

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,	)	File No. 26-cr-25
	)	(LMP/DLM)
Plaintiff,	)	
	)	
vs.	)	St. Paul, Minnesota
	)	May 14, 2026
Trahern Jeen Crews (7),	)	11:02 a.m.
Monique Cassandra	)	
Cullars-Doty (16), and	)	
Thomas Matthew Tier (36),	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE DOUGLAS L. MICKO
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(STATUS CONFERENCE)

Proceedings recorded by digital recording;
transcript produced by computer.

1 APPEARANCES

2 For the Plaintiff: U.S. Department of Justice
3 Civil Rights Division
4 ROBERT J. KEENAN
5 312 North Spring Street
6 12th Floor
7 Los Angeles, California 90012

8 U.S. Department of Justice
9 Civil Rights Division
10 NEVILLE S. HEDLEY
11 150 M Street
12 Suite 700
13 Washington, D.C. 20002

14 For Defendant Trahern ROBERT D. RICHMAN
15 Jeen Crews (7): P.O. Box 16643
16 St. Louis Park, Minnesota 55416

17 For Defendant Monique De Leon & Nestor, LLC
18 Cassandra Cullars-Doty BRUCE NESTOR
19 (16): 3547 Cedar Avenue South
20 Minneapolis, Minnesota 55407

21 For Defendant Thomas Dorsey & Whitney LLP
22 Matthew Tier (36): JOHN R. MARTI
23 50 South Sixth Street
24 Suite 1500
25 Minneapolis, Minnesota 55402

 Transcriber: CAITLIN J. NAT, RPR-CRR
 Suite 146
 316 North Robert Street
 St. Paul, Minnesota 55101

1 P R O C E E D I N G S

2 IN OPEN COURT

3 (Defendants present)

4
5 THE COURT: We are here in the matter of United
6 States vs. Levy Armstrong and others. It's Court File
7 Number 26-cr-25. And we're here for a status conference
8 that I set based on some discovery issues.

9 Let me make sure I understand who-all is here
10 before me today, so I'll get appearances, starting with the
11 Government.

12 MR. KEENAN: Very good. Good morning. Rob Keenan
13 for the United States.

14 THE COURT: Good morning, Mr. Keenan.

15 MR. HEDLEY: Good morning. Neville Hedley for the
16 United States.

17 THE COURT: Good morning, Mr. Hedley.

18 How about on behalf of our defendants today?

19 MR. RICHMAN: Good morning, Your Honor. Robert
20 Richman for Trahern Crews, Defendant Number 7, who's present
21 beside me.

22 THE COURT: Good morning to both of you.

23 MR. NESTOR: Good morning, Your Honor. Bruce
24 Nestor on behalf of Monique Cullars-Doty, who is present,
25 Defendant Number 16.

1 THE COURT: And good morning to both of you as
2 well.

3 MR. MARTI: And good morning, Your Honor. John
4 Marti. I'm representing Mr. Tom Tier, Defendant Number 36,
5 and he is present here as well.

6 THE COURT: And good morning to both of you as
7 well.

8 I've read the submissions.

9 Just a couple of logistic matters, folks. As you
10 might see, we don't have a court reporter with us today.
11 These proceedings are being recorded and will be transcribed
12 from that recording. But because of the potential
13 difficulties with recording, I might ask you to speak up or
14 speak a little bit clearer, and it's not intended to be any
15 disrespect; it's just to make sure that you have a clear
16 record, as I do, too.

17 I've read the submissions from the defendants who
18 are present here today. And I'll say that I have also read
19 the submissions about discovery from the other defendants
20 that were filed at, I think, Dockets Number 514, 515, 516,
21 and 517, although I denied the motions of those defendants
22 to join this status conference. I think I'm aware generally
23 of the issues.

24 Why don't I hear first from -- I don't know if I'm
25 going to be hearing from one of the attorneys for the

1 defendants or more than one, but whoever wants to tell me
2 the issues from defendants' perspective, I'm happy to hear
3 from you.

4 MR. RICHMAN: Thank you, Your Honor. I've agreed
5 to take the lead, but Mr. Nestor and Mr. Marti may weigh in
6 as well.

7 THE COURT: Thank you, Mr. Richman.

8 MR. RICHMAN: Your Honor, Rule 16 requires
9 disclosure of documents that are material to preparing the
10 defense. It's our position that the Government, by
11 restricting access to the names and contact information of
12 the very witnesses who were present during the events that
13 gave rise to these charges -- are material to preparing the
14 defense, and, therefore, the Government's restricted
15 production of discovery violates Rule 16.

16 Under Rule 16(d), this Court has broad discretion
17 to regulate discovery, whether that be in restricting
18 discovery in appropriate circumstances or in compelling it,
19 which is what we are requesting here.

20 THE COURT: Well, I did that. Didn't I do that
21 through the protective order?

22 MR. RICHMAN: That's what we think, Your Honor --

23 THE COURT: Okay.

24 MR. RICHMAN: -- but the Government disagrees.

25 Your Honor, first, just to explain to the Court

1 the nature of the discovery that we've received to date.

2 The discovery was produced in two tranches.

3 First, there are over 9,000 pages of PDFs, which
4 have been significantly redacted. Some of the PDFs look
5 like this (indicating), Your Honor, and for the record I'm
6 holding up Bates Number 1558, which is entirely redacted and
7 is completely blank or black. Although there are a number
8 of documents that look like 1558, I admit that this is not
9 typical.

10 Most of the documents look like this (indicating),
11 and I'm holding up Bates 44, which looks like a Dalmatian
12 because there are so many black spots.

13 THE COURT: So, Mr. Richman, I'm not -- just so
14 that we're all on the same page, those two documents that
15 you just showed me look similar to the documents that were
16 included with the request of Ms. Fort to join this status
17 conference at Docket Number 514. Is that kind of a fair
18 exemplar, from your standpoint?

19 MR. RICHMAN: 1558 was included in those
20 documents. Bates 44 is similar to but not the exact page
21 that was appended to Ms. Fort's request. And if the Court
22 would like, I could mark these as exhibits for this hearing.
23 I don't know if that's necessary.

24 THE COURT: Let's see if we need to get there.

25 MR. RICHMAN: But the Government insists that the

1 discovery is usable in its current format.

2 So I just want to take a moment with respect to
3 Bates 44. Bates 44 is a report that was written by "blank."
4 It was approved by "blank." And just to give the Court some
5 idea of what it is we're dealing with, here is an excerpt
6 from Bates 44.

7 "'Blank' ran into 'blank' when looking for 'blank'
8 kids and asked for assistance. 'Blank' has since spoken to
9 'blank' and was told she was unintelligible at that time.
10 'Blank' went downstairs and got the 'blank' kids. 'Blank'
11 was outside of the church in an alleyway. 'Blank' took the
12 children to a side door of the church to get them out."

13 And it goes on like that for 9,000 pages.

14 The second tranche of documents, Your Honor, is
15 what the Government has designated as protected material,
16 and it consists of hundreds of hours of audio and video;
17 body-worn camera videos, recordings of interviews. And
18 because those materials have not been redacted as far as I
19 know at this point, that is not the subject of this request.
20 We've learned that many of those recordings are in a format
21 used by the St. Paul Police that even the U.S. Attorney's
22 Office can't open, but we are working that out with the
23 U.S. Attorney's Office, hopefully, so we're not bringing
24 that issue to the Court.

25 THE COURT: Let me ask you a couple of questions

1 about the documents. You said there's something like 9,000
2 documents that you've received?

3 MR. RICHMAN: 9,000 pages.

4 THE COURT: 9,000 pages of documents. Thank you.

5 MR. RICHMAN: Yes. Yes, Your Honor.

6 THE COURT: Okay. And you received those
7 electronically?

8 MR. RICHMAN: Yes, Your Honor.

9 THE COURT: If you were to try to search those
10 through a text search function for names of witnesses, would
11 you be able to do that?

12 MR. RICHMAN: No.

13 THE COURT: Would you be able to search it through
14 a text search function for names of reporting officer?

15 MR. RICHMAN: No.

16 THE COURT: Okay. What about victims?

17 MR. RICHMAN: No.

18 THE COURT: Okay. Okay.

19 MR. RICHMAN: The -- it was our expectation, as
20 the Court has already suggested, that the protective order
21 was intended to deal with this issue, to -- by restricting
22 access to protected material, to prevent the heavy redaction
23 of material that we're dealing with here.

