

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

IN RE:

CLEO SUBIDO,

Respondent.

:
:
:
: Case No.
: 26-0004-F
:
:

Thursday,
October 1, 2026

Videoconference

The above-entitled matter came on for
hearing, pursuant to notice, at 11:58 a.m. EDT

BEFORE:

NORMA HUTCHESON, Chairperson
CHARLES NOTTINGHAM, Member
FELICE SMITH, Member
MELISSA TUCKER, Member

LYNN TRAN, ESQ., Counsel to the Board

1 APPEARANCES:

2 On Behalf of the Government:

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4 Ethics
5 ASIA STEWART-MITCHELL, ESQ., General Counsel
6 District of Columbia Office of Government
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11 On Behalf of Cleo Subido:

12 RICHARD RENNER, ESQ.
13 DAVID KARMAN, ESQ.
14 KATE BROWN, Paralegal
15 Gilbert Employment Law, P.C.
16 8403 Colesville Road
17 Suite 1000
18 Silver Spring, MD 20910

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

2 12:01 p.m.

3 CHAIR HUTCHESON: All right. Good
4 afternoon. The time is now 12:01 Eastern
5 Standard Time on October 1st, 2026, and this is
6 a special meeting of the District of Columbia
7 Board of Ethics and Government Accountability.
8 I'm BEGA Chairperson Norma Hutcheson, and with
9 me today are board members Charles Nottingham,
10 Felice Smith, and Melissa Tucker. Together, the
11 four of us constitute a quorum for this meeting.

12 We have one item on the agenda for the
13 meeting today, and it is case number 26-0004-F
14 in re Cleo Subido. The proceeding today is
15 being recorded using our hearing room's central
16 recording system. We will start with the
17 identification of the parties for the record and
18 we'll start with the government, which I will
19 refer to as the government or OGE or the Office
20 of Government Ethics during these proceedings.
21 Go right ahead.

22 MS. STEWART-MITCHELL: Good afternoon.

1 Asia Stewart-Mitchell, general counsel on
2 behalf of the Office of Government Ethics.

3 CHAIR HUTCHESON: Okay.

4 MS. COOKS: Ashley Cooks, Director of
5 the Office of Government Ethics.

6 CHAIR HUTCHESON: Okay, and I turn now
7 to the respondent.

8 MR. RENNER: Thank you. Richard Renner
9 here of Gilbert Employment Law on behalf of the
10 Respondent, Cleo Subido, who's here on the
11 conference with us. I'm joined by my colleague
12 David Karman, another attorney at Gilbert
13 Employment Law, and we are assisted by our
14 paralegal here, Kate Brown.

15 CHAIR HUTCHESON: Okay. We're here
16 today to conduct an adversarial hearing in this
17 matter, and this hearing is being conducted
18 pursuant to DCMR Title 3, Chapter 55, which
19 established BEGA's rules for the conduct of
20 hearings.

21 Under the rules, the hearing will begin
22 with a call to order and opening statement by

1 the chairperson. This matter stems from
2 respondent's appeal of a ministerial fine issued
3 by the Director of Government Ethics. After a
4 show cause hearing held on January 25th, 2025,
5 and January 29th, 2025, the Director found that
6 Respondent Subido violated 6 B DCMR § 1808-1, by
7 using her government email to send and receive
8 personal and private business emails between
9 February 2021 and June 2022, and she was issued
10 a \$300 ministerial fine.

11 I will turn now to OGE and Director
12 Cooks from the Office of Government Ethics to
13 determine whether OGE would like to make an
14 introductory statement at this time or waive it,
15 since the government will have an opportunity to
16 make an opening statement in presenting its
17 case.

18 MS. COOKS: OGE would like to point out
19 to the board that the parties do have and have
20 submitted a joint pre-hearing statement. The
21 parties met on May 21st, 2026, and for a joint
22 pre-hearing conference. From that conference,

1 the parties did draft a statement that was
2 submitted to the board.

3 I would just like to state for the
4 record that both parties agree that exhibits
5 presented by the Office of Government Ethics at
6 the January 23rd and 29th, 2005, show cause
7 hearing are true and accurate copies and may be
8 admitted into the record at this hearing. We
9 reserve the right for an opening statement once
10 the hearing begins.

11 CHAIR HUTCHESON: Okay. I will turn
12 next to counsel for respondent in the event you
13 would like to make an opening statement.

14 MR. RENNER: I would. Thank you.
15 First, I want to thank the board for permitting
16 my client and myself and my colleagues to appear
17 by video conference. It's a very significant
18 savings for us and facilitates our ability to
19 participate. Although I would say, I did have
20 trouble hearing everything that Ms. Stewart-
21 Mitchell said, so if there's some way we can
22 make sure that what she says is accessible to

1 us, I would appreciate that.

2 I would point out that we have
3 submitted a motion to dismiss this proceeding
4 contending that the allegations about personal
5 use of the government email do not state a claim
6 of a violation of the code of conduct because of
7 the acceptable use policy of the Office of the
8 Chief Technology Officer, which both parties
9 have identified and which is publicly available,
10 and this board could take administrative notice
11 of it.

12 The District policy makes clear that
13 employees of the District are permitted to use
14 their District emails for personal use as long
15 as it's not excessive or causing more than
16 minimal harm to the District government. And
17 that is significant, not because it constitutes
18 an exception to the code of conduct, but because
19 it conveys authorization, which means there
20 never is any violation of the code of conduct
21 because the code of conduct makes clear that
22 that use of the email has to be unauthorized.

1 Any authorized use is acceptable to the code of
2 conduct. Because of that acceptable use policy,
3 which both sides have now submitted, there
4 really is no claim stated for a violation of the
5 code of conduct.

6 I want to call the board's attention --
7 oh, before I get to that, we did also make a
8 motion to postpone this hearing, and I would
9 still contend that it is reasonably foreseeable
10 that the proceedings in the Superior Court on
11 the motion to compel OGE to provide additional
12 documents could foreseeably lead to additional
13 exhibits that would be admissible, particularly
14 as to our Whistleblower Protection Act defense.

15 We still stand by that motion to postpone this
16 hearing and reconvene it on another day and our
17 motion to dismiss this matter altogether because
18 of the acceptable use policy.

19 I do have a few other comments to make
20 about the evidence, and basically I want to
21 structure this by referring to my March 30, 2026
22 email to Director Cooks that set out the issues

1 that we are raising in this appeal. As to issue
2 number one, during the pre-hearing conference,
3 Ms. Stewart-Mitchell and myself agreed that the
4 government has dropped the claim of a conflict
5 of interest and is not raising evidence or
6 claims with respect to allegations of a conflict
7 of interest by Ms. Subido. For that reason, we
8 have omitted the evidence that we presented at
9 the show cause hearing on that issue.

10 We have resolved issue two based on
11 this board's favorable ruling on the motion to
12 compel, and we do now have the recording of the
13 show cause hearing. I appreciate that and will
14 be using that should the hearing proceed.

15 As to our third defense, I want to make
16 a particular comment about Ms. Subido receiving
17 emails. And for one of the government's
18 exhibits in particular, that being Exhibit 31,
19 this is an email that Ms. Subido sent to
20 herself. The purpose of the code of conduct is
21 to protect the District integrity from having
22 its name used for the personal interest of the

1 employees. And I just don't see how that can
2 arise when Ms. Subido is using the District
3 email to send herself an email. She's not
4 holding herself out to anyone else as a District
5 employee when she does that. The testimony will
6 eventually show that, you know, she did that
7 just for personal convenience so she would
8 remember other things she wanted to do. It was
9 in addition to her personal to-do list. And it
10 does not --

11 CHAIR HUTCHESON: Excuse me.

12 MR. RENNER: -- that does not impinge
13 on the integrity of the District in any way when
14 she uses it for her personal convenience. That
15 type of personal use is well within the scope of
16 the --

17 CHAIR HUTCHESON: Mr. Renner?

18 MR. RENNER: -- acceptable use policy

19 CHAIR HUTCHESON: Mr. Renner?

20 MR. RENNER: Yes.

21 CHAIR HUTCHESON: Okay. I just was
22 asking for an opening statement.

1 MR. RENNER: This is my opening
2 statement.

3 CHAIR HUTCHESON: Okay. Go right ahead.

4 MR. RENNER: Okay. I just have a
5 couple more points to raise. As to paragraph 5,
6 the District code makes clear that persons
7 employed in a position such as Ms. Subido's who
8 are required to live in the District, her emails
9 about finding a place to live and seeing that
10 she can live in that place are therefore not
11 only authorized but required of her in order to
12 live in the District and comply with this job
13 requirement. Eleven of the 41 emails at issue
14 fall in that category.

15 Similarly, when she is notifying her
16 coworkers about her illness, she is attempting
17 to prevent the transmission of infectious
18 disease. And that should not be considered
19 unauthorized. That is in furtherance of the
20 District's obligation to protect the health and
21 safety of its employees and of the public.

22 Finally, as to the Whistleblower

1 Protection Act defense, you know, this is going
2 to be quite complicated as we progress, but I
3 just want to make one point about it here now.
4 You know, I noticed that in this board's
5 memorandum order of September 3, so four weeks
6 ago, on page 4, it asserts the contention which
7 had not been briefed by the parties that
8 temporal proximity can be used to show a
9 contributing factor under the DC Whistleblower
10 Protection Act when the action occurs up to
11 three or four months after the protected
12 activity. And, you know, some of our requests
13 for discovery were denied on that basis.

14 I do want to point out that in our
15 exhibit list, our Exhibit X we will contend is
16 one such protected activity, and there were
17 others which we'd get into if the testimony
18 progresses to that point. But Exhibit X is a
19 February 28th, 2022, email that Ms. Subido sent
20 to Mr. Geldart. And you know, the adverse
21 action at issue in this case is dated by our
22 Exhibit J, the BEGA's privilege log to the

1 Superior Court. In it, it identifies May 3,
2 2022, as the date it received the complaint that
3 we know from the show cause hearing was
4 submitted by Kelly Brown. So that narrows the
5 temporal proximity to between two and three
6 months, well within the three or four months the
7 board was looking for here in the memorandum
8 opinion issued last month. That concludes the
9 initial remarks I wanted to make. Thank you.

10 CHAIR HUTCHESON: Thank you. And the
11 next order of business is the consideration of
12 pending motions and preliminary matters that
13 will be followed by the director's case, the
14 respondent's case, and any rebuttal that the
15 director would like to offer based on the
16 respondent's case.

17 The scheduling orders approved by the
18 board set forth a schedule for the submission of
19 joint pre-hearing statements and motions in
20 limine, as well as the identification of
21 exhibits and the provision of exhibits to the
22 board. The parties filed a joint pre-hearing

1 statement on June 3rd, 2026. The board received
2 exhibits from both the government and
3 respondent. Neither party has identified any
4 witnesses.

5 Pending before the board are two
6 motions filed by Respondent Subido on September
7 21st, 2026, a motion to dismiss and a motion to
8 continue hearing. OGE filed oppositions to both
9 motions on September 24th, 2026. The
10 regulations provide that the board may dismiss,
11 at any stage in the proceeding, any claim,
12 complaint, request for investigation, or other
13 portion of any investigation that the board
14 finds to be without merit. Respondent Subido
15 argues that the board should dismiss the matter
16 as her use of email was consistent with the
17 Office of Chief Technology Officer's acceptable
18 use policy, allowing personal use of District
19 email and therefore cannot constitute a
20 violation of the code of conduct.

21 The code of conduct includes a
22 prohibition on the use of government property

1 for other than authorized purposes and defines
2 government property to include office supplies,
3 telephone, and other telecommunications
4 equipment and services, and government emails.
5 Whether respondent has violated this provision
6 of the code and engaged in more than de minimis
7 use of District resources is a question for the
8 board to determine based on the record
9 established at this hearing. Therefore, the
10 motion to dismiss is denied.

11 We next turn to the motion to continue
12 the hearing. The regulations provide that the
13 motion for continuance shall not be granted
14 unless, in the board's opinion, the motion sets
15 forth good and sufficient cause for the
16 continuance. Respondent argues that the hearing
17 should be continued to allow the respondent to
18 review documents produced by OGE in a
19 whistleblower lawsuit against the District. The
20 board has considered respondent's motion for a
21 continuance along with OGE's opposition and
22 concludes that the motion fails to set forth

1 good and sufficient cause to support another
2 continuance in this matter. Respondent suggests
3 that the board continue the hearing to November
4 or later to allow time to review any discovery
5 produced by OGE in the whistleblower case. The
6 board notes that this is the third request for a
7 continuance. In the interest of judicial
8 economy, the board denies the motion to
9 continue, and we will move forward.

10 As we move forward, are there any other
11 preliminary matters that the board needs to
12 address?

13 MS. STEWART-MITCHELL: I can give my
14 opening at this time, or did you want me to wait
15 until you --

16 CHAIR HUTCHESON: Well, if there --
17 just a second.

18 MS. STEWART-MITCHELL: Unless there's
19 anything else preliminary.

20 CHAIR HUTCHESON: Do you have any other
21 preliminary matters?

22 MR. RENNER: I do have one. I was not

1 aware that there was any requirement that we
2 identify witnesses, but I had made clear through
3 Ms. Tran that we do intend to call Ms. Subido as
4 a witness, and we expect her testimony will take
5 about half an hour.

