

Sahuarita Municipal Court, Pima County, Arizona

Desiree Capuano,
Plaintiff,
vs.

Patrick Fox,
Defendant.

No. CV2015-00024

TRANSCRIPT OF PROCEEDINGS

Sahuarita, Arizona
December 16, 2015

1 PROCEEDINGS

2

[00:00]

3 THE COURT: This is an unusual circumstance, um, that I allow a
4 telephonic...uh...contested hearing. I'm allowing it because I believe you mentioned that you live
5 in Canada. Is that right?

6 Mr. FOX: That's correct, yes.

7 THE COURT: Okay...so...let me get this volume as loud as I possibly can.
8 I have Desiree Capuano versus Patrick Fox, C-V-2-0-1-5-0-0-0-2-4...and James Pendleton versus
9 Patrick Fox, C-V-2-0-1-5-0-0-0-2-5. We're set for a contested hearing on Miss Capuano's case an
10 Order of Protection, Mr. Pendleton's case an Injunction Against Harassment. Uh, this proceeding
11 will follow...will proceed as follows, um, it's the Plaintiffs' burdens to prove on each of their
12 cases...uh, that the orders should remain in effect. I have the authority to do one of several
13 things. I have the authority either to keep the case, the orders in place, as written; to modify the
14 orders...um, after I've heard testimony and evidence that's been presented, um, or I have the, the
15 authority to dismiss the orders, and it...they're both separate hearings even though we're going to
16 hear them together because we have you on record now. Um. What is it that you are contesting
17 in Miss Capuano's order? Let me read her order to you. The order that was signed by this
18 court...give me just a moment...on July 23, 2015...orders that you not have any contact with Miss
19 Capuano, or residence location, and that any firearms in your possession be transferred to law
20 enforcement upon service. What part of the order are you contesting?

21 Mr. FOX: Um, it would be with respect...well...primarily the firearms.
22 And...with respect to no contact, since we do have a, uh, current, ongoing custody, child custody
23 matter in the Superior Court...um...it would be difficult to have no contact with her since I have

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1 no contact with her since I have to serve [crosstalk] documents on her.

2 THE COURT: Okay, I, I'm going to stop you right now—

3 Mr. FOX: Sure.

4 THE COURT: —because I just heard the word Sup—Superior Court is
5 pending.

6 Mr. FOX: Yes.

7 Ms. CAPUANO: In California.

8 THE COURT: It doesn't matter.

9 Ms. CAPUANO: It's a custody court in California—

10 THE COURT: It doesn't matter. I don't have authority over an injunction
11 —

12 Ms. CAPUANO: Right and, and none of that is concerning the child at all.

13 Um, we still, there is communication as far as hearing dates and custody dates and that all—

[02:31]

14 THE COURT: So it's pending?

15 Ms. CAPUANO: —of that happen...Yeah, all of that is being taken care of
16 separately.

17 THE COURT: Okay, I have no authority over an injunction or an order of
18 protection, in your case an order of protection when there's anything pending in Superior Court.
19 That is why when you come in, my clerks asked you and I asked you in court when I, I'm issuing
20 an order, uh, whether or not there's anything pending in Superior Court between the two of you.
21 If there is, when it comes to child custody, dissolution, paternity, anything like that, this court has
22 no authority on this type of a hearing.

23 Ms. CAPUANO: Well, and that's why we didn't put any kind of protection

1 over G [REDACTED].

2 THE COURT: Over—

3 Ms. CAPUANO: Over the child...in any...we actually discussed that.

4 THE COURT: Okay, you, you don't understand what I'm saying. If there's
5 anything pending in Superior Court, between the two of you, in those types of issues, this court
6 does not have authority.

7 Ms. CAPUANO: I understand.

8 THE COURT: So we were to be notified to transfer these up if that were
9 the situation, but in your case it's in California.

10 Ms. CAPUANO: Correct.

11 THE COURT: So, I can't transfer this up to California.

12 Mr. PENDLETON: We have not been notified—

13 THE COURT: And, hold on, I'm just going to talk to Miss Capuano
14 because this is her case first.

15 Ms. CAPUANO: How do I, as an individual get protection from him then?

16 THE COURT: I can't give you legal advice but all I can tell you is we
17 don't have authority once there's something pending in another, in a higher court, basically...for
18 dissolution, custody, parenting, anything like that.

19 THE COURT: Mr. Fox.

20 Mr. FOX: Yes?

21 THE COURT: Uh, when were you made aware of the pending case?

22 Mr. FOX: The—

23 THE COURT: When did the case become pending?

24 Mr. FOX: Oh, goodness, uh, 2011 it's been going on.

1 THE COURT: Okay. This court does not have authority, uh, to issue an
2 order...in this case, Miss Capuano. I, I'm very sorry about it. I know that you...are concerned,
3 and you have some concerns but I, it, this is the wrong forum to bring this case. It would have to
4 go through Superior Court...if there's something pending...um.