24 And while the Government has helpfully enumerated
25 every time it used the word "redaction" in a filing,

1 beginning months before we were even negotiating a
2 protective order, the clear import of the protective order
3 was to prevent discovery that looks like Bates 44.

4 In fact, the Government, in its motion for a
5 protective order, said -- this is Document Number 495 --
6 said at page 3, "While the government intends to redact a
7 subset of sensitive information from the discovery, the
8 redaction of all personal and sensitive information from the
9 discovery would be impractical and unduly burdensome and
10 would also be of limited value to the defense."

11 THE COURT: You know, I read that, too. I'll say
12 that I -- tell me if I'm wrong, but I'm sure, from
13 Mr. Keenan's perspective, that was in context with the
14 preceding paragraph, which identified the number of
15 electronic pieces of discovery that would be sent out, that
16 is, the videos and whatnot. I think Mr. Keenan's argument
17 is going to be that the protective order was meant to
18 address videos and other electronic evidence but not
19 documents.

20 I'm not sure that that matters, because arguments
21 are fine, but it's the court order that is ultimately what
22 binds the parties.

23 MR. RICHMAN: Correct, Your Honor. And I was the
24 point person in -- for, I believe, 33 of the defendants who
25 ultimately signed on in negotiating the protective order.

1 My point of contact for the Government was Orlando Sonza,
2 and although he was the person who negotiated the protective
3 order, he has had no role whatsoever in now interpreting the
4 protective order that we negotiated.

5 But during those negotiations, the clear import of
6 the negotiations, the premise of the negotiations was we
7 were going to define what constituted protected material and
8 then limit the dissemination of that material.

9 In the initial proposal from the Government, the
10 Government included all discovery produced by the Government
11 as protective material. I objected to that scope as being
12 overbroad. And it was important to limit the scope of
13 protective material because, under the terms of the order
14 that this Court entered, protected -- the use of protected
15 material, number one, is limited to what is necessary to
16 prepare our defense for this case, and, number two, may only
17 be produced to members of the defense team. Even if we have
18 other people who are not a member of the defense team
19 acknowledge the protective order and sign the certification
20 under the terms of the protective order, they cannot have
21 access to protective material.

22 One issue that came up during the negotiation was
23 the Government wanted the names of law enforcement officers,
24 not contact information, just their names, included in
25 protected material, and I objected to that because I said

1 that means every single piece of paper is going to be
2 protected material because it's going to have the name of
3 some law enforcement officer. That would have been a
4 perfect time for the Government to say, We intend to redact
5 that information regardless of what the Court does. But it
6 didn't. And, ultimately, this Court excluded from protected
7 material the names of law enforcement officers. It included
8 names of witness and -- witnesses and victims but not law
9 enforcement officers.

10 THE COURT: Now, I think I -- I think that the
11 order included personal identifying information of victims
12 and witnesses but names of victims only.

13 MR. RICHMAN: Correct.

14 THE COURT: Okay.

15 MR. RICHMAN: That's what I'm saying, Your Honor,
16 is that the names of law enforcement officers was not
17 included.

18 THE COURT: No, I understood that. I just -- I --
19 witness names are not included within the protective order;
20 witness personal identifying information is?

21 MR. RICHMAN: Yes.

22 THE COURT: Okay.

23 MR. RICHMAN: And yet, notwithstanding the way in
24 which this Court has restricted what constitutes protected
25 material, the Government has gone ahead and redacted that

1 information anyway. So the Government produced discovery in
2 accordance with the protective order that it wanted rather
3 than the protective order that was entered by this Court.

4 A second example, Your Honor, is -- and the
5 Government has pointed out that the protective -- the
6 protective order includes in protected material only the PII
7 that is unredacted. I actually was the one that proposed
8 that language, the use of "unredacted," because I wanted the
9 defendants to be able -- if we wanted to give something that
10 had PII to a witness, say, who was not part of the defense
11 team, we could simply redact the PII and it would no longer
12 be protected.

13 Again, that would have been a perfect opportunity
14 for the Government to say, for Mr. Sonza to say, We're going
15 to redact that information, in any event. That never came
16 up.

17 And so it's our position that the Government, in
18 redacting material completely without regard for the
19 limitations of the protective order, has violated the
20 protective order and has violated Rule 16.

21 THE COURT: Let me ask you a couple of questions
22 about that.

23 I understood the Government's backup positions
24 here to be that, number one, they'd be willing to give you
25 the names of witnesses that would be called at trial

1 something like 28 days before the trial or, number two, they
2 would be willing to serve as a gatekeeper for any of the
3 potential witnesses that are -- or victims who are -- and, I
4 guess, law enforcement officers who are currently redacted
5 from the discovery.

6 It's hard for me to see how that's consistent with
7 Rule 16(a)(1)(E)'s requirement to provide information that
8 may be material to the defense since we have motion hearings
9 coming up and you need to file motions, but maybe you have a
10 different take on it.

11 MR. RICHMAN: No, Your Honor.

12 First of all, with respect to the 28 days before
13 trial, that addresses only the issue of those witnesses or
14 victims that the Government has determined are so favorable
15 to the Government's case that they have designated them as
16 potential trial witnesses.

17 Not surprisingly, Your Honor, we're interested in
18 the ones who are not on that list. And as to those, the
19 Government has said, as the Court mentioned, that they can
20 act as a gatekeeper, reach out to them and say something to
21 the effect of, That mob that invaded your church, they want
22 to talk to you. Now, keep in mind, you're under no
23 obligation to do so, but if you'd like, we can give them
24 your name and phone number. Would you like us to do that?
25 I think that we all know what the result of that gatekeeping

1 function is going to be.

2 We have a right to these disclosures without any
3 mediation from the Government.

4 If we compare this case to *Roviaro*, Your Honor, if
5 we were dealing with an informant, an informant who was
6 involved in the criminal activity, who has provided
7 information to the police, who has valid reason to fear for
8 his safety if his identity is revealed -- and yet *Roviaro*
9 has made clear that when that informant is a participant in
10 the activities, is an actual witness to what went on, the
11 defendant's right to a fair trial, to prepare his defense
12 guaranteed by the due process clause of the Fifth Amendment,
13 trumps the informer's privilege.

14 The language in *Roviaro*, I think, fits very well
15 with our circumstances. The Court said, "A further
16 limitation on the applicability of the privilege" --
17 referring to the informer's privilege -- "arises from the
18 fundamental requirements of fairness. Where the disclosure
19 of an informer's identity, or of the contents of his
20 communication, is relevant and helpful to the defense of an
21 accused, or is essential to a fair determination of a cause,
22 the privilege must give way."

23 And then in the circumstances of that case, "The
24 informer was the only witness in the position to amplify or
25 contradict the testimony of government witnesses.... The

1 desirability of calling John Doe" -- the informer -- "as a
2 witness, or at least interviewing him in preparation for
3 trial, was a matter for the accused, rather than the
4 Government, to decide." (As read)

5 There are no safety concerns in this case
6 comparable to *Roviaro*. While the Government talks about
7 doxing and ongoing protests at the church and harassment,
8 during our meet-and-confer last week, when pressed, the
9 Government conceded that they have no evidence that any of
10 the 38 defendants have had anything to do with that activity
11 since the protest in January, since the events that gave
12 rise to these charges. And I would suggest that, if they
13 did have any such evidence, they would be before the Court
14 seeking revocation of release for violating their release
15 conditions.

16 THE COURT: You know, I think that part of the
17 Government's point, though, is that perhaps the difficulty
18 in knowing who may leak information itself would support the
19 idea that we should have further protection here because
20 you're not going to know who of the 38 people may have
21 disclosed information.

22 Do you have anything you can tell me about that?

23 MR. RICHMAN: Well, first of all, the suggestion
24 that any of these 38 would violate the terms of the
25 protective order is completely speculative. It's not enough

1 for the Government to say, We don't -- I mean, what the --
2 what they said during our meet-and-confer last week is, We
3 don't trust your clients, so we don't care about the
4 protective order.