6 CHAIR HUTCHESON: You weren't aware
7 that you were supposed to identify witnesses?

8 MS. STEWART-MITCHELL: We were not
9 aware of any witnesses being identified.

10 MS. TRAN: The scheduling orders and
11 amended scheduling orders had discussed the
12 identification of witnesses. I believe our
13 communication was regarding how long you thought
14 the case presentation would take when you
15 mentioned a half an hour. So the scheduling
16 orders have always included the identification
17 of exhibits and witnesses.

18 CHAIR HUTCHESON: Okay. And that
19 comment was from Lynn Tran, our board counsel.

20 MR. RENNER: Yes. Okay. So it's not
21 perfect.

22 CHAIR HUTCHESON: Okay. All right,

1 we're looking at 30 minutes or less, so we're
2 going to go forward with that. Okay?

3 MS. STEWART-MITCHELL: And I have one
4 more preliminary matter.

5 CHAIR HUTCHESON: Okay. Okay.

6 MS. STEWART-MITCHELL: OGE's Exhibit 1
7 was not stipulated by the parties, so I would
8 like to first ask that the board and the
9 respondent stipulate and allow this to be
10 entered into the record as a public government
11 record as it is the Office of the Chief
12 Technology Officer's email use policy that does
13 differ from the Office of the Chief Technology
14 Officer's acceptable use policy, which is
15 directed toward equipment. This is the email
16 use policy.

17 I'll put that up for discussion, and if
18 we cannot have it accepted into the record as a
19 public government record, I would then ask to
20 call Investigator Corrales as a custodian of the
21 record so she can authenticate it and I can have
22 it entered into the record that way.

1 CHAIR HUTCHESON: Okay. Can we
2 stipulate that to that?

3 MR. RENNER: Right. Is this not the
4 same as the respondent's exhibit A?

5 MS. STEWART-MITCHELL: It is not.

6 MR. RENNER: I had misunderstood. I
7 need to review that. And in any event, you
8 know, I have concerns about whether or not
9 there's going to be any evidence that Ms. Subido
10 was ever trained on this policy.

11 MS. STEWART-MITCHELL: I understand.
12 Is there any evidence submitted that she was
13 trained on the acceptable use policy?

14 MR. RENNER: Well, there would be when
15 she testifies.

16 MS. STEWART-MITCHELL: Okay, perfect.
17 So then if you don't want to stipulate it here,
18 then I'll have Investigator Corrales
19 authenticate it and have it entered into the
20 record that way.

21 MR. RENNER: Okay. Thank you.

22 CHAIR HUTCHESON: Okay. The board can

1 take note. Okay. Are there any other
2 preliminary matters? And that's --

3 MS. STEWART-MITCHELL: Can I do my
4 opening?

5 CHAIR HUTCHESON: -- okay. That's a --
6 it sounds like that's a document that the board
7 could take notice of.

8 MS. STEWART-MITCHELL: Yes.

9 CHAIR HUTCHESON: Okay.

10 MS. STEWART-MITCHELL: Yep. It's a
11 publicly available government record being --

12 CHAIR HUTCHESON: Okay. Without the --

13 MS. STEWART-MITCHELL: -- email use
14 policy.

15 CHAIR HUTCHESON: Without the testimony.

16 MS. STEWART-MITCHELL: You could if you
17 choose.

18 CHAIR HUTCHESON: Okay. We'll probably
19 do that then. All right then, Director Cooks.
20 Are you up next, or is it Ms. --?

21 MS. STEWART-MITCHELL: Opening
22 statement.

1 CHAIR HUTCHESON: Opening statement.

2 MS. STEWART-MITCHELL: Going to be me.

3 CHAIR HUTCHESON: All right.

4 MS. STEWART-MITCHELL: Again, Asia
5 Stewart-Mitchell on behalf of the Office of
6 Government Ethics. Good afternoon, Chairperson
7 Hutcheson and members of the board.

8 Today's hearing is straightforward.
9 The Office of Government Ethics found evidence
10 that the Respondent, Cleo Subido, misused her
11 District government email account in violation
12 of 6B DCMR § 1808.1. On March 19th, 2026, the
13 Director of Government Ethics imposed a fine of
14 \$300 on the respondent for that violation, and
15 respondent appealed the ministerial order.

16 The respondent used her District
17 government email account to engage in several
18 personal correspondences, including
19 correspondence with her spouse, her children,
20 her therapist, a veterinarian's office, a DC
21 real estate professional, a mortgage officer, a
22 nail salon, a trademark attorney, among others.

1 Respondent does not deny that she engaged in
2 the correspondences using her government email
3 account. Respondent mixed her personal business
4 matters with her District government email
5 account regularly and associated the District
6 government with her private business matters.

7 Between February 2021 and June 2022,
8 respondent sent and received 42 emails regarding
9 personal and outside business matters. The
10 respondent's actions were not de minimis use of
11 government email, nor were they permitted by any
12 government policy or otherwise authorized by the
13 District government. No District government
14 policy can authorize a District government
15 employee to violate the District's code of
16 conduct. The Ethics Board is the District's
17 ethics authority and therefore authorized to
18 make a determination regarding whether the use
19 of government property in a given case is
20 authorized.

21 Respondent used her government email
22 account in the same manner that a person would

1 use a personal email account and conflated her
2 personal financial matters with her District
3 government title. Respondent's actions showed a
4 lack of regard for the ethical separation of
5 personal and government matters and violated the
6 District's prohibition against misuse of
7 government property. The exhibits will show
8 that the respondent misused her District
9 government email account in violation of 6B DCMR
10 § 1808.1. Thank you. And as the board has
11 taken notice of OGE Exhibit No. 1, I'd like to
12 request that it be entered into the record at
13 this time.

14 CHAIR HUTCHESON: Okay, is there any
15 objection?

16 MR. RENNER: I do object that without
17 evidence that Ms. Subido was ever informed of
18 this policy while she worked at the District
19 makes it irrelevant.

20 CHAIR HUTCHESON: Okay. Well, it's
21 admitted. Who's next?

22 (Whereupon, the above-referred to

1 document marked as OGE's Exhibit No. 1 was
2 received into evidence.)

3 MS. STEWART-MITCHELL: Thank you. And
4 as the parties have stipulated to Exhibits 2
5 through 43, I just want to make sure that those
6 are entered into the record, and that would be
7 it for me. And I will hold until Mr. Renner
8 puts on his case and to cross-examine Ms.
9 Subido.

10 CHAIR HUTCHESON: Okay, those are
11 admitted too. Exhibits 2 through 43.

12 (Whereupon, OGE's Exhibit Nos. 2
13 through 43 were received into evidence.)

14 MS. STEWART-MITCHELL: Thank you.

15 CHAIR HUTCHESON: Mr. Renner?

16 MR. RENNER: Thank you. I would call
17 for the admission of our Exhibit A on the same
18 basis that it's an official District policy
19 publicly available and that this board can take
20 administrative notice of it.

21 CHAIR HUTCHESON: Okay. The board
22 takes notice of your exhibit A.

1 MR. RENNER: And I would call for its
2 admission into the record.

3 CHAIR HUTCHESON: And we'll admit it.

4 (Whereupon, the above-referred to
5 document marked as Respondent's Exhibit No. A
6 was received into evidence.)

7 MR. RENNER: Thank you. And we will
8 call Cleo Subido.

9 CHAIR HUTCHESON: I have to swear -

10 MS. SUBIDO: Good afternoon.

11 CHAIR HUTCHESON: Good afternoon, Ms.
12 Subido. I have to swear you in. Can you raise
13 your right hand?

14 MS. SUBIDO: Yes.

15 C L E O S U B I D O, having been first duly
16 sworn, testified as follows:

17 CHAIR HUTCHESON: Where we can see it?

18 MS. SUBIDO: Sorry, yes.

19 (The Witness Is Affirmed)

20 CHAIR HUTCHESON: Do you swear or
21 affirm that the testimony you're about to
22 provide is the truth?

1 MS. SUBIDO: Yes.

2 CHAIR HUTCHESON: Thank you.

3 DIRECT EXAMINATION

4 MR. RENNER: Ms. Subido, have you ever
5 worked for the DC government?

6 THE WITNESS: Yes.

7 BY MR. RENNER:

8 Q What was your date of hire?

9 A January 6th, 2020.

10 Q What position were you hired into?

11 A Chief of the Office of Professional
12 Standards and Development.

13 Q Can you summarize what the duties were
14 for this position?

15 A I led a team of managers and employees
16 that were tasked with providing and scheduling
17 training and also performing quality improvement
18 activities.

19 Q Did this relate to the 911 center, also
20 called the Office of Unified Communications?

21 A Yes, it was. It was in that office,
22 that agency.

1 Q Did you have prior experience in this
2 subject matter?

3 A Yes.

4 Q Where at?

5 A Seattle King County Public Health
6 Emergency Medical Services for 18 years and,
7 prior to that, the Seattle Police Department for
8 13 years.

9 Q So you've had decades of experience in
10 the subject matter of public safety. Is that
11 correct?

12 A Yes.

13 Q In King County did you work on a
14 project called Public Safety Net?

15 A Yes, I did.

16 Q What was that?

17 A Public Safety Net was a six-page triage
18 document that one of my senior paramedic
19 instructors that worked for me and I developed
20 to assist the United Arab Emirates in the triage
21 of their 911 calls because they had no program
22 and wanted to use King County's, but it didn't

1 look like that was going to happen.

2 Q Was Public Safety Net ever a personal
3 business on your part?

4 A No.

5 Q Did you ever make any personal profit
6 off of it?

7 A No.

8 Q What project did you work on in the
9 District of Columbia?

10 A I worked on several, one also related
11 to the triage program that they were using at
12 the 911 center.

13 Q What was the DC project called?

14 A DC Net.

15 Q Was it the same as the Public Safety
16 Net you developed in King County?

17 A No.

18 Q Did you ever participate in seeking a
19 trademark for Public Safety Net?

20 A Yes.

21 Q Why?

22 A When we -- when Firefighter or

1 Lieutenant, I think, Ragucci and Patrick Cassidy
2 presented DC Net to the deputy mayor and
3 Director Holmes and myself, we were told by
4 Eddie Cavalieri that there was already something
5 in the District called DC Net. And so, Nick
6 Ragucci, said, I should probably trademark
7 Public Safety Net so that they don't -- the
8 District doesn't try to take over that name when
9 it has nothing to do with the product that DC
10 Net was. It was a completely different product.

11 Q Were you trying to save that name for
12 possible use by others in the public safety
13 profession?

14 A Yes, that was what it was designed for,
15 yes.

16 Q Was it for any personal enrichment on
17 your part?

18 A No.

19 Q All right. Are you familiar with --

20 MS. STEWART-MITCHELL: I want to --

21 MR. RENNER: -- the government --

22 MS. STEWART-MITCHELL: I want to object

1 to this line of questioning. The respondent has
2 been accused of misusing her District government
3 email, and it seems like this line of
4 questioning has to do with potential conflicts
5 of interest and Public Safety Net matters that
6 are no longer at issue. And if, you know, if I
7 had known that this was going to be introduced
8 in the record, I do have exhibits and could have
9 brought on potential witnesses to rebut some of
10 this testimony. So I'm going to object to this
11 as irrelevant.

12 CHAIR HUTCHESON: Okay, Mr. Renner,
13 could you try to tailor your questioning to the
14 issues that are pending before the board in this
15 case?

16 MR. RENNER: I'm going to tie it
17 together in my next question. Ms. Brown, can
18 you pull up the Government's Exhibit 31?

19 MS. BROWN: Yes, let me share my
20 screen.

21 CHAIR HUTCHESON: 31.

22 MR. RENNER: Thank you.

1 MS. BROWN: Can everybody see this?

2 THE WITNESS: Yes.

3 MR. RENNER: Ms. Subido, do you
4 recognize the Government Exhibit 31?

5 THE WITNESS: Yes.

6 BY MR. RENNER:

7 Q Why did you send it?

8 A Oh, I sent it to remind myself to
9 respond to the questions that the person that
10 emailed me had about the trademark, because I
11 didn't open my personal email very often because
12 of my long day schedules at work and I needed to
13 remember to respond to it. It was a reminder, a
14 to-do list.

15 Q Mm-hmm. Do you today hold any
16 trademark in Public Safety Net?

17 A No.

18 Q Did you send Exhibit 31 for any purpose
19 of personal remuneration?

20 A No.

21 Q Did anyone other than yourself as the
22 sender or yourself as the recipient see it, to

1 your knowledge?

2 A Not to my knowledge, no.

3 Q All right. Next I'd like to call your
4 attention to our Exhibit A -- that's not it.
5 Well, Ms. Subido, are you familiar with our
6 Exhibit A here?

7 A That is the -- the Octo policy?

8 Q Yes.

9 A Yes. Yes, I am.

10 Q Uh-huh. Have you seen it before?

11 A Yes, I have.

12 Q When was that?

13 A My initial hiring orientation in 2020
14 in January, I received it then, and we talked
15 about it. And then again in, oh, goodness, it
16 must have been 20 -- the end of 2021 when I
17 asked my legal to provide me a copy of it
18 because I had some questions about the OUC's 911
19 union using only their personal email for union
20 doings. I didn't know if it was permitted.

21 Q Right. Ms. Subido, did you get any
22 training during your orientation for District

1 employment about this policy?

2 A Yes, I did.

3 Q What happened in that training?

4 A They talked about that if you, you
5 know, had to, or you were pressed for time, or
6 it was some de minimis use of the email, that
7 that was permitted.

