILE ONE AND THEN THE DEFENDANTS WOULD FILE ONE. WE
17 WOULD HAVE CROSS MOTIONS.

18 **THE COURT:** SO I WOULD PREFER TO HAVE ONE SET OF
19 CROSS MOTIONS RATHER THAN HAVE SERIATIM MOTIONS. AS YOU KNOW,
20 MANY JUDGES ONLY ALLOW YOU TO DO IT THAT WAY. I DON'T HAVE A
21 HARD OR FAST RULE, BUT I DON'T WANT THERE TO BE TWO DIFFERENT
22 SETS OF SUMMARY JUDGMENT MOTIONS BECAUSE I THINK THAT'S
23 INEFFICIENT.

24 SO, WHEN YOU MEET AND CONFER, WHY DON'T YOU TALK
25 ABOUT THAT PROCESS AND GIVE ME COMPETING SCHEDULES USING THE

1 CROSS MOTION PROCESS, IF POSSIBLE?

2 **MR. FREE:** THANK YOU, YOUR HONOR.

3 **MR. BERNARDINO:** THANK YOU, YOUR HONOR.

4 **THE COURT:** OKAY. ALL RIGHT. YOU CAN DROP OFF THE
5 CALL WE'LL MOVE ON TO THE NEXT MATTER. THANK YOU.

6 (PROCEEDINGS ADJOURNED AT 1:51 P.M.)

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