5 You know, I've been doing this for 39 years,
6 Your Honor, representing criminal defendants. I've
7 represented people charged in major drug conspiracies with
8 actual informants from those conspiracies; international sex
9 trafficking where the witnesses were the women who were
10 victims of the sex trafficking; major frauds where the PII
11 was the information that allowed the defendants to actually
12 perpetrate the fraud. I have never had a case in which the
13 Government has said, We don't trust your client, and,
14 therefore, notwithstanding a protection order, we are not
15 going to give you information about any of the witnesses who
16 were present at the time of the crime.

17 That is extraordinary, Your Honor, and I would
18 suggest that it would make Rule 16 a nullity if the
19 Government could simply take it upon itself to say, We're
20 not going to comply in this case because we don't like your
21 clients, which is essentially what the Government is saying
22 here.

23 There's another point that I want to raise,
24 Your Honor, which is the -- the Government's position, I
25 would suggest, rings hollow, because in that tranche of

1 discovery which the Government has designated as protected,
2 which are all those recordings, hundreds of hours of
3 recordings, that material is unredacted. And with respect
4 to recordings of interviews of these victims, in many
5 cases -- I can't say all of them, but in the ones that I
6 have reviewed -- the witnesses are -- the members of the
7 congregation are identified by name. In many cases, their
8 addresses are included. And the Government has said, It was
9 too difficult for us to redact that.

10 If there was truly a concern about these
11 witnesses' safety, if, for example, this was a situation
12 with an informant, I would suggest that the Government would
13 make absolutely clear that the information from which the
14 defendant could identify the informant would be redacted,
15 however difficult it is. But for the Government to say, You
16 can't have the information in written form, but if you wade
17 through hundreds of hours of material, you may be able to
18 glean it from the audiotapes, that suggests to me not a
19 concern for safety but an attempt to obstruct the defense
20 function.

21 Our clients are presumed innocent. They have a
22 due process right to prepare a defense, and we need the
23 names of the witnesses to conduct an investigation. If we
24 fail to do that fundamental task, we will be providing
25 ineffective assistance of counsel.

1 And so, if the Government's view prevails, we will
2 be forced to take other steps to fulfill our constitutional
3 obligation to our clients. For example, we will be seeking
4 the Court's authority for Rule 17(c) subpoenas to the church
5 for the names and contact information for the congregants
6 who were present on that day. I would suggest that that
7 would be more intrusive to the interests of the church than
8 what we are suggesting here, which is that these reports
9 should be unredacted.

10 But it is simply a nonstarter for the Government
11 to suggest that we will only get access to the names and --
12 well, at least the names of their witnesses 28 days before
13 trial and, with respect to the others, they will act as
14 gatekeeper.

15 There's another issue here, Your Honor, which is
16 that, in its 12-page memorandum, the Government never once
17 mentioned *Brady*. Every witness who does not claim that he
18 was forcibly prevented from leaving the church is
19 exculpatory because that is at odds with the elements of the
20 FACE Act. Every witness who does not claim he was subject
21 to physical force is exculpatory. Every witness who does
22 not claim that he was threatened with physical violence is
23 *Brady*.

24 And if I could give the Court a few examples.

25 Page 1287, an interview with "blank." "No, we

1 were" -- "we were able to exit with no problem and no one
2 was hurt." (As read) That's indicated as a quote. That's
3 exculpatory.

4 Page 1342, an interview with "blank." "Blank"
5 stated no agitator blocked their departure nor physically
6 harmed her or W.W. That's exculpatory.

7 Page 1345. "Blank" stated after a few minutes she
8 realized it was just a protest, and she and some other
9 friends started praying and comforting each other but
10 remained in the church auditorium. "Blank" stated she was
11 never blocked in the pew by the protestors but did feel her
12 right to worship was violated. That's exculpatory.

13 And even with respect to the inculpatory
14 statements, Your Honor, we have a right to pursue an
15 investigation of those claims. For example, buried in the
16 9,000 pages of PDFs, there's one report from, I think, the
17 only person who claims to have actually been assaulted by
18 one of the defendants, who claimed that a defendant whacked
19 him in the side of the head. Following further
20 investigation, the Government concluded that that person was
21 not even present in the church at the time of the protest
22 and had made the whole thing up.

23 We are not required to accept the Government's
24 allegations that its witnesses were actually present in the
25 church. We are not required to accept the witnesses' claims

1 that they were threatened, if any of them -- or that they
2 felt threatened. We have a right to investigate those
3 claims. The Government has made that impossible for us to
4 do.

5 Your Honor, what we are requesting, and, again,
6 consistent with *Roviaro*, we are requesting the names,
7 addresses, and telephone numbers of the people who actually
8 witnessed the events giving rise to the crimes charged so
9 that we may attempt to interview them, and if they decline
10 to be interviewed, at our discretion, to subpoena them for
11 trial.

12 We are not asking for dates of birth or Social
13 Security numbers or any of the other PII that this Court
14 carefully delineated in its protective order. We are not
15 asking for the identity of any minors.

16 But this information we need in order to conduct
17 our investigation, and if we cannot get it from the
18 Government, we are going to seek it by subpoena from the
19 church. But this is the bare minimum that we need in order
20 to provide the effective assistance of counsel to which our
21 clients are constitutionally entitled.

22 THE COURT: Well, let me ask you a question about
23 what you just mentioned in terms of your request. The
24 protective order already applies and provides, you know, a
25 confidentiality designation to those other categories of

1 information that you said you're not seeking here: dates of
2 birth, maybe Social Security numbers, identification of
3 minors.

4 So I'm trying to just make sure that I understand
5 your position here. Is it -- is it your position that the
6 Government -- you're fine with the Government continuing to
7 redact that material, even though the protective order
8 already provides some confidentiality to those materials?
9 Or are you looking for entirely unredacted materials that
10 are -- nonetheless could be properly designated as
11 confidential under the protective order?

12 MR. RICHMAN: Your Honor, we could certainly take
13 a maximalist position and insist that, because it's
14 protected by the protective order, that the discovery should
15 be completely unredacted. But --

16 THE COURT: Because here's the problem: Let's go
17 back to the page that was completely blank. Let's say that
18 I agree with your position and I issue an order consistent
19 with your position and that page remains completely blank.
20 How in the world are you going to know what's in there and
21 whether it's within the scope of this more narrowed
22 permission to redact?

23 MR. RICHMAN: Well, clearly, this page has
24 redacted more than a name and an address.

25 I have been looking for a compromised position

1 that will take into consideration the Government's concerns
2 while at the same time allowing us to complete our
3 investigation, and while it plainly does not address pages
4 like this, I think that getting the limited additional
5 discovery that I am requesting will allow us to conduct an
6 investigation. And if at some point -- I mean, I guess we
7 would turn to the Government with respect to these other
8 pages that are not addressed by the remedy that I'm seeking.

9 With respect to pages like 1558, I would suggest
10 that the Court order that the Government provide some sort
11 of summary to explain why it is that -- what it is that has
12 been redacted and why it has been redacted. And that may be
13 a subject for a future date, but given what I have to work
14 with, I can't fashion a remedy that will cover what's behind
15 this redaction on page 1558.

16 THE COURT: Okay. Thank you, Mr. Richman.

17 MR. RICHMAN: Thank you, Your Honor.

18 THE COURT: Mr. Nestor, I'm happy to hear from
19 you, but otherwise I'd be happy to turn to Mr. Keenan or
20 whoever's going to speak to me from the Government for their
21 position.

22 MR. NESTOR: Nothing at this time, Your Honor.
23 Depending on the Government's presentation, I may have some
24 comments.

25 THE COURT: All right. Is that true for you, too,

1 Mr. Marti?

2 MR. MARTI: Two quick points.

3 THE COURT: Okay.

4 MR. MARTI: I think Mr. Richman is correct that
5 there are issues that are going to arise in the future
6 related to this discovery, and if the Government feels
7 strongly that this evidence should be protected or redacted,
8 they can re-approach the Court and seek a modification of
9 the protective order. They know how to do it. They've done
10 it once before; they can do it again.

11 The second point I'd bring up is, as it relates to
12 the Government's suggestion that they can mediate our access
13 to witnesses and evidence, I feel very strongly that
14 allowing them to become part of our investigative process
15 impedes -- gives them access to privilege, both work product
16 privilege, our strategy privilege. And the Court shouldn't
17 countenance -- the fact that they made this offer and
18 suggestion is alarming, and we'd ask you to reject it.