8 Q During that training, did you see the
9 policy on emails that the government introduced
10 here today?

11 A No, I did not.

12 Q This Exhibit A is the policy you saw?

13 A Yes, it is.

14 Q All right. During your employment for
15 the District of Columbia, were you affected by
16 DC's residency requirement?

17 A Yes, I was.

18 Q How so?

19 A The last -- my last conversation with
20 the mayor when I was appointed to interim
21 director, she informed me that I must live in
22 the District. At the time, I was renting a

1 place in Alexandria.

2 Q All right. What did you do to comply
3 with that requirement?

4 A I quickly moved to a rental in
5 northwest in the District and then eventually
6 purchased a home in the District.

7 Q Did you undertake those activities to
8 fulfill the requirements of your job?

9 A Yes.

10 Q Do you recall that we identified 11
11 exhibits of the government that were for the
12 purpose of your complying with the residency
13 requirement?

14 A Yes.

15 Q For the record, those are government
16 Exhibits 14, 15, 20, 21, 28, 29, 33 and 36
17 through 39. Ms. Subido, did you use these
18 emails to comply with this necessary job
19 requirement?

20 A Yes, I did.

21 Q Okay. Did you ever get sick while
22 working for the District of Columbia?

1 A Yes, I did.

2 Q And do you recall sending an email
3 about your illness?

4 A Yes.

5 Q For the record, that's Government
6 Exhibit 7. Was sending this email necessary to
7 protect the health and safety of your coworkers?

8 A Yes.

9 Q All right, during the time you worked
10 for the District of Columbia, did you ever raise
11 concerns about the safety of our emergency
12 services?

13 A Yes, I did.

14 Q Can you summarize what those concerns
15 were?

16 A The concerns had to do with responding
17 and answering -- and responding to all calls to
18 911, and also the timeliness of those responses
19 and answering. It had a lot to do with staffing
20 and the use of leave and how it left our agency
21 in a position of not being able to respond to
22 the needs of the general public and the

1 responders.

2 Q Right. While you were working for the
3 District of Columbia, did the District engage
4 any outside audits on these issues?

5 A Yes, they did.

6 Q All right. Ms. Brown, can you bring up
7 our Exhibit B as in Bravo? Mm. Ms. Subido, do
8 you recognize our Exhibit B here?

9 A Yes, I do.

10 Q What is it?

11 A It is the audit report from the vendor
12 that the auditor's office hired to do a complete
13 audit on the OUC.

14 Q Mm-hmm. How did you get it?

15 A I received it from the -- the Auditor,
16 Kathy Patterson.

17 Q Is our exhibit B a true copy of that
18 audit report?

19 A Yes, it is.

20 Q I call for its admission into evidence.

21 MS. STEWART-MITCHELL: I'm going to
22 object to the admission of this based on

1 relevance. I don't understand how this ties to
2 misuse of government email.

3 MR. RENNER: If I may respond, it is
4 strong evidence in support of Ms. Subido's
5 reasonable belief about the safety issues
6 arising in the 911 system which is one of the
7 elements of her whistleblower defense. So we
8 need this exhibit to establish that required
9 element of our defense.

10 CHAIR HUTCHESON: We can admit it, and
11 we can consider it for what it's worth.

12 (Whereupon, the above-referred to
13 document marked as Respondent's Exhibit No. B
14 was received into evidence.)

15 MR. RENNER: Thank you. Ms. Subido,
16 could you summarize what the findings of this
17 audit report were?

18 THE WITNESS: The finding were indeed
19 that there were issues with staffing and ability
20 to respond to the needs of both the general
21 public visitors and the responders of the
22 District.

1 BY MR. RENNER:

2 Q Did those findings overlap with the
3 concerns you had raised about the safety of the
4 District's 911 system?

5 A Yes, they did. They were inclusive.

6 Q All right. Who is Director Karima
7 Holmes?

8 A Karima Holmes. She was the director of
9 the OUC 911 center, I believe, from 2015 to
10 2021, and then again in March of 2022 she came
11 back as the director.

12 Q And who is Kelly Brown?

13 A Kelly Brown was her administrative
14 assistant.

15 Q Do you know how Kelly Brown felt about
16 the outside audit report?

17 MS. STEWART-MITCHELL: I'm going to
18 object to this.

19 THE WITNESS: Okay.

20 MS. STEWART-MITCHELL: This is asking
21 the respondent to characterize somebody else's
22 feelings.

1 MR. RENNER: Well, I'll withdraw the
2 question and rephrase that. Ms. Subido, did you
3 ever have any conversations with Ms. Kelly Brown
4 about her feelings about the concerns in this
5 audit report and the concerns you had raised
6 about the District's 911 system?

7 THE WITNESS: Yes, several.

8 BY MR. RENNER:

9 Q What did Kelly Brown say about that?

10 A She indicated that the audit from the
11 auditor's office, the vendor, as well as the
12 items that I had turned over to the mayor
13 regarding our issues at the 911 center made
14 Director Holmes look bad.

15 Q Do you recall during the show cause
16 hearing that we introduced affidavits from a
17 decade ago from another case involving the
18 safety of the 911 system?

19 A Yes, I do.

20 Q Those are exhibits G and H, and I would
21 call for their admission into the record.

22 MS. STEWART-MITCHELL: Well, I'm going

1 to object to the admission of those exhibits for
2 -- first on the grounds of relevance. Again,
3 they're from a decade ago. Not relevant to
4 misuse of government email.

5 CHAIR HUTCHESON: Do you have any--?

6 MS. STEWART-MITCHELL: Also, at the
7 show cause hearing, there was a issue of public
8 safety net and conflict of interest that's no
9 longer being considered here. So just to give
10 context about why those were stipulated to or
11 allowed into the record by me at the -- why I
12 didn't object at the show cause hearing.

13 MR. RENNER: If I may respond, these
14 again go to our whistleblower defense, and they
15 support the claim of a motive to retaliate
16 because these have been long-standing problems
17 at the 911 center that Ms. Subido was raising.

18 MS. STEWART-MITCHELL: Yeah, and
19 relevance there's no -- is there going to be
20 additional evidence that the Office of
21 Government Ethics had, you know, any information
22 about any of this?

1 CHAIR HUTCHESON: Mr. Renner, will
2 there be any evidence presented that, to show
3 that the OGE, which would've been in existence
4 then, what, two years, right, that there was any
5 relevance to the Office of Government Ethics?

6 MR. RENNER: Our claim of relevance is
7 not based on OGE's knowledge, but rather on
8 Kelly Brown's knowledge that these had been
9 long-standing problems that the audit report and
10 Ms. Subido were raising.

11 CHAIR HUTCHESON: Okay, but how is that
12 relevant to the decisions that were made with -

13 MR. RENNER: Yes.

14 CHAIR HUTCHESON: -- Regards to Office
15 of Government Ethics?

16 MR. RENNER: I am going to tie that in.
17 Our proffer here is that it was Kelly Brown who
18 made the original complaint to OGE that led to
19 this proceeding and that she was motivated by
20 animus against Ms. Subido's protected activity.

21 CHAIR HUTCHESON: And Kelly Brown --

22 MR. RENNER: Because of --

1 CHAIR HUTCHESON: Who is Kelly Brown?

2 MR. RENNER: She was the administrative
3 assistant to Director Holmes, and she was a
4 witness at the show cause hearing who admitted
5 that she is the one who made the complaint that
6 commenced this proceeding.

7 MS. SMITH: Even if you establish this
8 whistleblower claim, how does that affect the
9 issues in front of us today with respect to the
10 email? Can you --

11 MR. RENNER: Yes.

12 MS. SMITH: -- relate from a legal
13 perspective?

14 MR. RENNER: I can, and I --

15 MS. SMITH: Evidence of that.

16 MR. RENNER: I went over this briefly
17 in our motion to compel. The District of
18 Columbia Whistleblower Protection Act requires
19 all administrative agencies to uphold the law
20 and enforce it. And our contention here is that
21 Ms. Subido's protected activities in raising
22 issues about how to modernize the District's 911

1 system so it'd be safer for the public were
2 protected activities that made Ms. Kelly Brown
3 upset at how her boss was made to look bad for
4 failing to manage the 911 system more
5 effectively to protect the public. And that was
6 her motivation for commencing the complaint
7 that's before this board right here today.

8 If we can show that it was a
9 contributing factor, which is all the
10 Whistleblower Protection Act requires, then this
11 board would be prohibited by the Whistleblower
12 Protection Act from taking any adverse action
13 for which her protected activity was a
14 contributing factor. It is an affirmative
15 defense that would require this board to dismiss
16 the proceeding.

17 MS. STEWART-MITCHELL: And if I could
18 respond, these were arguments that were made in
19 the motions, and our response to that was that
20 under the DC Whistleblower Protection Act the
21 alleged victim of retaliation has recourse in DC
22 Superior Court or before some sort of EEO

1 office, and that not any administrative body in
2 the District of Columbia should make a
3 determination about whether there was
4 retaliation under the DC Whistleblower
5 Protection Act, and that procedurally it'd be
6 incorrect for the ethics board to make that
7 determination.

8 MR. NOTTINGHAM: I have a question for
9 Mr. Renner. Is the sound system working okay?
10 Can you hear me, Mr. Renner?

11 MR. RENNER: I do hear you. Yes, thank
12 you.

13 MR. NOTTINGHAM: Thank you. So I'm
14 trying to follow your argument about this, the
15 whistleblower protection. So are you saying it
16 doesn't really matter how many emails and for
17 what purpose were sent? I think we're talking
18 about 41 here.

19 MR. RENNER: Yeah.

20 MR. NOTTINGHAM: Let's just say
21 hypothetically it was 41,000 that had nothing to
22 do with DC government business, your argument

1 would be the same, right? She was a protected
2 whistleblower, and so no adverse action or
3 inquiry could possibly proceed or take place,
4 regardless of how many, how egregious
5 hypothetically a violation of DC Code of Conduct
6 might be.

7 MR. RENNER: Well, as a mathematician,
8 I'm always cautious about words like always and
9 never because, you know, the circumstances of
10 each case are unique. But I think the fact that
11 Ms. Subido's use of the email was so sporadic,
12 you know, on the order of one or two personal
13 emails per month of her employment, and that the
14 motive to retaliate by Ms. Brown was so strong,
15 that she felt personally attacked or was
16 personally allied with her supervisor in trying
17 to defend her supervisor against Cleo Subido's
18 concerns, that it is in this case a much more
19 satisfying explanation about why this proceeding
20 began than any concern about the, you know, use
21 of the District email for personal uses, that
22 the whistleblower explanation is a better one to

1 explain what's going on, and a reason why this
2 board should dismiss this matter to avoid
3 participating in Ms. Brown's retaliation against
4 Ms. Subido.

5 MR. NOTTINGHAM: So just to clarify,
6 now you're saying that we, that it is worthwhile
7 or it is relevant to actually look at the
8 content and substance of the emails? Or are you
9 making a like, a fruit of the poison tree
10 argument that we can't look at that evidence
11 because something triggered a whistleblower
12 protection and therefore it's irrelevant what
13 the so-called evidence of misuse of email might
14 be? I'm trying to understand which, which
15 direction you're going.

16 MR. RENNER: I appreciate it. I
17 appreciate the frank discussion. I'm not saying
18 that it's inadmissible. I'm not making a fruit
19 of the poison tree argument here. What I am
20 saying is that Ms. Brown's original complaint
21 that commenced this proceeding was motivated by
22 unlawful animus against protected whistleblower

1 activity. And that under the law, since Ms.
2 Subido only has to show that her protected
3 activity was a contributing factor in this
4 adverse action against her, it is barred by law.

5 And the Whistleblower Protection Act is quite
6 clear that it applies to all administrative and
7 judicial proceedings within the District and
8 therefore does apply to this board.

9 And I appreciated how the board's
10 memorandum opinion last month addressed the
11 whistleblower claim on the merits, particularly
12 addressing the temporal proximity issue that
13 we'll be addressing subsequently here in our
14 testimony. So those are the reasons why this
15 Whistleblower Protection Act does apply here and
16 should lead to an affirmative defense on Ms.
17 Subido's part.

18 MS. STEWART-MITCHELL: In response, I
19 would say that the DC Whistleblower Protection
20 Act requires that the management or the agency
21 at issue be a defendant. And again, the ethics
22 board and the Office of Government Ethics are

1 not a Defendant in a whistleblower matter.
2 Again, I believe that it would be inappropriate
3 for the ethics board to make a DC whistleblower
4 determination in this case.

5 Additionally, there is a break in the
6 causal link in reference to Mr. Renner's
7 argument that Kelly Brown submitted a complaint
8 against Ms. Subido because of animus and
9 retaliation. This office is the investigative
10 arm of the ethics board, and the ethics board is
11 the ethics authority in the District of
12 Columbia. We received a complaint and we
13 investigated a complaint and found that there
14 was evidence of a violation.

15 We make no determination about Ms.
16 Brown's intentions. Ms. Brown's intentions when
17 she filed a complaint are not relevant here at
18 the hearing today.

19 MR. NOTTINGHAM: Ms. Mitchell, can I
20 ask regarding the whistleblower law and process
21 would it be correct to say that it that
22 hypothetically a plaintiff, a complainant, in a

1 whistleblower case could seek damages from the
2 alleged wrongdoing official or agency, and those
3 damages could include a \$300 fine imposed by
4 another agency as a result of what
5 hypothetically might possibly have been a
6 whistleblower scenario that then resulted in an
7 employee having to pay a \$300 fine?

