

1 UNITED STATES DISTRICT COURT
 2 CENTRAL DISTRICT OF CALIFORNIA

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4 HONORABLE DOLLY M. GEE, JUDGE PRESIDING

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 8 **JENNY L. FLORES**, et al.,)
 9)
 10 Plaintiffs,)
 11 VS) No. 85-4544DMG
 12 **EDWIN MEESE**, et al.,)
 13)
 14 Defendants.)
 15 _____)

16 Reporter's Transcript of Proceedings
 17 **TELEPHONE CONFERENCE**
 18 Los Angeles, California
 19 **MONDAY, MAY 4, 2015**

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1 MONDAY, MAY 4, 2015

3:00 P.M.

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3 TELEPHONE CONFERENCE

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5 COURT CLERK: Calling Item No. 5. CV 85-4544DMG.
6 Jenny L. Flores versus Edwin Meese.

7 Counsel, your appearances please.

8 On the phone, please?

9 **MR. FRESCO:** Okay. Leon Fresco from the
10 Department of Justice on behalf of the defendants.

11 **MR. SCHEY:** This is Peter Schey and Marchela
12 Iahdjian with the Center for Human Rights, the plaintiffs.

13 **MR. MOLINSKI:** And this is Bill Molinski from
14 Orrick Herrington & Stuchliff, also on behalf of the
15 plaintiff.

16 **MS. MANNING:** This is Katherine Manning from Legal
17 Advocates, also for the plaintiffs.

18 **THE COURT:** All right, good afternoon, counsel.

19 I assume that you have had a chance to look
20 at the Court's admonition in bold at the end of the tentative
21 that indicated that the tentative ruling was only to be used
22 to allow the parties to frame their oral argument.

23 At the end of the oral argument at the last
24 hearing, I believe it was Mr. Holguin who requested that they
25 be allowed to retain the copy of the tentative ruling in

1 order to facilitate the parties' discussions in the course of
2 the next month. I agreed to allow that. Although now, given
3 this experience, you can be credited for making sure that I
4 will never do that again.

5 I guess that there is some sort of confusion
6 about what I meant, but I do rely on the parties to have --
7 to exercise some measure of common sense. I certainly didn't
8 mean that you couldn't share a copy of it with your cocounsel
9 or tell your clients what happened at the hearing, but I
10 don't understand how one can accidentally give a summary of
11 my tentative to the press.

12 (Pause.)

13 **MR. FRESCO:** Your Honor. This is Leon Fresco from
14 the Department of Justice.

15 I know you probably didn't want to hear from
16 me first, but I just wanted to clarify what our interest is
17 in this matter, which is, I agree with Your Honor, what you
18 said.

19 We did not do any such thing. We -- our
20 intention after the hearing was to scull into what would be
21 the functional equivalent of a 30-day time claim where we
22 would just sit there, and nobody would know anything, and
23 we'd either come up with an agreement or we wouldn't.

24 And the reason we're here today, Your Honor,
25 is, first of all, yes, what we saw was a little bit

1 troublesome to us because from my communications and just --
2 I mean, there were lawyers at the Department of Justice who
3 got these e-mails. It appears that these e-mails were sent
4 to every person who's ever sent an e-mail to plaintiffs'
5 counsel and that there were actually on the record
6 conversations with the reporter with plaintiff's counsel, so,
7 actually it wasn't necessarily at -- at play here, but
8 putting it to the side for the minute.

9 I then tried to resolve how we would move
10 going forward with the plaintiffs' counsel, and we have sort
11 of -- we're sort of in different universes on this issue.
12 That doesn't mean we can't reach a resolution on the merits,
13 but on this issue, Your Honor, the plaintiffs' counsel wants
14 to be able to inform people who are not attorneys in this
15 case about offers we're going to be making them in settlement
16 communication so that they can sort of get broad community
17 buy-in, whatever that is, on this agreement, and we are not
18 interested on any of that. We would like to have a
19 confidential settlement discussion, that is, with the lawyers
20 and the parties in this case.

21 And so, this worries us if the next time we
22 make an offer to them to try to resolve this matter, it's
23 going to be blasted in a community environment: *What do you*
24 *think of the government's offer?* It's going to make it very
25 hard to move forward.

1 **THE COURT:** Plaintiffs?

2 **MR. SCHEY:** This is Peter Schey for the
3 plaintiffs.

4 We certainly apologize, and I think I said as
5 much in the e-mail to the clerk of the Court. If we went
6 astray in communicating in bullet point form where we were,
7 in an invitation to people to join a -- for the advocates and
8 stakeholders too during a conference call which we did have
9 on Friday, the advocates for the class members. And we made
10 clear during that call that there was no discussion -- there
11 could be no discussion of the Court's tentative ruling. We
12 were just discussing potential proposals to put forward to
13 the defendants when we meet with them.

14 We have scheduled two meetings; one for the
15 next week, one for the following week. So, we have two
16 meetings scheduled with defendants and hopefully with
17 policymakers next week in Washington, D.C.; and then if
18 that's productive, we scheduled another full day of meetings
19 in Los Angeles the following -- the following week.

20 In terms of hours, in terms of calendar -- in
21 terms of -- I -- I think the defendants have a fairly -- a
22 fairly simple line of communication with their clients, and
23 we assume that that proposal that they make to us or
24 proposals that we make to them during the course of that --
25 of these discussions, we assumed that those will remain

1 within the scope of either their lawyers or their -- their
2 clients. I guess that would be employees of -- of -- of the
3 defendants, possibly with the experts if they wish to consult
4 with -- with -- with experts.