19 THE COURT: Thank you, Mr. Marti.

20 All right. Well, is it Mr. Keenan today or
21 Mr. Hedley?

22 Hello again, Mr. Keenan. How are you?

23 MR. KEENAN: Excellent. Thank you very much.

24 Nice to see you again.

25 The -- in the Government's papers, we tried to

1 explain -- address the primary allegation. At least, if it
2 didn't make it into the letter to the Court, it made it into
3 some of the e-mails to us.

4 THE COURT: I'd just ask you real quick to just
5 bump up that podium a little bit. There's a button in front
6 of you, and I want to make sure we get a good recording.

7 MR. KEENAN: All right.

8 THE COURT: Thank you.

9 MR. KEENAN: I'll try to lean in a little bit
10 more.

11 THE COURT: Okay.

12 MR. KEENAN: The main point is that we started
13 preparing the discovery in this case while the
14 investigation, namely continuing efforts to interview
15 witnesses, was still ongoing. I think that was reflected in
16 some of our earlier court filings. So the -- and we explain
17 what the preparation of discovery looked like, what it
18 entailed. The Court is familiar with that process, but,
19 nonetheless, we wanted it on the record in this case.

20 As part of that process, as we tried to explain --
21 we tried to highlight it that we were open and notorious
22 about it. We weren't hiding it, weren't concealing it,
23 weren't negotiating the protective order in bad faith. We
24 made clear to everybody that redactions were occurring, and
25 we were in the process of redacting documents.

1 THE COURT: That was before there was a protective
2 order or even a motion for a protective order.

3 MR. KEENAN: The redactions were largely completed
4 before the -- I say "largely" because I'm not positive of
5 when the last one was made, but I think "largely" completed
6 is certainly an accurate phrasing -- before the first
7 protective order was issued and, a day or two later, the
8 amended protective order.

9 THE COURT: Right.

10 MR. KEENAN: Those were all done.

11 THE COURT: So -- I know. I guess what -- my
12 point in saying that is -- you know, and, ultimately, I'm
13 not sure if I -- if I give that much attention to what
14 brought us here; it's where we go from here that I
15 particularly care about.

16 MR. KEENAN: I agree.

17 THE COURT: But, you know, when -- you spend a
18 good deal of ink in your -- in your filing explaining how it
19 was always, at least in the Government's view, that matters
20 were going to be redacted, and you made that point to the
21 Court a couple of times.

22 My question about that is -- was really, well,
23 yeah, but wasn't that before there was a protective order?
24 In other words, it's fine to say you're redacting something
25 when there's no protective order, because apparently at that

1 point the Government's view was that -- I assume the
2 Government's view was that they were protecting interests
3 that otherwise weren't covered by a -- by a court order.
4 But once there's a protective order, I'm not sure that --
5 I'm not sure that that whole, We were going to redact it
6 anyways, makes any sense. So help me understand your
7 position on that.

8 MR. KEENAN: We are taking an effort to be as
9 protective as possible. I've had mandamus proceedings in
10 the past involving allegations -- no findings -- of a
11 failure to comply with the Crime Victims' Rights Act, you
12 know, in those cases about plea negotiations, for example.
13 But it's a serious act with serious consequences for
14 violating it.

15 Part of the act, as the Court knows, we pointed
16 out, it requires us to protect the privacy of the victims.

17 THE COURT: So who is covered by the act?

18 MR. KEENAN: Victims.

19 THE COURT: Exactly.

20 MR. KEENAN: Right.

21 THE COURT: I saw in your -- in your submission to
22 me that there seemed to be kind of a lumping together of
23 victims and witnesses and law enforcement officers, but I
24 didn't see anything in the act that would speak to those
25 latter two categories. So help me understand your position

1 on that.

2 MR. KEENAN: The CVRA does not apply to other
3 third-party witnesses, it only applies to victims.

4 As to -- as to the others, there is still a
5 privacy interest and a safety concern that we've tried to
6 explain in our brief whether they're victims or not. They
7 have -- they have concerns, and we have concerns for them,
8 about the kinds of harassment -- and "doxing" is sort of the
9 modern term for it -- that led the defendants in this case
10 to Cities Church on January 18. That's what they were up
11 to.

12 We have every concern that similar behavior, not
13 necessarily from the defendants -- I would hope not. There
14 are protective -- there are instruct- -- you know, release
15 conditions that say, you know --

16 THE COURT: Well, there's also a protective order.

17 MR. KEENAN: Yes.

18 THE COURT: And the protective order itself has
19 sanctions baked right into the order if there's any
20 violation. So help me understand --

21 MR. KEENAN: Sure.

22 THE COURT: -- your position about that.

23 MR. KEENAN: The conc- --

24 THE COURT: Because it's -- because, you know, the
25 protective order that I signed is very similar to the one

1 that you proposed, including the sanctions section.

2 MR. KEENAN: Yes. The concern about the -- the
3 number one -- when we were preparing discovery, we said to
4 ourselves, In addition to the redacting we're doing, do we
5 need a protective order? We concluded that we needed a
6 protective order not for the documents that we were
7 redacting, because that's -- we were redacting the stuff
8 that we were concerned about being disclosed and publicly
9 disseminated; we were concerned about the stuff we couldn't
10 redact just as a practical matter: audio recordings, video
11 recordings, some of them, you know, body camera -- body-worn
12 camera videos of the victims being interviewed in their --
13 in their homes, for example.

14 The -- and the -- Mr. Richman says he's
15 responsible for the word "unredacted," but the word
16 "unredacted" is the focus -- it's information -- "'Protected
17 Material' is," per the protective order, "information
18 produced by the government ... which contains the following
19 unredacted personal identifiers." (As read) So the
20 protective order is needed for stuff we couldn't redact.

21 THE COURT: Okay. Well, turn --

22 MR. KEENAN: But --

23 THE COURT: Since you have it in front of you --

24 MR. KEENAN: Mm-hmm.

25 THE COURT: -- turn to paragraph 7 of that

1 protective order.

2 MR. KEENAN: Yes.

3 THE COURT: Okay. Now, Section 7 is entitled,
4 "Limitations on Use in Open Court," and it says, "The Legal
5 Defense Team will redact any Protected Material sought for
6 use in unsealed judicial proceedings."

7 That section would not be in there if it wasn't
8 intended to address how matters should be used in court
9 proceedings, that is, in filings or in open court.

10 So when we're talking here about how to use
11 unredacted material --

12 MR. KEENAN: Right.

13 THE COURT: -- or protected material and that
14 there's a requirement that protected material be redacted in
15 open court, and that requirement, that onus, is put on the
16 defense team, it would be intuitive to suggest that that
17 matter is not already redacted by the Government coming in.

18 MR. KEENAN: There is no question that the
19 protective -- the definition of "protected material" in that
20 particular provision relates sort of definitionally to
21 discovery materials produced by the Government that are
22 not -- that are not redacted, and, therefore, for those,
23 it's got to be redacted if it's publicly filed by the
24 defense. But --

25 THE COURT: So your suggestion is that that only

1 applies to those matters you haven't taken the time to
2 redact? In other words, just the electronic -- the videos
3 and the audio recordings that are going to be used in a
4 court filing? I'm not following that.

5 MR. KEENAN: That's, I think, the way that order
6 is worded. That's -- it relates to protected material.

7 Paragraph 12 of the order, I was also going to
8 note it -- you know, it notes that it's -- this order talks
9 about what to do with materials that are produced that are
10 unredacted. They're protected in the following way that the
11 Court maps out in the amended order. But there's a
12 limitation on the scope of the order, in the original as
13 well, and it notes that it does not purport to "constitute a
14 ruling on the question of whether any particular materials
15 are discoverable ... and does not constitute a ruling on any
16 potential objection to the ... discoverability of the
17 material." (As read)

18 So, I mean, there are issues --

19 THE COURT: So you're saying that you didn't need
20 to disclose the -- I'm not following your --

21 MR. KEENAN: Oh.

22 THE COURT: Help me understand what you're saying
23 here.

24 MR. KEENAN: The point being that, you know,
25 there's -- the defense, as I understood the argument today,

1 was suggesting that, Oh, this has already been ruled on. It
2 hasn't. And the protective order is limited by its terms to
3 what it says.