8 In other words, is there a process in
9 the law that would actually address that that
10 hypothetical chain of events?

11 MS. STEWART-MITCHELL: I think that the
12 more appropriate procedural chain of events
13 would be if the respondent felt that the Office
14 of Government Ethics retaliated against her,
15 that we be named as a party in a whistleblower
16 act in DC Superior Court, and that they would
17 lay out their case there that this office
18 retaliated against Ms. Subido. And so, we,
19 again, performing our function as the District's
20 ethics authority, conducting an investigation
21 and found evidence that there is a violation.
22 In the DC Whistleblower Act, it refers to the

1 party who may have retaliated. If the plaintiff
2 is able to establish a case, then it is on the
3 Defendant to show that retaliation didn't have
4 anything to do with it, that there are other
5 reasons why the action, the alleged retaliatory
6 action, took place.

7 And just by the way the procedure is
8 laid out in the statute, Mr. Renner's argument
9 fails. Again, we would be the defendant in that
10 matter once it was brought against us, and they
11 would have to lay out their case as the
12 plaintiff, as the retaliated against party and
13 lay out, you know, what happened and how they
14 were damaged. And again, this is the ethics
15 board. Our purview -- your purview, excuse me,
16 is to determine whether or not the emails, which
17 were already stipulated to and are in the
18 record, were a misuse of government property.

19 CHAIR HUTCHESON: And may I ask, when
20 the OGE receives a complaint, are you focused at
21 all on the reason why the complaint was brought
22 to you?

1 MS. STEWART-MITCHELL: No, only in the
2 sense that if the complainant gives a reason,
3 right? If they tell us, then we'll understand.

4 But generally, no, we wouldn't be focused on
5 the reason. We would only be focused on
6 investigating and finding out, you know, whether
7 or not the alleged actions took place.

8 CHAIR HUTCHESON: Okay. Thank you. Go
9 ahead, Mr. Renner.

10 MR. RENNER: Well, I call for the
11 admission of our Exhibits G and H.

12 MR. NOTTINGHAM: Chair Person?

13 MS. STEWART-MITCHELL: I just want to
14 reiterate our objection to the admission of
15 those.

16 MR. NOTTINGHAM: Is Ms. Subido still
17 testifying? I have some questions for Ms.
18 Subido but at the appropriate time. I didn't
19 want to interrupt her --

20 CHAIR HUTCHESON: Well, we're going to
21 --

22 MR. NOTTINGHAM: -- her presentation

1 CHAIR HUTCHESON: We're doing, trying
2 to deal with this, and I'm going to not admit
3 those because they're not relevant.

4 MR. RENNER: Right. I --

5 CHAIR HUTCHESON: They're not relevant
6 to why there was an investigation by OGE.

7 MR. RENNER: I am going to move
8 forward. I'm about halfway through my questions
9 for Ms. Subido.

10 CHAIR HUTCHESON: Okay, let's move on.

11 MR. RENNER: Ms. Subido, was there a
12 time when you were transferred or reassigned
13 during your DC employment?

14 THE WITNESS: Yes.

15 BY MR. RENNER:

16 Q Where were you transferred to?

17 A I was transferred to the fire
18 department as Assistant Chief of Emergency
19 Communications.

20 Q What were your duties there?

21 A I was to try to help the OUC fix some
22 of the issues they were having, to continue

1 basically some of what I did as the interim
2 director.

3 Q Was there some overlap between those
4 duties and the duties you had before as a chief
5 in your prior position?

6 A Yes, there was. I had to look into
7 errors that happened -- errors that usually we
8 found out from, you know, fire department
9 personnel. I had to do those investigations,
10 yes.

11 Q And while you were employed at the fire
12 department, did you continue to raise concerns
13 about the safety of the 911 call center
14 operations?

15 A Yes, I did.

16 Q What type of concerns did you raise?

17 A The same ones. The issues of not
18 responding via radio to responders requesting
19 help. The issues of not responding to 911 calls
20 in a timely matter or in the correct manner.

21 Q Did you raise -

22 MS. STEWART-MITCHELL: Okay. I want to

1 object to this line of questioning as it is not
2 relevant to a misuse of government email.

3 MR. RENNER: They are relevant to our
4 whistleblower defense.

5 MS. SMITH: But how does the
6 whistleblower defense have to do with what we
7 did here? What does it have to do with this?
8 Because it -- it, these aren't -- you -- you
9 used the phrase adverse action. Doesn't it have
10 to be something that affected Ms. Subido's
11 employment?

12 MR. RENNER: Yes.

13 MS. SMITH: BEGA's not in the position
14 to do that.

15 MR. RENNER: The DC Whistleblower
16 Protection Act says that every DC court and
17 administrative agency has to enforce the
18 Whistleblower Protection Act and if we can show
19 that her whistleblowing was a contributing
20 factor to this proceeding --

21 CHAIR HUTCHESON: Mr. Renner --

22 MR. RENNER: That is a defense under

1 the Whistleblower Protection Act, and I am going
2 over now Ms. Subido's protected activity in
3 support of that defense.

4 MS. STEWART-MITCHELL: If so, I would
5 just want to ask maybe if you could read
6 directly from the DC Whistleblower Protection
7 Act, because I don't believe it says that every
8 administrative agency is supposed to administer
9 the DC Whistleblower Protection Act. And so if
10 you could point me to that.

11 MS. SMITH: Every agency has to uphold
12 it with respect to its own employees, of course,
13 but it doesn't say that you fall within the
14 definition of.

15 CHAIR HUTCHESON: She's not. She was
16 not a BEGA employee.

17 MS. STEWART-MITCHELL: I think that
18 that is a -- there's a difference between a
19 general prohibition against retaliating against
20 an employee and arguing that each administrative
21 body that has different functions in the
22 executive must make determinations about whether

1 the DC Whistleblower Protection Act was
2 violated.

3 MS. SMITH: Well, it says prohibited
4 personnel action.

5 MR. NOTTINGHAM: Mr. Renner, are you -

6 MS. SMITH: Like these are personnel --

7 MR. NOTTINGHAM: Are you arguing that -
8 - that this original complaint that came to BEGA
9 was an act of bad faith or was made in bad faith
10 and that BEGA should've discerned that and
11 discounted it or dismissed it or ignored it?
12 What just -

13 MR. RENNER: I think, more accurately,
14 I'm saying that based on our evidence that it
15 was retaliatory, this board should dismiss this
16 proceeding to avoid furthering or participating
17 in unlawful retaliation. And the statute I'm
18 referring to here is DC Code § 1-615.54 Bravo,
19 and it says, In a civil action or administrative
20 proceeding, once it has been demonstrated by a
21 preponderance of the evidence that an activity
22 prescribed by 1-615.53 was a contributing factor

1 in the alleged prohibited personnel action
2 against an employee, the burden of proof shall
3 be on the defendant to prove by clear and
4 convincing evidence that the alleged action
5 would have occurred for legitimate independent
6 reasons even if the employee had not engaged in
7 activities protected by this section. So, I
8 think it pretty clearly does apply to this
9 administrative process, and that is why -

10 MS. SMITH: There's no --

11 MR. RENNER: I'm presenting evidence of
12 her protected activity.

13 MS. SMITH: There's no prohibit -- what
14 is the prohibited personnel action?

15 MR. RENNER: It is the ministerial fine
16 against her because of her employment with the
17 District.

18 MS. SMITH: A prohibited personnel?

19 MS. TUCKER: No.

20 MR. RENNER: Well, requiring her to pay
21 money, that's pretty clearly an adverse action.

22 MS. TUCKER: That's --

1 MS. STEWART-MITCHELL: It's not a
2 prohibited personnel action.

3 MS. TUCKER: -- that's defined under
4 the code, and that is not -- that does not apply
5 to the definition here. I'm reading right from
6 the code.

7 MS. SMITH: Sure.

8 MS. TUCKER: It is recommended,
9 threatened, or actual termination, demotion,
10 suspension, or reprimand. I could go on here.
11 None of these things apply. And moreover, we
12 are not a supervisor as defined under the code.

13 MS. STEWART-MITCHELL: And I just want
14 to draw your attention. I think I found the
15 language that I was referring to earlier, and
16 that's DC Official Code § 1-615.54B. Sorry, I'm
17 reading it on the fly.

18 MR. NOTTINGHAM: Chairperson, I just
19 had a follow-up question for Mr. Renner.

20 MS. STEWART-MITCHELL: Yeah. Okay.

21 MR. NOTTINGHAM: You mentioned you were
22 quoting from, I believe, the -- is it the

1 Whistleblower Protection Law? You mentioned
2 that the defendant then has a burden. Who's the
3 defendant in your

4 MR. RENNER: It is the OGE here. If
5 they want to prevail in this matter, they would
6 have the burden of proof to overcome the
7 presumption of retaliation.

8 MS. STEWART-MITCHELL: And see, and
9 that's exactly right -- is thank you Chip.
10 That's what I was referring to, the language
11 about our office being the defendant. And we
12 would be a defendant if the respondent in the
13 instant matter brought a civil action against us
14 for this alleged retaliation. Procedurally it
15 is incorrect that the respondent who technically
16 in this matter, if to -- just for context, would
17 be the defendant. She's the defendant in this
18 matter, and we're the plaintiff or the
19 prosecution bringing this matter. So we are not
20 the defendant. And so the statute is telling us
21 that this -- we would be in a posture that they
22 would be bringing a retaliation action against

1 us, and then we would have to answer after they
2 put on that case that whatever action we took
3 was retaliatory.

4 I think it's a legal question about
5 what you were bringing up about whether or not
6 this is a retaliatory personnel action. Our
7 position is that it is not. This is an
8 independent agency. We impose civil fines. We
9 do not opine on personnel matters or involve
10 ourselves in personnel matters whenever we issue
11 fines. And so that, that's the second issue.
12 But the first issue is that procedurally this is
13 wrong. This is just the -- the -- this is not.

14 It might be an affirmative defense pursuant to
15 the statute, but that would be if we were in
16 civil court or before EEO administrative body
17 that handled whistleblower matters.

18 MR. RENNER: May I make a suggestion
19 here?

20 CHAIR HUTCHESON: Yeah. How much --
21 how much more question -- how many more
22 questions do you have so we can move forward

1 with this?

2 MS. TUCKER: What do you--?

3 MR. RENNER: I -- I -- I've --

4 MS. TUCKER: We need to.

5 MR. RENNER: -- I've got --

6 MS. SMITH: We're taking evidence and
7 testimony about whistleblower protection because
8 I think what we're saying is that we don't think
9 it applies here because there's no prohibited
10 personnel action at issue.

11 MS. TUCKER: Because we're not
12 supervisors.

13 CHAIR HUTCHESON: So we're not
14 supervisors.

15 MS. SMITH: You're not with --

16 MR. RENNER: If I may, I've finished
17 three pages. I got one and a half more pages of
18 testimony to present. And --

19 CHAIR HUTCHESON: So -- so, but those
20 one and a half pages relevant to the issues in
21 this case?

22 MR. RENNER: Well, the --

1 CHAIR HUTCHESON: Or you're talking
2 about the prohibitive or alleged retaliatory
3 action that some other agency or some other
4 employee may have taken?

5 MR. RENNER: Well -

6 CHAIR HUTCHESON: Do you have any
7 evidence that BEGA: A) as an employee,
8 employer, which it is not, and that the action
9 that we took was because of some retaliation?
10 Any of those questions go to those issues?

11 MR. RENNER: Well --

12 CHAIR HUTCHESON: In the page and a
13 half you have left?

14 MR. RENNER: Yeah.

15 CHAIR HUTCHESON: Or are they just more
16 of what we've seen already, because so far we
17 haven't gotten to this?

18 MR. RENNER: I would contend they do,
19 and I was going to suggest that instead of
20 trying to argue about the scope, structure, and
21 effect of the Whistleblower Protection Act in
22 response to each of my questions as an objection

1 to a question that perhaps you might hear the
2 rest of Ms. Subido's testimony, and then permit
3 Ms. Stewart-Mitchell and myself to submit briefs
4 so that we can lay out the legal authority on
5 each of our positions. And then the BEGA board
6 would have time to consider that when it's fully
7 briefed, instead of --

8 CHAIR HUTCHESON: Oh --

9 MR. RENNER: -- trying to do it on a
10 question by question basis.

11 CHAIR HUTCHESON: Okay. Well, let's
12 just kind of move forward and make sure that the
13 questions you're asking are relevant to the
14 issues in this case.

15 MR. RENNER: Well, obviously the two
16 sides have different contentions about the scope
17 of relevance. And I need to make my case to
18 support the arguments I would intend to make
19 when that opportunity arises.

20 CHAIR HUTCHESON: Okay. Let's move
21 forward.

22 MR. RENNER: Okay. So Ms. Brown, if

1 you could, bring up Exhibit K. Ms. Subido, do
2 you recognize Exhibit K?

3 THE WITNESS: Yes, I do.

4 BY MR. RENNER:

5 Q What is it? Can you summarize?

6 A It is what I discovered regarding a
7 Metro incident with WMATA.

8 Q Right. Is this an example of you
9 raising the type of concerns that Kelly Brown
10 was upset at you for raising because they made
11 Director Holmes look bad?

12 A Yes.

13 MR. RENNER: I call for the admission
14 of exhibit K.

15 MS. SMITH: Relevance.

16 MS. STEWART-MITCHELL: Objection. It's
17 not relevant. You also characterized Ms.
18 Brown's feelings about this specific email.
19 I'll just leave my objections here from now on,
20 but all of the exhibits speak to work that Ms.
21 Subido did, but they don't speak to Ms. Brown's
22 intentions regarding her work and her actions.