5 On the outside -- we -- we most definitely
6 view these discussions as confidential. So we don't -- we --
7 we'd certainly not be doing any broad e-mails about this. On
8 the outside, we would -- we would envision the ability to
9 consult, pretty much the same as them, we -- we would -- we
10 think that we ought to have the ability to consult with class
11 members. We think we should have the ability to consult with
12 their parents or their lawyers, and we think we should have
13 the ability to consult with a small group of experts of maybe
14 ten people.

15 On the outside these experts tend to be
16 people very involved in this issue, and they -- they might be
17 lawyers, they might be psychologists, they might be experts
18 just in this whole area.

19 There are certainly -- if -- if -- if -- the
20 parts of the -- in the conference calls, given that these
21 practices are taking place in different parts of the country,
22 and it's sort of a moving targets. One facility has a one
23 type of practice, the other one has a different. A bit of a
24 moving target.

25 So, we -- we certainly found it very helpful

1 to have a -- a conference call largely to get input from
2 these advocates on the ground.

3 Now, most of these advocates are lawyers for
4 the kids, but -- for the -- for the class members. But I
5 will say that there was a handful who are really just
6 experts. They weren't lawyers for the -- the kids, and --
7 but -- but they worked on this issue -- umm -- umm --
8 significantly. And -- and have -- there might be policy
9 people or faith based people, but there are no -- I couldn't
10 call the lawyer for one of the class members. And at the --
11 just -- just like I think the defendants ought to have the
12 right to consult with -- not a hundred, and probably not even
13 ten, maybe five to ten experts or whatever, I think we ought
14 to have that ability.

15 And I had also had suggested that it's my
16 sense that -- that in our communications with the class
17 members or -- or the parents or lawyers or handful of -- of
18 experts, and likewise I've seen defendants in discussions
19 with their employees, that the -- the terms that I just laid
20 out ought to be shared with them, and they ought to agree to
21 those terms before we share any information about the
22 negotiations with them.

23 So, I think that they -- I think that -- the
24 pool of people, in summary, I think the pool of people being
25 consulted is -- is -- is relatively small. We don't have the

1 time or the resources to go ahead and consult with several
2 hundred class members.

3 **THE COURT:** Well, if either side consults with --

4 **MR. SCHEY:** -- and I think those people who are
5 consulted with, it -- it ought to be made clear to them that
6 these discussions are confidential and that they need to
7 agree to those -- to -- to that understanding before we could
8 share -- you know, before we can have a discussion with them
9 about -- about the possible terms of the settlement. And
10 that would certainly exclude the media, no question about it.

11 **THE COURT:** Well, if either side decides to
12 consult with people who cannot be considered counsel in the
13 case, who obviously would be bound by confidentiality in the
14 context of a settlement conference, then both sides, I think,
15 should require any of those consultants to be bound by a
16 confidentiality agreement that sets forth the parameters for
17 how they may receive information and to whom they may discuss
18 that information with.

19 **MR. SCHEY:** Plaintiffs would agree a hundred
20 percent.

21 **MR. FRESCO:** Your Honor, obviously the defendants
22 don't disagree with that. That is of course what we want.
23 The question is how that is articulated, hopefully, via Court
24 order, because this is -- unfortunately it is what it is,
25 which is -- I know with this community -- I -- when I worked

1 in the Senate, and when you tell two people anything, they go
2 to the press. That's what happened -- that's what happened
3 in this case. That's what happens. You know, it's an
4 inevitable circumstance. And what I don't want to do is have
5 to come back here when that happens, and when now, we've
6 given an offer, and it's in the media, and that's created all
7 kinds of hysteria.

8 But, I mean, it is fair to say, I mean, we --
9 we gave an order to the plaintiff, a proposed order. I don't
10 know if they like it or not, but our -- that's our fear,
11 is -- is these consultants or whatever they call them, who
12 are in basically immigrants rights advocates, in my
13 experience they -- they disseminate information. They don't
14 keep it confidential.

15 **THE COURT:** Well, I've just learned that the hard
16 way.

17 So, I would like to have the parties submit a
18 joint proposed stipulation regarding confidentiality. If you
19 can't agree on it, then submit the proposed language from
20 each respective side to me, and I will issue the order
21 myself.

22 **MR. FRESCO:** Thank you, Your Honor.

23 **MR. SCHEY:** That sounds fine to us, Your Honor.
24 Thank you.

25 **THE COURT:** And why don't you get it in by this

1 Wednesday. Is that doable?

2 **MR. SCHEY:** All right.

3 **MR. FRESCO:** Thank you, Your Honor.

4 **THE COURT:** All right, anything further?

5 **MR. SCHEY:** Nothing further from plaintiffs.

6 **MR. FRESCO:** Nothing further from the defendants,
7 Your Honor.

8 **THE COURT:** All right. Well, I hope both sides
9 understand what I expect with regard to the tentative ruling.
10 It's not to be disseminated to the press. Is that clear?

11 **MR. SCHEY:** Absolutely.

12 **MR. FRESCO:** Yes, Your Honor.

13 **THE COURT:** All right.

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15 (Proceedings concluded.)

16 ~ ~ ~

17 (Court adjourned.)
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C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of the stenographically recorded proceedings in the above matter.

Fees charged for this transcript, less any circuit fee reduction and/or deposit, are in conformance with the regulations of the judicial conference of the United States.

/S/Anne Kielwasser

05/14/2015

Anne Kielwasser, CRR, RPR, CSR
Official Court Reporter

Date

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