4 And so --

5 THE COURT: Well, every order is limited to its
6 terms. The protective order deals --

7 MR. KEENAN: Right.

8 THE COURT: -- pretty comprehensively, in my view,
9 with how we're going to handle the material that's included
10 within its scope, that is, personal identifying information
11 of victims and witnesses, additional information for minors,
12 and some additional information for victims.

13 So help me understand why any limitations that are
14 out on the margins have anything to do with what we're
15 talking about here today.

16 MR. KEENAN: Well, I guess the point I was trying
17 to make is that it -- the protective order, by its terms,
18 does not say the Government may not redact anything else.
19 Doesn't say that.

20 THE COURT: Why would it have to? It's a
21 protective order.

22 MR. KEENAN: Well --

23 THE COURT: It addresses those materials.

24 MR. KEENAN: The question of whether or not -- it
25 addresses those materials that are produced that are

1 unredacted and that we cannot protect ourselves by first --

2 THE COURT: No. No, no, no. I --

3 MR. KEENAN: -- first applying the redactions.

4 That's --

5 THE COURT: I've just --

6 MR. KEENAN: That's our --

7 THE COURT: I've looked at -- come to -- I
8 understand that's your argument. I'm trying to help you let
9 me kind of get a little bit of a better flavor for that
10 argument. Because I'm having a hard time with the notion
11 that you moved for a protective order, I heard from the
12 defendants on that, and, ultimately, in considering all the
13 arguments, I fashioned a protective order that
14 comprehensively covers discovery in this case and provides
15 not just characterization of materials but also how those
16 materials should be handled in court and out of court.

17 Help me understand how, when there's a
18 comprehensive court order, that the Government then
19 unilaterally determines that it's going to take steps
20 separate and apart from that court order that affect a
21 defendant's rights to a fair trial, to effective assistance
22 of counsel, and under Rule 16.

23 MR. KEENAN: Two points.

24 Number one, we didn't unilaterally decide it --

25 THE COURT: Wait, wait, wait. Who did? Did you

1 ask them what to redact?

2 MR. KEENAN: If I can finish the one sentence.

3 We didn't unilaterally decide it after the
4 protective order was issued. We made these -- my main point
5 is we made these redactions over the course of a couple
6 months. Okay? So -- and we make those decisions -- every
7 prosecutor across the nation makes those decisions
8 unilaterally, if you'd like, because we aren't consulting
9 with people until there's a hearing and we need to figure
10 out, okay, are the redactions okay?

11 THE COURT: And what about -- what about once
12 there is a protective order? I know you have a second
13 point. I'm going to let you --

14 MR. KEENAN: Yes.

15 THE COURT: -- get to your second point.

16 MR. KEENAN: This is it.

17 THE COURT: But help me understand the fact that
18 you did a bunch of work leading up to the disclosures. How
19 does -- how is that impacted by the fact that then there is
20 a protective order that would provide Court-endorsed
21 protections to the discovery that you've already redacted?

22 MR. KEENAN: Two things on that point.

23 The point I was going to make, I'll make now, is,
24 is the protective order comprehensive? My reading of the
25 protective order is it isn't as comprehensive as the Court

1 perceives. It's comprehensive regarding the treatment of
2 discovery materials that are not redacted. That's my point.
3 It doesn't mean that we cannot take other additional
4 belt-and-suspenders, if you will, efforts to protect
5 materials in accordance with the privacy act.

6 It's not just the -- it's not just the victims'
7 rights act; there are privacy act issues, too. We've got
8 records. Privacy act applies to government records. We've
9 got to redact for that. It's under the PII -- privacy act.
10 But -- so that's, essentially, it.

11 And the second point on that, as I've already
12 said, is you spend months with redactions and you
13 negotiate -- I think it was about three weeks of negotiation
14 to get a stipulation on a protective -- well, some agreement
15 regarding most of the protective order. And then we have to
16 produce the discovery on the day of the amended discovery
17 order.

18 And, again, just the point about -- to make clear,
19 the Court may have a different understanding, but our
20 understanding was clearly, frankly, openly, notoriously, and
21 candidly expressed to the Court regarding the fact we're
22 still planning on doing redactions. I pointed that out in
23 our motion for reconsideration of the protective order and
24 that's quoted in our brief.

25 In any event -- but that's still, as you point

1 out, sort of history. What are we going to do now? And is
2 there a need that the defense -- anyway, all of that is
3 designed to just explain the Government's view of the
4 process and just a little bit of correcting the history
5 about what we've done to date.

6 Everything's been open and notorious, what we were
7 doing and how we were planning to do it. And the -- so the
8 protective order was -- the amended protective order was
9 issued, I think, two days before we disclosed. The amended
10 protective order was issued on the day we needed to disclose
11 and we weren't going to blow that deadline, so the discovery
12 was produced as we had prepared it.

13 THE COURT: But you haven't --

14 MR. KEENAN: If --

15 THE COURT: -- you haven't subsequently reproduced
16 in the manner that defense thinks is consistent with the
17 protective order, have you?

18 MR. KEENAN: No, that's correct.

19 THE COURT: Okay.

20 MR. KEENAN: On that, because of the work that was
21 done and the way it was done, it is my understanding that
22 those redactions, for example, names, are coded in a way
23 that I don't understand and won't pretend to be able to
24 summarize accurately, but coded in a way so that redactions
25 of names can be done with some speed, efficiency.

1 I asked prior to the hearing, Okay, what if we
2 have to disclose the names? How long is that going to take?
3 How many days do we need? I don't know that I have an exact
4 thing, but in terms of my understanding of our Everlaw
5 system, I think you can, you know, click a button, and I
6 think, if it's coded in the way I understand it is, that the
7 redactions of names can be removed somewhat quickly.

8 So I want to make that clear. So if we have to
9 redact them, I think we can do it somewhat quickly.

10 THE COURT: Can you -- before you get to the
11 logistics, can you help me understand how you think the
12 privacy act supports the redactions here? Because I'm
13 struggling with that, and I didn't see that addressed in
14 your -- in your filing.

15 MR. KEENAN: Our filing -- it was a short time
16 frame, but our focus was primarily on the victims, so I
17 don't think I cite to the privacy act.

18 But the privacy act as a general proposition
19 provides that records in the possession of the Government
20 need to -- there's -- "personal identifying information," I
21 think, is the standard term that's used in that act, as I
22 recall. It puts obligations on us that we secure it and
23 maintain, basically, the privacy interests of the people.
24 So --

25 THE COURT: Vis-à-vis the public, right?

1 MR. KEENAN: -- the dates of birth, addresses,
2 phone numbers, things like that.

3 THE COURT: But that's -- the way I always
4 understood the privacy act is that those protections were
5 vis-à-vis the public. Do you think I'm wrong on that?

6 MR. KEENAN: Like broad public dissemination?
7 Certainly, it's included in that. I'd have to go back and
8 study the text of the -- of the statute, but I --

9 THE COURT: Well, I'm asking you because you're
10 the one who brought it up to me.

11 MR. KEENAN: Yeah. Well, my point remains that
12 the privacy act reflects concerns about the privacy of
13 personal identifying information, and we -- it's something
14 we -- we -- as a general rule, I can just tell you -- I
15 don't have Mr. Richman's 39 years, but I've been doing this
16 a while. In victim reports -- or in police reports,
17 countless different cases, you know, all the stuff he
18 mentioned -- drug trafficking cases, bribery, bank
19 robberies, all kinds of different things -- I redact
20 victim -- it's not just me. I get trained on this stuff
21 back in California, and I learned how to do it, and the way
22 it's done by everybody is you redact the addresses,
23 telephone numbers, dates of birth, Social Securities, that
24 sort of thing.

25 So all of those are very standard redactions.

1 THE COURT: I understand. And I appreciate your
2 experience; I appreciate Mr. Richman's experience. I can't
3 make a decision based on that.

4 MR. KEENAN: Yeah.

5 THE COURT: I will tell you, for what it's worth,
6 that I -- I tried to find any case law, because I didn't see
7 any in your filing, that would support the type of what
8 you're calling belt-and-suspenders approach here, and I
9 didn't find anything in the district; I didn't find anything
10 in the circuit.