1 But -- objection. And then I'll keep it short
2 for each one. I am going to just say objection
3 for the record, and then I'll let you continue.

4 CHAIR HUTCHESON: Your response, Mr.
5 Renner?

6 MR. RENNER: This is a pretty clear
7 example of Ms. Subido's protected activity of
8 raising a concern about public health and safety
9 because of shortfalls in the District's
10 administration of its 911 call operations.

11 CHAIR HUTCHESON: Okay. Why is that
12 relevant to whether or not she was improperly
13 using her email?

14 MR. RENNER: Because it supports our
15 contention that this proceeding was commenced as
16 an act of retaliation against Ms. Subido for
17 these protected activities.

18 (Unintelligible.)

19 CHAIR HUTCHESON: So what if it was?

20 MR. RENNER: It would be unlawful for
21 this board to participate in imposing the
22 ministerial fine if it is retaliatory, if Ms.

1 Subido can show that protected activity was a
2 contributing factor in these proceedings.

3 CHAIR HUTCHESON: But if she still did
4 something she wasn't supposed to do because
5 she's also done things that she considers a part
6 of her job, then she's allowed to do those other
7 things? And we're supposed to turn a blind eye
8 to those other things because the person who
9 brought the improper things to us didn't like
10 the things that she may have been doing that
11 were completely proper? Is that what you're
12 saying?

13 MR. RENNER: Well, I -

14 CHAIR HUTCHESON: She's protected
15 because she was doing her job?

16 MR. RENNER: Uh-huh. That is a
17 different way of characterizing it that I think
18 kind of exaggerates my position. My contention
19 is only that the protected activity was a
20 contributing factor. And the statute, you know,
21 sets out the process to decide whether or not
22 that would be a defense based on whether or not

1 the opposing party called the defendant in the
2 statute can show by clear and convincing
3 evidence that the same exact action would've
4 happened even without the protected activity.
5 And right now I am making my case about the
6 contributing factor in setting out Ms. Subido's
7 protected activities that motivated Kelly
8 Brown's retaliatory complaint.

9 MS. STEWART-MITCHELL: And I'll just
10 say, for, you know, my objection stands for
11 reasons previously stated, but, you know, even
12 as you set out your case, where are, you know,
13 aside from Ms. Subido testifying about things
14 that, you know, Ms. Brown thought and felt,
15 where are the emails where Kelly Brown was upset
16 by this? Where are her responses? She is
17 copied on this one. You know you're laying out
18 emails of Ms. Subido doing her work, and then
19 you are inserting Ms. Brown. That's why I --
20 but just, I don't -- I don't see the relevance.
21 I don't what -- again, I don't want to draw --
22 I don't want to us to have a long, drawn out

1 conversation about every exhibit, but I am -- I
2 mean, the, these are the reasons that I'm
3 objecting. I'm just -- I'm not seeing the
4 collect on top of I that I don't believe that
5 this is the proper form for the DC Whistleblower
6 Protection Act. I'm not seeing the relevance or
7 the connection. There are causal chains that
8 need to be connected here, and I don't see it,
9 so I'm -- again --

10 CHAIR HUTCHESON: Are we--?

11 MS. STEWART-MITCHELL: I'll let you
12 continue, but I object.

13 MR. NOTTINGHAM: Ms. Mitchell. Does
14 the Office of Government Ethics, OGE, ever
15 receive complaints that don't transition to
16 this, the point of formal investigation? In
17 other words, get discounted for -- various
18 reasons or dismissed?

19 MS. STEWART-MITCHELL: Yes.

20 MR. NOTTINGHAM: Would that be, like,
21 more than 10 a year? How often is it that
22 somebody thinks they have a BEGA complaint and

1 they contact your office but it turns out, for a
2 variety of reasons -

3 MS. STEWART-MITCHELL: That would be
4 quite often. It would be probably dozens a
5 year.

6 MR. NOTTINGHAM: Dozens of times a
7 year?

8 MS. STEWART-MITCHELL: Dozens in a year
9 probably. Mm-hmm.

10 MR. NOTTINGHAM: And so, do you look at
11 -- you look at the quality and the content of
12 the complaint and the complainant and look for
13 any indicators that a complainant might be
14 acting in bad faith or might be not trustworthy
15 or?

16 MS. STEWART-MITCHELL: Generally, no.
17 When a complainant submits a complaint, we look
18 at the allegations and make a determination
19 about whether the allegations fall within our
20 jurisdiction. If they do, then we proceed with
21 the matter to try to gather some preliminary
22 evidence about what happened, and generally in

1 that process, we can ascertain, you know, bad
2 faith, whether or not somebody was upset about
3 something. But it's just not a motivating
4 factor. We're pursuing the evidence about
5 whether the code of conduct was violated.

6 MR. NOTTINGHAM: Thank you.

7 CHAIR HUTCHESON: Okay. We can admit
8 it and consider it, for what it's worth.

9 (Whereupon, the above-referred to
10 document marked as Respondent's Exhibit No. K
11 was received into evidence.)

12 MR. RENNER: Thank you.

13 MS. STEWART-MITCHELL: I'm sorry.
14 Which one was that?

15 MR. RENNER: For the sake of brevity, I
16 will group together here our Exhibits L, M, N,
17 O, W, and X. And as to those exhibits, Ms.
18 Subido, do you recall reviewing those exhibits
19 that we submitted here to the BEGA board?

20 A Which? Could you repeat which --

21 Q Sure, these are your emails from April
22 15, 2021 through February 28, 2022, the exhibits

1 we submitted about the concerns you raised
2 through email at work.

3 A Yes. I recall those.

4 Q Uh-huh. And in each of those exhibits,
5 is it your understanding that these are among
6 the ways in which you raised issues that Kelly
7 Brown perceived as making Director Holmes look
8 bad?

9 A Yes.

10 MS. STEWART-MITCHELL: I'm going to
11 object again relevance, again characterizing
12 about Ms. Brown's feelings, thoughts, and
13 perceptions.

14 CHAIR HUTCHESON: I'm going to sustain
15 that objection.

16 MR. RENNER: Well, in particular, Ms.
17 Brown, could you bring up Exhibit X as in x-ray?

18 MR. NOTTINGHAM: Who's Ms. Brown?

19 CHAIR HUTCHESON: Ms. Brown is his -

20 MR. NOTTINGHAM: Oh.

21 CHAIR HUTCHESON: Paralegal.

22 MR. RENNER: Oh, I'm sorry.

1 MR. RENNER: Ms. Subido, do you
2 recognize our Exhibit X?

3 THE WITNESS: Yes, I do.

4 BY MR. RENNER:

5 Q Can you summarize it?

6 A It was the email I sent to Deputy Mayor
7 Geldart to bring some things that I thought to
8 the forefront that were particularly -- could be
9 damaging to the OUC, the general public, and the
10 responders. And it was because I was soon to be
11 leaving the office of Unified Communications.

12 Q Mm-hmm. All right -

13 MS. STEWART-MITCHELL: Same objection.

14 MR. RENNER: Ms. Brown, could you now
15 bring up our Exhibit P as in papa? Oh, I'm
16 sorry. I misspoke. Exhibit J as in Juliet.

17 MR. NOTTINGHAM: Ms. Mitchell, do I
18 hear did you just object? I'm sorry, that
19 sounds like --

20 MS. STEWART-MITCHELL: I did. Same
21 objection, relevance for reasons previously
22 stated.

1 MR. NOTTINGHAM: I thought I heard
2 that, but it wasn't very loud, so I want to make
3 sure if somebody does have an objection on that
4 we know about it.

5 CHAIR HUTCHESON: This is the privilege
6 log?

7 MR. RENNER: Yes. Ms. Brown, could you
8 enlarge it so we can read the top entry in this
9 log? All right. And do you see that this is a
10 Board of Ethics and Government Accountability
11 Subido privilege log?

12 THE WITNESS: Yes.

13 BY MR. RENNER:

14 Q If you scroll over for that first line,
15 can we see what the subject is? The description
16 there? Do you see what that is?

17 A Oh, the description. Yes, forwarded
18 email from complainant to express concern about
19 Cleo Subido.

20 Q And what was the date of that email?

21 A May 3rd, 2022.

22 Q Right. And how much time is that?

1 Well, I think we can all take administrative
2 notice that that's about nine weeks from your
3 February 28 email. Is that correct?

4 A That's correct.

5 Q Uh-huh. And do you know, do you know
6 who made that complaint about you?

7 A Yes, I do.

8 Q How do you know that?

9 A Kelly Brown made the complaint. She
10 testified to that in the show cause hearing.
11 She said that --

12 Q Okay.

13 A -- she filed this complaint along with
14 many others.

15 MR. RENNER: Right. Ms. Brown, could
16 you bring up our Exhibit Q and play that for us?

17 MS. STEWART-MITCHELL: Is there going
18 to be any request that J be entered into the
19 record because I would object to that?

20 MR. RENNER: I want to get all three of
21 these exhibits before the board and then move
22 for their admission together because they're

1 connected.

2 CHAIR HUTCHESON: Okay.

3 (Video plays.)

4 MR. RENNER: Did you ever submit any
5 complaint or information to the Office of
6 Government Ethics about Ms. Subido?

7 MS. BROWN: I did.

8 MR. RENNER: When was that?

9 MS. BROWN: I don't recall.

10 MR. RENNER: What was it you submitted
11 to the office?

12 MS. BROWN: There were several things
13 that I don't feel -- that -- that are unrelated
14 to this matter.

15 MR. RENNER: Were there also things
16 that were related to this matter that you
17 provided to the Office of Government Ethics?

18 MS. BROWN: I have provided items to
19 the government, to the Office of Ethics.

20 (Video ends.)

21 MR. RENNER: Okay. So with that video
22 clip and the February 28 email, our Exhibit X,

1 this Exhibit Q, and our Exhibit J, I would move
2 their admission because they show the temporal
3 proximity between Cleo Subido's last protected
4 email and the date of this complaint Kelly Brown
5 made to OGE.

6 MS. STEWART-MITCHELL: Again, I want to
7 renew my objection. I'm sure there are many
8 things that happened between those two times. I
9 don't understand the relevance or the
10 connection. Also specifically, I want to object
11 to Exhibit J. That is a privileged log that we
12 submitted as a third party in Ms. Subido's DC
13 whistleblower matter that is in civil court.

14 By nature of a privileged log, it is
15 not very descriptive, and so there can only be
16 inferences made about what any document listed
17 on a privileged log is. So we don't know what
18 those were, and so there's just a lot of
19 imputing people's thoughts and ideas and
20 feelings. And so I object to all three of
21 those.

22 MR. RENNER: I understand that I have

1 not persuaded Ms. Stewart-Mitchell of the merits
2 of this whistleblower defense, but this is the
3 evidence that is relevant to that defense that I
4 need to connect the dots between the protected
5 activity and the initiation of this proceeding.

6 This board can decide later about whether or
7 not we have carried that evidence over the
8 threshold for action, but I should at least be
9 permitted to introduce this evidence for the
10 board's consideration.

11 CHAIR HUTCHESON: You, we'll admit it
12 and consider it, for what it's worth. Is there
13 anything else, Mr. Renner?

14 (Whereupon, the above-referred to items
15 marked as Respondent's Exhibit Nos. X, Q and J
16 were received into evidence.)

17 MR. RENNER: Yes. Very quickly. Ms.
18 Subido, at some point did you file a lawsuit
19 against the District of Columbia?

20 THE WITNESS: Yes.

21 BY MR. RENNER:

22 Q Ms. Brown, can you bring up our Exhibit

1 C as in Charlie? Ms. Brown, can you scroll to
2 the top of that page, please? All right. Ms.
3 Subido, do you recognize our Exhibit C?

4 A Yes.

5 Q What is it?

6 A It is the face page of the lawsuit that
7 I filed in March of 2023.

8 Q Okay, and to summarize, is this your
9 complaint that you suffered whistleblower
10 retaliation because of your safety concerns
11 while employed with the District of Columbia?

12 A Yes.

13 MR. RENNER: All right. I call for the
14 admission of exhibit C.

15 MS. STEWART-MITCHELL: I'm going to
16 object. Relevance, the same as previously
17 stated.

18 CHAIR HUTCHESON: And I'll admit it,
19 and we'll consider it, for what it's worth.

20 (Whereupon, the above-referred to
21 document marked as Respondent's Exhibit No. C
22 was received into evidence.)

1 MR. RENNER: All right. Ms. Brown,
2 would you bring up Exhibit D as in Delta? Ms.
3 Subido, do you recognize our Exhibit D?

4 THE WITNESS: Yes, I do.

5 BY MR. RENNER:

6 Q What is it?

7 A It looks like just the response or the
8 initial scheduling conference document that we
9 had to produce.

10 Q You're referring to the right side of
11 the caption that says event initial scheduling
12 conference?

13 A Yes.

14 Q All right. Below that, do you see the
15 title for the document called defendant's answer
16 to plaintiff's complaint?

17 A Oh, yes. I do.

18 Q Okay.

19 A That was -- sorry, that was the -- the
20 District's response to the -

21 Q Right. Does this answer show that the
22 District -

1 A Sorry.

2 Q Ms. Subido, are you still with us?

3 A Yes, I am.

4 Q There we go.

5 A Sorry.

6 Q Does this exhibit show that the
7 District of Columbia is opposing your
8 whistleblower lawsuit in Superior Court?

9 A Yes, it does.

10 Q Is that lawsuit in Superior Court still
11 pending?

12 A Yes.

13 Q And it's been pending continuously
14 since 2023?

15 A Yes.

16 MR. RENNER: All right. I call for the
17 admission of exhibit D.

18 MS. STEWART-MITCHELL: Objection on the
19 same grounds.

20 CHAIR HUTCHESON: Okay.

21 MS. STEWART-MITCHELL: Relevance.

22 CHAIR HUTCHESON: And admit it with the

1 same understanding that we'll consider it for
2 what it's worth.

3 (Whereupon, the above-referred to
4 document marked as Respondent's Exhibit No. D
5 was received into evidence.)

6 MR. RENNER: Okay. Right. I would
7 also call for the admission of the excerpts from
8 the show cause hearing, Our Exhibits P, R, S, T,
9 U, and V, as self-authenticating because they
10 are the video clips that the office submitted to
11 us in response to the discovery order.

12 MS. STEWART-MITCHELL: I will stipulate
13 to the authenticity of the clips, but I would
14 object to their admission into the record. The
15 clips in question discuss Ms. Subido doing her
16 work when she was a District government
17 employee. I don't believe that they're relevant
18 to whether or not she misused her government
19 email.

20 CHAIR HUTCHESON: Okay, we'll admit
21 them for what they're worth, because Ms.
22 Subido's job performance is not at issue in this

1 case, but we'll admit them.

2 (Whereupon, the above-referred to
3 videos marked as respondent's Exhibit Nos. P, R,
4 S, T, U and V were received into evidence.)

5 MR. RENNER: Right. I have no further
6 questions. Thank you.

7 CHAIR HUTCHESON: I have one question.

8 Ms. Subido, what was the position, the first
9 position you had before you went to the fire
10 department?

11 THE WITNESS: I was the chief of the
12 Office of Professional Standards and Development
13 for the 911 center, the OUC.

14 CHAIR HUTCHESON: And in that position
15 and in your next position where you were interim
16 director at the fire department, were you
17 required -- go ahead, I'm sorry.

18 THE WITNESS: Right, ma'am, forgive me.
19 my next position was interim director at the
20 OUC at the 911 center, and then the third
21 position was assistant chief at the fire
22 department, yes.

1 CHAIR HUTCHESON: Okay. And in those
2 positions, were you required to take annual
3 ethics training?

4 THE WITNESS: Yes.

5 CHAIR HUTCHESON: And you did?

6 THE WITNESS: Yes, I did.

7 CHAIR HUTCHESON: Okay. Thank you.

8 Any questions from this -

9 MR. NOTTINGHAM: Yeah.

10 MS. TUCKER: Judge, if I may.

11 MR. NOTTINGHAM: I have a few too, but
12 go. Do you want to go ahead?

13 MS. TUCKER: I just have one question
14 related to Exhibit 31.

15 THE WITNESS: Mm-hmm.

16 MS. TUCKER: I think you had testified.

17 You were explaining to us that you were
18 emailing yourself at home to remind yourself to
19 work on something related to the trademark that
20 you were working on with the triage program, I
21 think it was.

22 THE WITNESS: Yes.

1 MS. TUCKER: And I wanted to understand
2 on page 3 of your email why was the mailing
3 address for a Seattle, Washington address.

4 THE WITNESS: Oh. Well, my home was
5 in Seattle? I had a home in Seattle, and I
6 lived in the District. I mean it was the same
7 address it had been. I had that email address
8 for a couple of decades probably. Is that what
9 you were asking? I'm sorry.

10 MS. TUCKER: No, no. I'm just trying
11 to figure it out. It sounds like you were
12 working with a company on behalf of the District
13 government, right? You were trying to trademark
14 for the District government?

15 THE WITNESS: No. Thank you for the
16 question. To clarify, no, I was not. I was
17 working on behalf of -- to get the trademark.
18 It wasn't a company. I believe it was -- well,
19 it was a company. It was some an attorney that
20 worked that did those kinds of activities. But
21 what I was doing was just protecting the name
22 Public Safety Net, which that senior paramedic

1 and I used in to name that six-page triage
2 document that we built for the United Arab
3 Emirates. What I didn't want was the District
4 to name the product that they built, that Nick
5 Ragucci and Patrick Cassidy built. I didn't
6 want them to name it Public Safety Net because
7 it was a completely different program. But we
8 ran into the issue of DC Net already having a
9 name with the info technology folks.

10 MS. STEWART-MITCHELL: Again, I just
11 wanted to renew my objection to this testimony.

12 Again, if I had any notice that the issue of
13 Public Safety Net would be re-litigated, I do
14 have rebuttal evidence regarding Public Safety
15 Net, and I just wanted that to be on the record.

16 And so not prepared to answer to that.

17 MR. NOTTINGHAM: But it is in OGE's
18 Exhibit 31 -

19 MS. STEWART-MITCHELL: It is not.

20 MR. NOTTINGHAM: -- reference to

21 MS. STEWART-MITCHELL: It is not. It's
22 in -- it -

1 MR. NOTTINGHAM: I think you were just
2 reading from --

3 MS. SMITH: Yeah.

4 MR. NOTTINGHAM: -- Exhibit 31.

5 MS. SMITH: OGE 31. This is, yep, this
6 is OGE's Exhibit 31. Okay.

7 MS. TUCKER: It is a company that is
8 mentioned in the email.

9 MS. STEWART-MITCHELL: It is -- it is
10 mentioned, but I'm referring to some separate
11 evidence regarding Ms. Subido's work on the FIMS
12 LUC working group and the name of that working
13 group.

14 MR. NOTTINGHAM: Well, I have a related
15 question for Ms. Subido. Why was it a concern
16 of yours about the trademark status of a name?
17 Here you are, you're a DC employee; you're
18 hired to do work on behalf of the people of DC,
19 and you're working on a trademark application
20 with a Seattle, Washington address that's your
21 personal address. I just don't understand --

22 THE WITNESS: Yes.

1 MR. NOTTINGHAM: -- what fits into your
2 -- your DC -

3 THE WITNESS: -- I totally understand
4 your question, yes. So Public Safety Net was a
5 program which was designed for the public use
6 for free. So it was eventually going to be open
7 sourced if we ever finished doing that. I
8 wasn't working on that program. I was working
9 on the, you know, protecting the name of that
10 program because people kept referring to DC Net
11 as Public Safety Net when it was not. It was --

12 MR. NOTTINGHAM: And why would you
13 care? Did you have --

14 THE WITNESS: I would care because -- I
15 would care because the name was specifically
16 designed for it to be evident that this was a
17 clear, free product, and it was for public
18 safety. It was Public Safety Net 911 Emergency
19 Triage. And so you could see how down the road,
20 if the District had gone through with the
21 product that the fire department guys, Nick
22 Ragucci and Patrick Cassidy, had developed and

1 called it Public Safety Net, the paramedic Don
2 Cloyd and I would not be able to release the
3 free product, an open source with that same
4 name. Does that make sense?

5 MR. NOTTINGHAM: Not really, but I
6 don't want to impugn your integrity. I just,
7 I'm trying to understand what was going on here.

8 I mean, would you say it is a little unusual
9 for a District employee to be submitting a
10 trademark application listing the person's home
11 address in a different state?

12 THE WITNESS: I wasn't submitting it as
13 a District employee. I was submitting it as the
14 person who developed the program in 2004. And
15 Public Safety Net maybe it would help. So just
16 to let you know, there are multiple triage --

17 MR. NOTTINGHAM: You just said
18 something I think that might be significant.
19 You were not. So this email is not about DC
20 business?

21 THE WITNESS: No, it was not.

22 MR. NOTTINGHAM: Okay. But it's also

1 not part of your real estate house hunting or
2 your illness, the 11 emails that your attorney
3 said we should discount?

4 THE WITNESS: That's correct. And the
5 reason I sent it to myself was because I was
6 working 14- to 16-hour days, six or seven days a
7 week and I wanted to remind myself to get back
8 to it. But you're exactly right. All of these
9 other, there are multiple programs out there
10 that cost hundreds of thousands of dollars, and
11 vendors take advantage of people like the OUC
12 and other 911 centers and charge them a fortune
13 to use a triage program that is so easy to
14 develop on their own. We wanted to have that
15 development piece, and that was the name of it.

16 MR. NOTTINGHAM: And who is the we?
17 You just said it's had nothing to do with your
18 DC government work. Who is the we?

19 THE WITNESS: It was Don Cloyd, the
20 paramedic, that was my one of my senior
21 instructors that worked for me when I was with
22 the county for 18 years. He and I --

1 MR. NOTTINGHAM: Oh, that's the DC -

2 THE WITNESS: -- developed -

3 MR. NOTTINGHAM: This is a non-DC
4 employee you're talking about?

5 THE WITNESS: Non-DC employee, yes.

6 MR. NOTTINGHAM: Okay. So this is an
7 enterprise, a project, or an activity that you
8 had engaged in in the past that had nothing to
9 do with the DC government, nothing to do with DC
10 employees, but for whatever reason, it was
11 convenient for you to use your DC computer to
12 research it.

13 THE WITNESS: Yeah, I sent it to myself
14 as a reminder. Again, I was working a lot of
15 hours, and I would probably not be logging back
16 in to my regular email.

17 MR. NOTTINGHAM: And are you aware that
18 anything on a -- according to OCTO policy, and
19 I'm referencing 5.1.5 in the OCTO use of email
20 policy, the presumption is anything on
21 government email is public information that's
22 FOIA-able unless there's an exemption to the

1 Freedom of Information Act.

2 Were you aware at the time that all the
3 things you were doing, travel plans, personal
4 appointments, trademark applications, were
5 basically being entered into the public domain
6 by just de facto by the fact that you were
7 using? There's no expectation of privacy, is
8 there, when you're using a government computer?

9 THE WITNESS: No, there isn't. It was
10 explained in my orientation, and I considered it
11 de minimis use because that's what I saw
12 happening in the agencies I worked for, both OUC
13 and the fire department. People were sending
14 recipes and documents from the union, and back
15 and forth. It was, in my mind, de minimis use.

16 MR. NOTTINGHAM: Now, turning back to
17 OGE's Exhibit 31, do you have that in front of
18 you or access to it? It's the same document
19 we've been talking about, the email looks like
20 dated May 5th, 2022 from Alejandro Palma, JPG.
21 Starts off by saying, Hello. I am working on
22 your trademark application. That indicates that

1 there have been some prior communications
2 between yourself and Mr. Palma. Was that done
3 on a government computer? Do we have everything
4 we're supposed to have here? Or were --

5 THE WITNESS: Yes.

6 MR. NOTTINGHAM: -- what were the --
7 how did -- how were those prior communications
8 made?

9 THE WITNESS: The only communication I
10 had with him was probably the form I had to fill
11 out online that I did on my own time. As a
12 matter of fact, I think Nick might have been
13 with me at the time. But it was just the
14 initial contacting someone to see, Hey, how do I
15 get a trademark? And unfortunately, I didn't
16 realize there were so many steps to it after the
17 fact, so it was never trademarked.

18 MR. NOTTINGHAM: How did Mr. Palma have
19 your government email address?

20 THE WITNESS: I probably said maybe
21 when I filled out the form. I put it as a
22 secondary address.

1 MR. NOTTINGHAM: And why would you do
2 that?

3 THE WITNESS: Because I was working so
4 much, I rarely had time to deal with my own
5 personal stuff. I was constantly working.

6 MR. NOTTINGHAM: Did you have access
7 during this time to a personal device, like a
8 iPhone type device, that would allow you to
9 check on personal messages occasionally during
10 breaks or what have you while you're at work?

11 THE WITNESS: I did, yes.

12 MR. NOTTINGHAM: And did the thought
13 ever occur to you to maybe use that occasionally
14 and not your government computer on personal
15 business?

16 THE WITNESS: It didn't, because when
17 you talk about breaks, I mean, I'm not sure that
18 you have an idea of what my position was and
19 what I was handling at the time. There were
20 many days when it would be 3:00 in the
21 afternoon, and I hadn't even had a drink of
22 water yet. So I didn't have time for breaks,

1 per se. There were times I was on the floor
2 with my headset answering calls because I was in
3 fear of what kind of calls we were going to miss
4 because we didn't have staffing.

5 MR. NOTTINGHAM: So it was your
6 testimony that you had possession of a personal
7 email device, but you didn't use it; you opted
8 to use a government computer because it was more
9 convenient, or it saved you time somehow?

10 THE WITNESS: I --

11 MR. NOTTINGHAM: I mean, I don't --
12 it's --

13 THE WITNESS: I'm sure I used it many
14 times, but on this particular part I used the DC
15 email address as a reminder to get back with
16 that person. But I'm sure I used my personal
17 email. All my texts from my kids, which was 99
18 percent of any personal thing that I was doing,
19 came on my personal device.

20 MR. NOTTINGHAM: And we've got, I
21 guess, 41 examples of emails in front of us.
22 Your attorney has mentioned that perhaps 11 of

1 them could be possibly construed as examples of
2 government related communications. Did you ever
3 have the occasion to use a government printer to
4 print out any of those 41 emails?

5 THE WITNESS: No, I don't recall
6 printing anything any emails out that were
7 personal, no.

8 MR. NOTTINGHAM: Okay, so it's your
9 testimony today that you did not print out any
10 personal emails from your government computer
11 using a government copying printing machine?