11 I found a single case out of the District of New
12 Jersey that supported the notion that even though there was
13 a protective order similar to the one here, that certain
14 redactions would be appropriate in that case, which was a
15 sexual exploitation case and there was concerns about the
16 victim being further victimized if their information was
17 coming out.

18 MR. KEENAN: Mm-hmm.

19 THE COURT: Now, that was brought to the court by
20 way of the Government seeking a protective order. So when I
21 said "unilateral" earlier, it wasn't just throwing terms
22 around. I'm telling you what I've seen happen in the one
23 case that has endorsed the approach that was taken here.

24 This seems different to me in terms of the
25 potential for abuse and also in terms of the posture in

1 which it comes to me. There's been no motion from the
2 Government to amend the prior protective order. And,
3 frankly, in a lot of ways, the conduct of the Government
4 here would just render -- you know, it would obviate the
5 need for any protective order. I don't understand how this
6 has happened.

7 And you can sense I'm a little frustrated with it,
8 I think --

9 MR. KEENAN: Yes, Your Honor.

10 THE COURT: -- because, as you know, I've tried to
11 keep your case on track.

12 MR. KEENAN: Yes.

13 THE COURT: I think it's important for the public
14 to have a quick trial in this case, if possible. The public
15 has some right to a trial. I think it's important for
16 disclosures to happen in due course and for the defense to
17 be able to see what they can do and evaluate their case.

18 I think that's a very difficult thing to do given
19 the type of disclosures that I've heard about. I don't know
20 what the entirety of the disclosures look like, but it
21 struck me as something that seemed inconsistent with what we
22 were trying to do by ensuring through a protective order we
23 would have a relatively full flow of information back and
24 forth.

25 MR. KEENAN: In my introduction to the brief, I

1 said that we welcome the Court's guidance regarding these
2 matters. You're the judge; I'm not. I'm comfortable with
3 that. Been doing this a long time. That's the way it
4 works. If the Court disagrees, we can do it however you
5 want it done.

6 In terms of our concern, though, the -- when it
7 comes to the disclosure of names, again, it's primarily, not
8 exclusively, but primarily the victims of the offense who
9 are worried about the disclosure. We've suggested maybe an
10 attorneys'-eyes-only thing. They are members of the bar. I
11 don't know hardly any of them except -- none of them except
12 for my dealings with them in this case, but they are members
13 of the bar and I trust them implicitly.

14 The -- their defendants might be fine people who
15 had a bad day on January 18. But the bottom line is the
16 conduct they engaged in on January 18 as alleged in the
17 indictment is the kind of behavior that the victims in this
18 case and that the Government is also concerned about, the
19 kinds of harassment, intimidation, and doxing.

20 So -- and it's not just from the defendants. It's
21 from anyone who might view themselves as allied in some way
22 or another.

23 So here -- the big problem in a case like this,
24 38 defendants, is that we -- if it were one defendant and
25 there were a disclosure, that enforcement provision would be

1 really handy. With 38 defendants, who did it? You know?
2 It's like trying to find out who leaked a Supreme Court
3 opinion in *Dobbs*, right? No one will know. Too many
4 potential suspects.

5 So that's why the protective order doesn't give us
6 a great deal of confidence that --

7 THE COURT: Well, why did you ask for it?

8 MR. KEENAN: -- it will have the --

9 THE COURT: Why did you ask me for it?

10 MR. KEENAN: Like I said, there are materials we
11 cannot redact, like the videos. That's why.

12 THE COURT: I get that.

13 MR. KEENAN: That's why we asked.

14 THE COURT: But that's not clear from the order
15 that you requested, because the -- as I mentioned,
16 paragraph 7 of your order, your proposed order that I
17 adopted, doesn't talk about videos that are hard to redact
18 or anything like that. It speaks to the defendants'
19 obligations to redact what are otherwise protected materials
20 in judicial proceedings.

21 That suggests to me something other than just
22 playing a video in court, suggests to me that what you're --
23 what you were contemplating was providing unredacted
24 materials, not simply unredacted electronic materials
25 because that was too hard to do, but unredacted materials

1 that, if the defense wanted to bring that up in a motion or
2 whatnot, in a documentary motion, that then they would have
3 some obligation to redact.

4 So what you're saying to me today, it's not
5 consistent with what I -- and, you know, I say this with all
6 due respect, it's not consistent with what I understood from
7 your motion for a protective order, and it's not consistent,
8 in my view, with the protective order in this case. So I'm
9 trying to figure out where we go from here.

10 I appreciate the suggestion about maybe we could
11 uncode a few things that are already in Everlaw coded a
12 particular way. I have concerns about timing, so I don't
13 know what to do with that.

14 You know, these disclosures -- it's hard for me
15 not to say that these disclosures should have been made
16 unredacted back on April 24th.

17 MR. KEENAN: The other couple -- well, primary
18 point on redacting of the -- the core of the discovery is
19 the, you know, the reports of interviews that they have and
20 their point that they can't really make heads or tails out
21 of them. They are actually able to see and have cited
22 examples of, okay, a witness says that, you know, they're
23 not -- they weren't in fear after a few minutes, I think was
24 the phrase.

25 But the -- you know, I suppose the point is that

1 they -- they can look at the reports and see what that
2 witness, which is usually going to be identified -- the DHS
3 reports, you know, they -- ROI Number X, so there is an
4 identifier. It's not the name, I get it's not the name, but
5 there is an identifier. They can say, This witness says
6 this, and they can see from the -- from the report what was
7 said.

8 But, more importantly on that, it's -- the vast
9 majority of the interviews, which are reflected in the
10 interview reports, were conducted with -- they were
11 recorded. Some, as I mentioned, the body-worn camera videos
12 from St. Paul PD, video and audio; others, I think, were
13 audio.

14 But they can -- there's -- it's not like, oh,
15 blank, blank, blank. The audio -- if they really have
16 concern about being able to perceive what's on the report,
17 the audio recordings of the interviews will, you know, make
18 clear what's being -- it will certainly aid. And I think it
19 gets to the need or -- whether the discovery is worthless as
20 is. I don't think it's -- "worthless" is an accurate word
21 at all, but the -- my view is that the recordings of those
22 interviews make clear what was said, how they were said, how
23 the interview was conducted, you know, all sorts of
24 different things that the reports, perhaps, won't.

25 THE COURT: But how do you link that up? So you

1 got a -- you got an audio -- you've got a video and audio
2 interview of a victim --

3 MR. KEENAN: Mm-hmm.

4 THE COURT: -- and that identifies the victim's
5 name --

6 MR. KEENAN: Mm-hmm.

7 THE COURT: -- address, contact information,
8 whatever it might be, and then you've got separately
9 hundreds of pages of ROIs that talk about interviews that
10 were conducted with anonymous -- anonymized --

11 MR. KEENAN: Yes.

12 THE COURT: -- people. I don't know how -- even
13 if you're right, how do you connect those two things up?
14 I'm -- there might be an answer, I just don't know what it
15 is.

16 MR. KEENAN: If it's not clear from the index or
17 file names, we could -- we could link them up. This audio
18 relates to this ROI, report of interview -- or
19 investigation. We could do that if it's not already clear
20 from the indexing.

21 And, lastly, just in terms of the point about the
22 fully unredacted [sic] page, I don't know what that page is.
23 I don't recall a significant number of pages like that.
24 It's -- frankly, I didn't recall any pages that were
25 completely blank. The -- so I don't know what that is.

1 I mean, if -- we can certainly provide a statement
2 to all counsel saying, These things are blank because -- I
3 know some of the documents, medical records, totally
4 irrelevant. For the one victim that suffered an injury to
5 her elbow, might be a page or two relating to that, but I
6 can't say with certainty because I don't know that
7 particular number.

8 And the mediation offer, we're not trying to
9 invade the defense camp. And the suggestion -- the
10 suggestion was not, Gee, defense lawyers, tell us who you
11 want to interview. Okay, that would be a problem. Right?
12 We get that. That wasn't the idea.

13 The idea that we suggested in our brief was we
14 could just cover the waterfront, all of the victims, contact
15 all of them, phone them or whatever, and say, Hey, there's
16 been an interest expressed by some of the defense lawyers
17 and they'd like to interview you. Would you like to -- are
18 you willing to be interviewed? Some -- you know, vague,
19 appropriately tailored, nothing suggestive. Do you want to
20 talk to them or not? If so, we can provide your name and
21 phone number for that purpose.

22 THE COURT: I understand. I mean, they're
23 difficult issues --

24 MR. KEENAN: Anyway, it's not trying to get
25 into -- yeah.

1 THE COURT: -- and I didn't think that the
2 intention was to -- was anything kind of underhanded with
3 that. I don't think I could do it, for whatever it's worth.
4 I think that would be difficult to square with some of the
5 issues that Mr. Marti and Mr. Richman raised. But I
6 understood that, yeah.

7 MR. KEENAN: And that's all I have.

8 We've made a suggestion -- number one, I think the
9 discovery as produced is adequate for the needs of the
10 defense bar -- the defense lawyers in this case, and -- but
11 if not, we're all ears, and we'll remove whatever redactions
12 you think are excessive.

13 THE COURT: And let me get back to something,
14 because in the event I do that, you know, I don't want to
15 put you in an untenable position. Do you have a sense of
16 timing for any reproduction?

17 MR. KEENAN: I think in terms of the reproduction,
18 it would simply be removing the redactions within the
19 Everlaw context and then letting the defense bar -- the
20 defense lawyers here know that those documents, which are,
21 as I understand it, just on a database available to be
22 accessed, will -- are now available.

23 You know, I got the impression that the
24 redaction -- the codes could be removed, you know, like a
25 click of a button, but I don't want to overstate that, so

1 maybe Wednesday of next week. And if I'm wrong, I can deal
2 with yet another mea culpa, but I believe it will be -- I
3 believe it's a quick process.

4 THE COURT: Okay. All right. Thank you,
5 Mr. Keenan.

6 MR. KEENAN: Thank you.

7 THE COURT: I appreciate it.

8 MR. HEDLEY: Your Honor, I also wanted to point
9 out one thing. Get up to the microphone. I apologize,
10 Your Honor.

11 THE COURT: All right. Go ahead, Mr. --

12 MR. HEDLEY: We still have less than half of the
13 defendants having submitted the exhibit, or the attachment,
14 to the protective order. So I think that's a relevant
15 factor here in terms of the redactions already being in the
16 pipeline, the discovery going out because of a discovery
17 deadline, and not having the representations from defendants
18 or their defense counsel that they're going to abide by the
19 terms of the protective order. And we still only have
20 approximately half of them.

21 So I think --

22 THE COURT: I saw that in your -- I saw that --

23 MR. HEDLEY: -- that context --

24 THE COURT: -- in your briefing.

25 MR. HEDLEY: -- I think, needs to be taken into

1 account about the whole flow of information, the whole flow
2 of the process in terms of trying to meet a discovery -- the
3 redactions being in the pipeline, trying to meet a discovery
4 deadline, and then having the negotiation over the
5 protective order, and then now we're three, four weeks from
6 the protective order being entered and still have less than
7 half the defendants having executed that. So I think that's
8 a relevant factor to draw to the Court's attention.

9 THE COURT: Thank you, Mr. Hedley.

10 Any response from the defense on this?

11 MR. RICHMAN: First of all, with respect to that
12 last point, Your Honor, it's completely appropriate that the
13 protected material not be disclosed until the certifications
14 have been provided to the Government.

15 Because of the two tranches that I spoke about at
16 the beginning, one that was protected, the other not, the
17 Government took the position that before receiving the
18 protected material, they wanted a signed certification. So
19 the defense counsel were able to get those, you know, 9,000
20 pages of PDFs because they were not protected, because they
21 were all redacted, which I would suggest is the reason that
22 there have been delays in producing those signed
23 certifications.

24 But I certainly -- I've produced my signed
25 certification as well as my client's, although I have not

1 provided him with any protected material to date. But I
2 think that's completely appropriate that individual defense
3 counsel not receive discovery until they've signed the
4 certification.

5 But with respect to the protective order,
6 Your Honor, the purpose of the protective order was to
7 balance the privacy interests of the victims and witnesses
8 against the due process rights of the defendants. It was
9 negotiated at great length between the parties. This Court
10 granted a protective order that it made its own tweaks to.
11 The Government sought a specific amendment, which this Court
12 granted in part. That protective order abides by the
13 interests of the Crime Victims' Rights Act. That statute
14 does not promise witnesses or victims anonymity. What it
15 promises is that there -- that they will be treated fairly
16 and their dignity and privacy interests will be respected.
17 That's what the protective order does.

18 It is an untenable situation for only the
19 Government to know who the people are who witnessed the
20 events that gave rise to the charges in this case.
21 Mr. Keenan seems to indicate that everything is fine because
22 if we plow through a hundred hours -- hundreds of hours of
23 audio, we can figure out who the witnesses are. If we can
24 know through an enormous amount of work, we should be able
25 to know by reading a PDF. The issue then becomes not

1 protecting any particular interest, but simply making our
2 lives as difficult as possible.

3 We ask the Court to enforce the terms of the
4 protective order by ordering the Government to produce the
5 unredacted material that I outlined earlier.

6 Thank you, Your Honor.

7 THE COURT: And what you were asking for was
8 names, addresses, phone numbers -- or I guess contact
9 information. I don't know if you said e-mail addresses. I
10 didn't hear that one way or another.

11 MR. RICHMAN: I didn't say e-mail addresses.

12 THE COURT: Okay. Names, address, and phone
13 numbers of victims and witnesses, correct?

14 MR. RICHMAN: Correct.

15 THE COURT: Okay. Thank you.

16 MR. RICHMAN: Thank you.

17 THE COURT: All right.

18 MR. RICHMAN: And law enforcement officers.

19 THE COURT: Yes. Thank you.

20 Mr. Nestor?

21 MR. NESTOR: Your Honor, I just have a few brief
22 comments. And it's not my intent to lose focus on the core
23 issues as addressed by Mr. Richman, which really relate to
24 the discovery, but today and in its moving papers responding
25 to my letter, the Government has made accusations against my

1 client and the other defendants as to their behavior and
2 motivation to dox or harass witnesses and victims as a
3 reason for the Government's actions.

4 Today we had counsel saying that, We have concern
5 for harassment and doxing. That is what they were up to,
6 referring to the events that led to these charges.

7 In their Filing Number 520 responding to my
8 letter, they talk about, quote, "Following well-known rules
9 for radicals, the defendants identified the ICE agent and
10 then tried to target, isolate, intimidate, and ostracize
11 him." And that just calls for some response.

12 The events as publicly described that occurred at
13 Cities Church on January 18th were holding a high public
14 official accountable for his official actions, and that's
15 Acting Field Office Director David Easterwood.

16 THE COURT: Mr. Nestor, I'm just going to cut you
17 off on this, because I have a very limited amount of time
18 and a limited scope of the hearing. Appreciate your
19 comments. I appreciate that you want to respond to what
20 feels to potentially you and your clients like attacks from
21 the Government. You can deal with that in a different
22 forum.

23 MR. NESTOR: I just -- I just -- I don't believe
24 there's any evidence in the record to support that
25 motivation or past behavior on the part of my client or any

1 of the other defendants.

2 THE COURT: Thank you, Mr. Nestor.

3 MR. MARTI: Judge, I understand you're running out
4 of time. I'll use very little time.

5 One, the privacy act, it's a red herring. It's
6 Title 5 U.S.C. § 552. No role in this, and you should just
7 ignore that.

8 I think Mr. Keenan was referring to the
9 administrative burden on the Government in redacting all
10 this evidence. That suggests that quite easily they could
11 unredact certain information and produce that.

12 And listening to your questions and commentary, I
13 think you're focusing on a resolution of the issues that the
14 three of us have brought before the Court, but we're not the
15 only defendants in this case as a result of the Government's
16 decision to charge this in the way it has done, and also to
17 produce discovery in the manner which it has done. And I
18 don't know how we work this out in the long run, because we
19 are where we're at because of the Government's conscious
20 decisions and the manner in which they've chosen to pursue
21 this case.

22 If you look back in the gallery, you're going to
23 see other counsel who represent other defendants in this
24 case. They may have different positions as it relates to, I
25 think, what Mr. Richman was suggesting in terms of

1 identifying data, and I don't want the Court to find itself
2 in a position where it enters an order and then we're still
3 in these arguments as we move forward.