12 THE WITNESS: Right now I can't think of
13 any. No.

14 MR. NOTTINGHAM: And how many emails
15 would you say, based on your recollection --
16 this trademark application -- this was going on?
17 I'm -- I'm struggling here to understand why in
18 the world a government employee is using a
19 government computer to apply for a trademark
20 application that the government employee just
21 today has said had nothing to do with DC
22 government work or business.

1 THE WITNESS: As I said, it was the
2 fact that I was so busy with my work. I wasn't
3 getting into my personal email. I mean, I got
4 multiple calls even during my sleep hours that I
5 had to deal with. This was a full-time, 100
6 percent of your time job.

7 MR. NOTTINGHAM: That's all I have for
8 now.

9 MS. SMITH: Could I just ask one
10 question?

11 MR. NOTTINGHAM: Well --

12 MS. SMITH: Just so that we're clear on
13 the trademark thing, were you trying to beat the
14 District to the name on behalf of?

15 THE WITNESS: No. I wasn't trying to
16 beat the District to the name. I was trying to
17 make sure that the name that we came up with,
18 Don Cloyd and I, the paramedic in King County,
19 was not used by something that it did not
20 represent. So it's not just a name. When you
21 have a name, the product that went with it, if
22 they used my name that, we got with -- Don Cloyd

1 and I developed in 2004, it would not be the
2 product that we developed. It would be the
3 product that DC developed. So it had nothing to
4 do with DC. It was later, in years to come, if
5 this ended up on open source for 911 centers to
6 use for free, this would be very different than
7 if the District decided to name DC Net Public
8 Safety Net. It's two different things.

9 MS. SMITH: Right. They're two
10 different things, so you wanted them to be
11 distinguished, but was your goal to get in front
12 of the District using the name?

13 THE WITNESS: I don't think it was to
14 get in front of because, quite frankly, I didn't
15 think that the District would use the name
16 because they knew. We told them, or Nick did
17 when he did his presentation, that was the name
18 of my program from King County. So I didn't --
19 it was Nick that said, You know what? If you
20 don't have it trademarked, you should do that
21 because they could use it if they wanted to.
22 That was the reason I did it.

1 MS. SMITH: To protect it against the
2 District using it.

3 THE WITNESS: Yes.

4 MS. SMITH: Okay. Thank you.

5 THE WITNESS: Mm-hmm.

6 MR. NOTTINGHAM: So was this a King
7 County thing -- product, or you --

8 THE WITNESS: When I worked --

9 MR. NOTTINGHAM: -- King County has
10 like rights over this Public Safety Net? You
11 keep referencing it as your entity, your
12 creation, your concept, your name --

13 THE WITNESS: Yeah. So as I spoke
14 about earlier, the United Arab Emirates
15 approached King County, and that would be me to
16 try to use a product that the county had
17 developed in 1989 called Criteria-Based
18 Dispatch.

19 The United Arab Emirates had some
20 specific laws and so on that King County
21 government, we were told, they were not going to
22 allow the United Arab Emirates to use Criteria-

1 Based Dispatch. It was used all over the United
2 States and in other countries, but because of
3 some of the laws that were in force in the UAE,
4 they were going to deny that use. So Don Cloyd
5 and I got together. Literally, we built those
6 six pages one night in a restaurant, and that's
7 what we were going to give to the United Arab
8 Emirates. That was Public Safety Net.

9 MR. NOTTINGHAM: And that was while you
10 were an employee of the, of King County?

11 THE WITNESS: I was an employee, yes.

12 MR. NOTTINGHAM: You were developing a
13 product that was going to be of use to a foreign
14 government, and was that foreign government
15 asking for a free donation of that name, or was
16 there money involved?

17 THE WITNESS: No. We never -- no, they
18 weren't asking for either one, and there was no
19 money involved. We developed it so that we
20 could have something that this country could use
21 as a triage tool, not for King County, not for
22 anybody else. Criteria-Based Dispatch was the

1 product that we wanted them to use, but because
2 of those legal issues, which I'm not sure if
3 you've read in the documentation, those were
4 worked out, and we gave a license to United Arab
5 Emirates to use Criteria-Based Dispatch. So
6 Public Safety Net, those six pages, went
7 nowhere.

8 MR. NOTTINGHAM: So King County
9 authorized the United Arab Emirates to use
10 something.

11 THE WITNESS: Criteria-Based Dispatch,
12 yes.

13 MR. NOTTINGHAM: This has got nothing
14 to do with you. I mean, in other words, you
15 happen to be an employee of King County, and you
16 were involved perhaps in that space or in that
17 type of work, but I just -- what I'm a little
18 struggling with, Ms. Subido, is the lack of
19 boundaries or lines between public service and
20 non-public service, things you do when you're at
21 work for a county or a District or a state or a
22 federal government, King County, DC, and things

1 you do in your own time. The conflation of we
2 and it's a little confusing. You understand?
3 What's the primary reason people seek trademark
4 protection for a name or an image?

5 THE WITNESS: Just to prevent others
6 from using that name, I believe. I thought that
7 was it, but apparently you have to have a
8 product to give them at the end in order to
9 actually have it be officially trademarked,
10 which we had those six pages. There was, we
11 didn't, I hadn't worked on Public Safety Net
12 since we developed it in 2004. But the District
13 employees kept referring to DC Net as Public
14 Safety Net, so there was confusion there.

15 I hope I can answer your question about
16 the boundaries. So we had a country who came to
17 us and wanted to use our program at King County.

18 When I say us, I mean King County when I worked
19 there. I was there from 2002 to 2020. We often
20 made that happen for agencies outside of state
21 of Washington, outside of the United States. It
22 was used in Finland, Sweden. But because of

1 that legal whatever it was, we were not going to
2 be, King County was not going to be able to
3 license the United Arab Emirates with Criteria-
4 Based Dispatch. So as you can imagine, the two
5 people, myself and the senior paramedic
6 instructor, who had heard how these calls were
7 being managed by the United Arab Emirates
8 without any triage program, we were sickened by
9 the fact that there were many times these people
10 were calling for help, and they could have
11 gotten help. So as you can imagine, people that
12 know how a program works, you can Google
13 Criteria-Based Dispatch. The research shows it
14 works. It helps people. It gains survivors of
15 cardiac arrest. You can survive a traumatic
16 gunshot wound using these instructions. So you
17 can imagine how we felt with the people that
18 really needed the help weren't going to get it.

19 That's --

20 MR. NOTTINGHAM: So, Ms. Subido, would
21 it be fair to say that you had a lot --
22 personally you had a lot invested in that name?

1 THE WITNESS: In Criteria-Based
2 Dispatch or Public Safety Net?

3 MR. NOTTINGHAM: Public Safety Net.
4 This was personal -- very personally important
5 to you.

6 THE WITNESS: It was important to me
7 because I wanted there to be something free for
8 any agency, whether it was a little town in
9 Alabama or a whole other country. That's why it
10 was important to me.

11 MR. NOTTINGHAM: Would you agree that
12 the large majority of trademark applications are
13 connected to a pecuniary interest? Somebody
14 goes to the trouble and expense of trademarking
15 a name or likeness image because they want to
16 protect their pecuniary interest in it. If they
17 created it and it might be used and benefit
18 someone, that person ought to be able to benefit
19 as the creator.

20 THE WITNESS: I didn't really
21 understand what a trademark was, to be quite
22 frank with you, when Nick mentioned it. I

1 confused it with copyright, and so I don't know.

2 I thought that we wanted to save the name that
3 we named the product Public Safety Net, the six-
4 page document, and why would we have something
5 that, a program that looked nothing like it, be
6 called the same thing.

7 MR. NOTTINGHAM: And so is it your
8 testimony today that you had no pecuniary
9 interest or expectation of a pecuniary interest
10 in Public Safety Net?

11 THE WITNESS: That is true.

12 MR. NOTTINGHAM: While you were
13 applying for a trademark application.

14 THE WITNESS: Absolutely true, yes.
15 That is true.

16 MR. NOTTINGHAM: Okay.

17 CHAIR HUTCHESON: Any other questions?
18 You have rebuttal?

19 MS. STEWART-MITCHELL: Yeah, we would
20 like to cross, but we would like to request a
21 five-minute recess if we may.

22 CHAIR HUTCHESON: Okay. We're going to

1 take a five-minute break, and then we will have
2 rebuttal from the government. Thank you.

3 MR. RENNER: May I --

4 CHAIR HUTCHESON: Let's be back at
5 1:55.

6 MR. RENNER: Right. May I also present
7 some redirect testimony on the questions that
8 were presented to Ms. Subido? I can do that
9 after the break.

10 CHAIR HUTCHESON: Yeah, the rules don't
11 provide for that, do they?

12 DIRECTOR COOKS: Those, the questions
13 that were asked, came from the board, not from
14 OGE, so there should be --

15 MR. RENNER: I understand, but I think
16 some of those questions didn't quite capture the
17 full truth, and I think three lines of questions
18 would help make sure the board had a correct
19 understanding of the evidence.

20 DIRECTOR COOKS: Redirect is allowed
21 when opposing counsel questions.

22 CHAIR HUTCHESON: Okay. We're going to

1 take a five-minute break. We'll come back at
2 1:55 -- let's say we'll come back at 2:00 from
3 that break.

4 (Whereupon, the above-entitled matter
5 went off the record at 1:50 p.m. and resumed at
6 2:00 p.m.)

7 CHAIR HUTCHESON: Okay, we're ready to
8 go back on the record. You had, we had --

9 MS. STEWART-MITCHELL: I wanted to
10 cross.

11 CHAIR HUTCHESON: We want a cross-
12 examination. I'm sorry. Go ahead.

13 CROSS-EXAMINATION

14 MS. STEWART-MITCHELL: Good afternoon,
15 Ms. Subido.

16 THE WITNESS: Good afternoon.

17 BY MS. STEWART-MITCHELL:

18 Q You testified earlier that you were
19 sent a copy of and received training on the
20 District's acceptable use policy. Is that
21 correct?

22 A Yeah, the attachment that Richard

1 referred to, yes.

2 Q Do you have an email confirmation from
3 when you attended that training?

4 A I don't have it, but it should be in my
5 District emails. We don't have all of them yet.

6 Q So, it is your testimony that you
7 received the email confirmation when you took
8 that training?

9 A I don't recall whether I did or not.
10 It was in the January -- it was on January --
11 January of 2000. So I don't recall.

12 Q And you said you hadn't received all
13 the emails yet. What do you mean by that?

14 A Oh, I mean, just the discovery as
15 Richard, or Mr. Renner referred to. We haven't
16 received all the discovery.

17 Q In discovery if for what -- is what I'm
18 getting at. What discovery?

19 A For the whistleblower case.

20 Q Okay. And so you haven't received all
21 the emails. Is it your testimony that a
22 training email confirmation, is at issue in your

1 whistleblower complaint?

2 A I'm not saying that, no.

3 Q It's okay. Great. Thank you.

4 A You're welcome.

5 Q All right. I want you to, if you
6 could, direct your attention to Respondent's
7 Exhibit A.

8 A Okay.

9 Q And I can share it on my screen, one
10 second.

11 A Thank you.

12 Q One moment, I'm almost there.

13 A Okay.

14 Q I'm realizing that I have to call in to
15 share it. One moment.

16 MR. RENNER: If you like, perhaps Ms.
17 Brown here can bring it up for you.

18 MS. STEWART-MITCHELL: Sure, that would
19 be great. Thank you. Ms. Subido, if you could
20 direct your attention to page 3 of that
21 document. It was your testimony that you were
22 trained on this policy, is that correct?

1 THE WITNESS: Yes, it was. It was on
2 the PowerPoint screen when they talked about it.

3 BY MS. STEWART-MITCHELL:

4 Q Can you direct your attention to
5 section 4.312 at the bottom of page 3? And can
6 you read that section of the policy?

7 A Using District technology resources for
8 commercial purposes or in support of for-profit
9 activities or support of outside employment or
10 business activity, for example, consulting for
11 pay, sales or administration of business,
12 transaction, sale of goods or services,
13 including District government technology
14 resources to assist relatives, friends, or other
15 persons in activities.

16 Q Thank you. And can you go back up to
17 the top of the page 3 and read the section
18 header of what that section is called 4.3?

19 A Unauthorized uses and specific
20 prohibitions.

21 Q Thank you. And so in your training
22 did you receive training on that portion of the

1 policy?

2 A I don't recall if it was actually named
3 out. Like I said, it was up on a PowerPoint,
4 and we had discussion about it. So they brought
5 up certain, you know, scenarios or so on, like
6 having a business on the side and charging
7 people using your DC government email, and
8 that's where I first heard de minimis use, and I
9 had to look that up because I didn't know what
10 it was.

11 Q So you testified that you specifically
12 learned about de minimis use in the policy, but
13 that you did not specifically learn about the
14 prohibitions in the policy? Is that your
15 testimony?

16 A I only remember the de minimis use
17 because I didn't know what de minimis use meant.

18 But when I looked it up and they talked about
19 it, I realized it was pretty much the same
20 policy that I've had in my other government
21 jobs.

22 Q Can you direct your attention to page 1

1 of the policy? And can you, for the record,
2 tell me the date that this document was
3 published?

4 A It's 2/22/2021.

5 Q And can you repeat for the record the
6 date that you started your employment with the
7 District?

8 A January 6, 2020.

9 Q Thank you. So now if you could, and I
10 think I'll be able to share this because this is
11 my exhibit, direct your attention to OGE Exhibit
12 1. Are you able to see that, Ms. Subido?

13 A Yes, I am. I think I've seen number
14 one purpose.

15 Q And above that, can you see the name of
16 the policy?

17 A I cannot.

18 Q What about now?

19 A Email use policy.

20 Q And can you tell me the published date
21 of this document?

22 A 2/22 of 2021.

1 Q And it was your testimony that you are
2 not familiar with this policy?

3 A I don't remember seeing it, and the
4 attorney I had at the District for the agency
5 did not provide this to me when I asked about
6 the union's use of DC government email.

7 Q All right, one more thing regarding
8 this document. Can you direct your attention to
9 the bottom of page 4 of this document?

10 A Yes.

11 Q And can you read the name of section
12 5.3?

13 A Prohibited uses.

14 Q Thank you. And then can you read
15 section 5.3.1?

16 A Any purpose that violates a federal or
17 DC government law, code, or policy, standard, or
18 procedure.

19 Q Thank you. And so you testified
20 earlier that you had training on the acceptable
21 use policy?

22 A That I had training in my orientation,

1 yes.

2 Q Any other policies that you had
3 training on?

4 A When there were some online trainings,
5 I believe that had to do with harassment and so
6 on. But other than that, in my mind right now,
7 I can't recall anything specific.

8 Q Okay. And are you aware if there are
9 some policies that the District has in place
10 that you were subject to when you were a
11 District government employee that you may not
12 have had training on?

13 A There could have been. I don't know.

14 Q Thank you.

15 A Okay.

16 Q And one more thing. And, Ms. Brown, if
17 I could enlist your help with this to go to
18 Respondent's Exhibit C. Thank you. Ms. Subido,
19 can you identify again what this document is for
20 the record?

21 A It is the face page for the lawsuit I
22 filed in March of 2023.

1 Q Thank you. And can you take a look at
2 the case caption on the left side and tell me
3 whether the Office of Government Ethics or the
4 Board of Ethics and Government Accountability
5 are listed?

6 A They are not.

7 Q Thank you. And to your knowledge, is
8 the Office of Government Ethics or the Board of
9 Ethics and Government Accountability named in
10 that lawsuit?

11 A It is not to my knowledge.

12 Q Thank you.

13 A Mm-hmm.

14 MS. STEWART-MITCHELL: Thank you.
15 That's it for me on cross. Thank you.

16 CHAIR HUTCHESON: Okay. Is there any
17 redirect? And the redirect would be limited to
18 what Ms. Asia Mitchell asked about.

19 MR. RENNER: Well, first I need to
20 clarify some points that came out in the
21 examinations by the board members.

22 CHAIR HUTCHESON: No, sir. Redirect is

1 limited --

2 MR. RENNER: I want to ask Ms. Brown to
3 bring up Exhibit 31.

4 CHAIR HUTCHESON: No, sir. Ms. Brown,
5 please don't because the redirect is limited to
6 what Ms. Stewart-Mitchell just talked about.

7 MR. RENNER: That's not been my
8 experience in any other tribunal, that --

9 CHAIR HUTCHESON: Well, that's -- that's
10 --

11 MR. RENNER: -- if judges ask questions,
12 we still have a chance to redirect to clarify
13 the testimony.

14 CHAIR HUTCHESON: The redirect is
15 limited to what Ms. Stewart-Mitchell just asked
16 about. So if you want to go forward with that,
17 then we can do that.

18 MR. RENNER: I object because there --
19 there were some --

20 CHAIR HUTCHESON: I understand you
21 object.

22 MR. RENNER: -- impressions given by

1 the board.

2 CHAIR HUTCHESON: Mr. Renner, Mr.
3 Renner, Mr. Renner, third time. The redirect is
4 limited to what Ms. Asia Mitchell just asked
5 about. So do you have any questions that relate
6 to what she asked about?

7 MR. RENNER: May I make a proffer as to
8 what I would ask about?

9 CHAIR HUTCHESON: I'm not interested in
10 that unless you have questions that relate to
11 what she just asked about. That's the
12 definition of redirect.

13 MR. NOTTINGHAM: Chairperson Hutcheson,
14 could I just add? Mr. Renner, I fully
15 understand why as an attorney you would want to
16 rehabilitate your witness, but you called this
17 witness, and so --

18 CHAIR HUTCHESON: Without letting us
19 know per the rules.

20 MR. NOTTINGHAM: -- and you should've
21 known if you called her that she might be asked
22 questions, and she, I think she in some -- I'm

1 not -- she answered them, and she, I don't, I
2 didn't get the sense she needed your help in
3 answering them, but that's, you know, we're not
4 witnesses; we're board members. But if you
5 don't want your witness to be questioned, don't
6 call him or her.

7 MR. RENNER: I'm not trying to erase
8 anything she said. I -

9 CHAIR HUTCHESON: Well, we're -- we're
10 smart people. We can understand what she said.
11 We don't need clarification. So do you have any
12 questions that relate to what Ms. Asia Mitchell
13 just said?

14 MR. RENNER: I do not. No.

15 CHAIR HUTCHESON: Okay. And that
16 sounds like we're at the end of closing
17 arguments. The parties have presented their
18 cases and rested, and we can move on to closing
19 arguments. Under our rules, the government
20 bears the burden of proof or substantial
21 evidence. Respondent bears the burden of
22 producing sufficient evidence to establish an

1 affirmative defense. We will start with the
2 government's closing argument, and then
3 respondent will close, and there will be an
4 opportunity for a brief rebuttal from the
5 government.

6 MS. STEWART-MITCHELL: Thank you,
7 Chairperson Hutcheson. The evidence showed in
8 this matter that Ms. Subido regularly misused
9 her District government email, and that most
10 egregiously, she uses to communicate with real
11 estate professionals regarding buying a home in
12 the District, trademark business, and
13 continuously emphasizing to those who would be
14 responsible for who she bought a house from or
15 whether or not she received a trademark in
16 associating her District government email with
17 those activities.

18 The evidence shows that Ms. Subido used
19 her government email account to communicate with
20 a trademark attorney regarding her personal
21 business. Ms. Subido herself testified that she
22 forwarded personal emails to her government

1 email to remind herself to deal with them, the
2 inference there being that she would deal with
3 those personal matters while she was on her
4 District government time. We ask that based on
5 the whole record, that you find that the
6 respondent violated the code of conduct and
7 impose a fine against her for doing so. Thank
8 you.

9 CHAIR HUTCHESON: Mr. Renner?

10 MR. RENNER: Thank you. Let me start
11 with that last point. There's no basis in this
12 record to say that Ms. Subido was handling the
13 trademark matter on her work time, only that she
14 wanted to be reminded about it while she was
15 working, in part because she was working
16 basically every hour of every day, every waking
17 hour of every day, sometimes even her sleeping
18 hours. So the District got way more than the 40
19 hours a week than it was entitled to of Ms.
20 Subido's time.

21 There's been no evidence at all that
22 she took any action about the trademark issue

1 during work hours. And if I may turn to that
2 Exhibit, Ms. Brown, could you bring up Exhibit
3 31?

4 CHAIR HUTCHESON: This is the closing,
5 though.

6 MR. NOTTINGHAM: Is there an objection?

7 MS. STEWART-MITCHELL: I'm just going
8 to object to the use of an exhibit in the
9 closing. I'm not sure that's appropriate
10 procedurally, but --

11 MR. RENNER: It's in evidence, so it's,
12 I think, fair for comment, and I want to show
13 the board one particular fact about this. Okay.

14 MS. STEWART-MITCHELL: And you're going
15 to testify about the document yourself?

16 MR. RENNER: I am not.

17 MS. STEWART-MITCHELL: Okay.

18 MR. RENNER: I'm going to speak, I'm
19 going to make an argument about what the
20 document says and means. So the top header on
21 this email shows it was sent from
22 publicsafetynet@comcast.net, which Ms. Subido

1 acknowledged was her personal email, and sent to
2 subidocleo@fems. We acknowledge that was her
3 work email. She's the one who sent it to the
4 work email address, and below that you can see
5 that Mr. Palma sent his email to public safety
6 net and not to the District email.

7 Based on this exhibit, there is no
8 evidence that Mr. Palma did have Ms. Subido's
9 work email address. It was Ms. Subido, not Mr.
10 Palma, who sent it to the work address. And -

11 MS. STEWART-MITCHELL: Okay, I just
12 want to object. This is testimony.

13 MR. RENNER: This is argument. It's
14 arguing about what this exhibit means. And of
15 all 41 emails that the District has put into
16 evidence without any objection from us, not one
17 of them is an email from Ms. Subido's work email
18 to anyone about that trademark issue. The only
19 trademark issue here is the email that Ms.
20 Subido sent to her own account for her own
21 personal use while she was at the office. As I
22 mentioned in the opening, this does not

1 represent any misrepresentation about her role
2 to anyone else or any implication that she tried
3 to use her government office for personal use.

4 If I may just connect a couple dots
5 here, you know, she did testify quite clearly
6 that her goal here was to get Public Safety Net,
7 the triage system, available for public domain
8 open source use. And if she had succeeded in
9 that effort, then obviously the District of
10 Columbia, if they had wanted to, could have used
11 it the same as, you know, any foreign government
12 or any other state. It would've been available
13 for everyone to use. This was a public service
14 Cleo Subido was doing because she wanted to
15 share her expertise in public safety management
16 with the whole world so that lives could be
17 saved far away and everywhere. All right.

18 Turning back now to the issues that we
19 had raised in our initial appeal, we had cited
20 specifically the DC residency requirement, which
21 is DC Code § 1-515.03. This code requirement,
22 as Ms. Subido testified, was a job requirement

1 of hers, so her efforts to get housing within
2 the District of Columbia were a necessary job
3 duty for her. Those are not personal emails.
4 Those are fulfillment of her job duties, and
5 they should not be counted as work emails.

6 There's been no testimony or argument
7 from the government about why Exhibit 7 should
8 not similarly be treated as important for her
9 work duties to protect her coworkers from
10 getting an infectious illness.

11 Now, I want to turn to Government's
12 Exhibit Number 1. Ms. Brown, if you could get
13 that up. And we want to turn to section 5.2.9.

14 Here it is. Scroll up to the top of section
15 5.2, if you could, Ms. Brown. Oh, okay. 5.2,
16 Allowable Uses. And then 5.2.9 includes as
17 allowable uses incidental personal purposes
18 provided that such does not directly or
19 indirectly interfere with DC government
20 operation, burden the DC government with
21 noticeable incremental cost, or interfere with
22 the email user's employment or other obligations

1 to the DC government. This is actually a
2 broader personal use.

3 MS. STEWART-MITCHELL: Objection --
4 objection. I just want to renew my objection
5 that counsel is testifying, and counsel had
6 ample opportunity to ask his witness, his
7 surprise witness, about the document and what
8 was in the document.

9 MR. RENNER: I contend this is my
10 argument about what the evidence in the record
11 means.

12 CHAIR HUTCHESON: Okay, Mr. Renner, if
13 you could go ahead.

14 MR. RENNER: Thank you. Even this
15 policy that is put forward here by the
16 government makes clear that incidental personal
17 use is used, and there's been no evidence of
18 interference with DC operations or Ms. Subido's
19 obligations to the government. If anything, she
20 testified about pouring her whole life into this
21 job and for the benefit of the District of
22 Columbia above and beyond what the District was

1 entitled to.

2 All right. I have a few comments to
3 make about the Whistleblower Protection Act.
4 There is nothing in the government's argument
5 that explains why the DC Whistleblower
6 Protection Act would not be applicable to this
7 proceeding, especially when the section I had
8 cited before makes explicit that it does apply
9 to administrative proceedings. Let me see if I
10 can get that up for you --

11 MS. SMITH: You don't need to pull that
12 up. We already looked at it.

13 MR. RENNER: Okay. And as to the issue
14 of what constitutes a prohibited personnel
15 action here at section 1615.52(5A), the
16 prohibited personnel action includes but is not
17 limited to recommended, threatened or actual
18 termination, demotion, counseling, or other
19 failure to take some other favorable action, or
20 retaliating in other manner against the
21 employee. That is a very broad definition. And
22 the DC Whistleblower Protection Act is obviously

1 based on the Federal Whistleblower Protection
2 Act, and I think it's appropriate to draw from
3 federal law in applying these terms. In the --

4 MS. SMITH: And you'll have the
5 opportunity to make that argument in your brief.

6 CHAIR HUTCHESON: Right.

7 MR. RENNER: Oh, would we be permitted
8 to file briefs?

9 CHAIR HUTCHESON: We're going to -- oh,
10 absolutely yes.

11 MR. RENNER: Okay. Well yes, you're
12 right. I can make these arguments in my brief.

13 MS. SMITH: Yes, this is a closing.

14 CHAIR HUTCHESON: Okay. Then the
15 parties are directed to submit findings of fact
16 and conclusions of law, including briefing the
17 issue of how the DC Whistleblower Protection Act
18 applies to this proceeding within 30 days of the
19 date of this hearing. The board will now
20 adjourn the meeting and await for the additional
21 briefing, after which we will consider the
22 record and reach a decision in this matter. We

1 are adjourned at 2:25.

2 THE WITNESS: Thank you for your time.

3 MR. RENNER: Thank you.

4 CHAIR HUTCHESON: Thank you.

5 (Whereupon, the above-entitled matter
6 went off the record at 2:25 p.m.)

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C E R T I F I C A T E

I hereby certify that the attached transcription is to the best of my belief and ability a true, accurate, and complete record of the above referenced proceedings as contained on the provided audio recording.

A handwritten signature in cursive script, reading "Neal R. Gross", is written over a horizontal line.

Transcriber

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