4 And I don't --

5 THE COURT: You know, I --

6 MR. MARTI: -- I don't have an answer to that.

7 THE COURT: I appreciate that. But what I would
8 say about that is simply that, you know, I don't expect
9 unanimity among defense counsel on anything that I do, you
10 know, but that doesn't really -- that can't really animate
11 my decision.

12 MR. MARTI: Right.

13 THE COURT: So -- but I -- you know, that is what
14 it is. But I appreciate you bringing that to my attention.

15 MR. MARTI: So there may be additional process as
16 it relates to the protective order as we go forward.

17 THE COURT: Understood.

18 MR. MARTI: Okay. Thank you.

19 THE COURT: Thank you.

20 Mr. Keenan, it looked like you wanted to tell me
21 something.

22 MR. KEENAN: Just one factoid. I'm informed that
23 the reports of investigation, as I noted, they have a
24 number, let's say "ROI 102." It's my understanding that the
25 recordings relating to that interview are referenced as

1 "ROI 102" as well. But if the index is insufficient to make
2 the -- to link those up, we are happy to do that.

3 THE COURT: Okay.

4 MR. KEENAN: And I don't yet -- I was checking to
5 see exactly how quickly that can be done, the recoding. I
6 don't yet have an answer, but I've told you what I know.

7 THE COURT: Thank you, Mr. Keenan.

8 Why don't we take just a five-minute recess and
9 I'll be back out and tell you what we're going to do here
10 today.

11 THE LAW CLERK: All rise.

12 *(Recess taken from 12:19 p.m. to 12:21 p.m.)*

13 THE LAW CLERK: All rise.

14 THE COURT: You all can be seated as you see fit.
15 Thank you.

16 UNIDENTIFIED MALE ATTORNEY: Mr. Marti is just
17 retrieving his client.

18 THE COURT: My five minutes was shorter than
19 yours, which is fine.

20 MR. MARTI: I think my client probably went to the
21 other end of the hallway.

22 THE COURT: Mr. Marti, do you want me to wait for
23 your client, or do you want me to excuse your client for
24 this part of the proceeding? We can give him a minute.

25 MR. MARTI: You can proceed.

1 THE COURT: Okay. Okay.

2 Thank you all for your presentation here today.

3 It was helpful to my decision-making process.

4 I'll tell you what we're going to do: I'm going
5 to follow this up with an order that summarizes what I'm
6 going to do that I expect to issue today.

7 Let me tell you, first of all, how I see things.
8 In my view, the amended protective order that was issued by
9 the Court was intended to govern the characterization and
10 use and dissemination of discovery materials, not simply
11 discovery materials that may come to defense counsel in an
12 unredacted form. That was the intention. It was intended
13 to be more broadly used, and I don't think that the
14 redactions that I've heard about today are consistent with
15 that amended protective order.

16 I appreciated the Government's comments on the
17 application of the privacy act and application of the Crime
18 Victims' -- the CVRA. I considered privacy concerns when I
19 issued the amended protective order, and that was part of my
20 decisional process there, so that was already covered.

21 I also, in my research, noted that -- the
22 Government confirmed today -- that the CVRA is designed to
23 and does impose certain rights for victims, not for
24 witnesses, not for law enforcement officers, unless they
25 also qualify as victims.

1 I also will tell you that, to the extent that the
2 CVRA has some application to this matter, as I said, I
3 considered that in my protective order, and the rights that
4 are conferred by the CVRA are general rights that are, you
5 know, kind of probably included in and also -- they're, you
6 know, perfected by a more specific protective order that
7 identifies how those rights are going to be honored. That's
8 what we did here with the protective order.

9 All of that to say, I don't find any basis for the
10 Government's redactions in discovery that was produced, so I
11 am going to order that the Government reproduce the
12 discovery that is due and has been produced consistent with
13 Rule 16.

14 I heard Mr. Richman, on behalf of the three
15 defendants who are in front of me here today, indicate that
16 he's -- that, at least from their perspective, the matters
17 can be unredacted as to names, address, and telephone
18 numbers of those victims and witnesses, that he's not asking
19 for date of birth or other personal identifying information.
20 I think that that is fine.

21 I'm going to issue this order broadly as it
22 relates to all defendants. And I understand Mr. Marti's
23 point that some other defendants might seek to challenge
24 that order because they want additional personal identifying
25 information. We can deal with that in due course.

1 I will say, for those who are here, you're free to
2 go forward with whatever motion practice you feel like you
3 need to to protect your clients' interests on that, but I
4 think it's a tougher row to hoe to seek other personal
5 identifying information beyond what -- the limitations that
6 Mr. Richman had mentioned, that is, names, addresses, and
7 phone numbers for witnesses and victims.

8 I'm also going to order that the discovery be
9 reproduced entirely unredacted as it relates to law
10 enforcement officers. I didn't hear anything today that
11 would support the notion that redactions for law enforcement
12 officers would be appropriate in this case. It's not
13 contemplated by the protective order and they would not be
14 included within the CVRA, and I know of no case that would
15 support that type of redaction.

16 I'm going to order that that reproduction be
17 completed no later than May 22nd, which is next Friday.
18 Mr. Keenan indicated that this -- that unredacting in a
19 manner that I've just identified would potentially be a
20 matter of keystrokes. That's fine. Let's give it a little
21 bit more time just in case it's not. And if there are
22 difficulties between -- with making that deadline, you could
23 always seek further relief from the Court.

24 I think that covers the matters that were before
25 me.

1 MR. HEDLEY: Your Honor?

2 THE COURT: Yes.

3 MR. HEDLEY: Just wanted to clarify, if there
4 hasn't been an executed attachment to 505 --

5 THE COURT: Thank you for bringing that to --

6 MR. HEDLEY: -- then we don't have to disclose
7 unredacted --

8 THE COURT: So --

9 MR. HEDLEY: -- until -- until we have that.

10 THE COURT: Thank you, Mr. Hedley, for bringing
11 that to my attention.

12 For -- just for the absence of doubt, if there are
13 no executed attachments that the people receiving the
14 information are -- understand that they are subject to the
15 protective order, including the potential sanctions, yes,
16 there does not need to be an unredacted disclosure to those
17 members until there is such a certification that's executed.

18 Thank you for that.

19 Mr. Richman, did I capture -- is there any lack of
20 clarity on this from the defense perspective?

21 MR. RICHMAN: No, Your Honor. The -- at least, on
22 behalf of Mr. Crews, I'm satisfied, and I appreciate the
23 Court's time.

24 THE COURT: Okay. Thank you.

25 Mr. Nestor, anything else that you wanted to raise

1 on behalf of Ms. Cullars-Doty?

2 MR. NESTOR: No, Your Honor.

3 THE COURT: All right. Mr. Marti, how about on
4 behalf of Mr. Tier?

5 MR. MARTI: I agree with Mr. Richman. Thank you.

6 THE COURT: All right. Let me turn to the
7 Government, then.

8 Mr. Keenan and Mr. Hedley, anything else other
9 than the exhibit that you wanted to bring up to my
10 attention? The exhibit being the certification. It's
11 included as Exhibit A to the protective order.

12 MR. KEENAN: I have nothing further. I'll just
13 say study the Court's order.

14 But in terms of victims, is it the Court's intent
15 to disclose the addresses of victims as well as opposed to
16 third-party witnesses?

17 THE COURT: Yes.

18 MR. KEENAN: Okay.

19 THE COURT: Okay. Okay. I mean --

20 MR. KEENAN: I should say, not -- that's not okay
21 with the Government's view, but I understood what the Court
22 said. Thank you.

23 THE COURT: No, no, I -- and, to be clear,
24 Mr. Keenan, I think that that is already -- the identity of
25 the victim is already included within the protective order

1 and that's what -- that's the basis for my decision.

2 Okay. With that, we are in recess.

3 *(Court adjourned at 12:30 p.m.)*

4 * * *

5
6 I, Caitlin J. Nat, certify that the foregoing is a
7 correct transcript from the record of proceedings in the
8 above-entitled matter to the best of my ability.

9
10 Certified by: s/ Caitlin J. Nat

11 Caitlin J. Nat, RPR-CRR
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