5

6 Ms. CAPUANO: The case was actually final. I, it was finalized...he just
7 reopened it.

8 THE COURT: Okay, reopen, when was it reopened?

9 Ms. CAPUANO: Well, there's a hearing he filed for two weeks ago, and that,
10 that hearing is not set for January. He gave up rights to the child and, and gave sole custody to
11 me, it was finalized in court...over the summer. And he just...requested to change that.

[05:02]

12 THE COURT: Two weeks ago?

13 Ms. CAPUANO: Yeah.

14 THE COURT: Mr. Fox did you just file something two weeks ago? Was
15 this filed after you received the order of protection?

16 Mr. FOX: Um, I request, yes, to modify the current custody and
17 visitation.

18 THE COURT: Was it after you received the order of protection from Miss
19 Capuano?

20 Mr. FOX: Um, honestly, I don't recall.

21 THE COURT: Okay. What would be your need to make contact with Miss
22 Capuano, at all?

23 Mr. FOX: Well, the first and immediate would be to serve a copy of

1 the request that was recently filed in the California case.

2 THE COURT: Okay, but that's not your, you cannot serve her personally.

3 Mr. FOX: Right, right.

4 THE COURT: So you would not be making contact with her. Legal
5 process, um, is, is okay when there's an active order of protection in place. You still are not
6 allowed to make contact yourself, personally, anyways.

7 Mr. FOX: Sure—

8 THE COURT: Proper, proper legal process would not involve you handing
9 something to her.

10 Mr. FOX: Right, right. Um, aside from that I really have no interest
11 in having contact with her so I'm not overly concerned about that, I guess.

12 THE COURT: Okay, well you just said to me that one of your concerns
13 would be the issue with the pending Superior Court and having contact with her.

14 Mr. FOX: Oh, yes, yes, but if I can still serve her and, um, interact
15 with her, uh, at the court hearings, um—

16 THE COURT: You can, you cannot with her at any place...time, at all
17 under, with a restraining order in place. Um, legal counsel can if you have an attorney, legal
18 counsel [crosstalk] would communicate with her directly.

19 Mr. FOX: Right, right.

20 THE COURT: So, and the only other thing would be the court could
21 monitor, um, and, and direct any conversation, it would be directed to the court and she would be
22 within hearing distance if she's in the courtroom but that would pretty much be it.

23 THE COURT: My concern at this point is, um, let me go through the
24 order...So we don't have the child on this restraining order.

1 THE COURT: I, I'm not comfortable proceeding even, because there is
2 something pending. However, this case was set to be heard today, prior to notification to the
3 court that there was something pending, so I'm going to go ahead and hear it.

4 THE COURT: Um, in the case James Pendleton versus Patrick Fox, C-V-
5 2-0-1-5-0-0-2-5, uh, Mr. Fox, what part of that order are you contesting and I will read to you
6 what is re—, what is prohibited from you. You are not to have any contact with Mr. Pendleton;
7 you're not to go to his place of residence, and that is it. Which part of that order do you want
8 dismissed?

[07:37]

9 Mr. FOX: Um, well, I guess it would be the no contact, uh, and
10 the...neither of those if particularly...huge, since I live so far away and I have no interest in
11 returning to the US at this point.

12 THE COURT: Okay, so—

13 Mr. FOX: Um.

14 THE COURT: —your only contest to the, to today, for today would be if
15 you're contesting the order that is in place. Are you contesting having contact with him or his
16 residence?

17 Mr. FOX: Um, yes.

18 THE COURT: So, you want to have contact with him?

19 Mr. FOX: Not at this point. Um, I guess it's, I would phrase it more
20 as I don't want to have a court order prohibiting contact.

21 THE COURT: Well, you are prohibited from contact and unless you're
22 contesting having contact then I'm not going to have a hearing in this case.

23 Mr. FOX: Um, well then I guess I would contest that.

1 THE COURT: Okay so you wish to have contact with Mr. Pendleton?

2 Mr. FOX: Um, yes.

3 THE COURT: Alright. Then this is how we will proceed: It is the

4 plaintiff's burden of proof by a preponderance of the evidence, uh, that the petition, the order

5 should remain in effect, as written. Potentially I would modify, if I heard enough to make that

6 decision. I'll hear first from each of the plaintiffs. You will be given an opportunity to ask them

7 questions. Once they've testified, uh, once I've completed hearing their evidence and their

8 testimony, I'll, I will make a preliminary decision, uh, *prima facie* case showing by

9 preponderance of the evidence that there's enough to proceed with the injunction and order of

10 protection. If so, at that point I will listen to your testimony. I will swear you in telephonically

11 and listen to your testimony and the two of them will then have an opportunity to ask you

12 questions.

13 THE COURT: So let me start with, um, both of you. If I can have, uh,

14 Miss Capuano and Mr. Pendleton raise your right hand, please. Do you solemnly swear/affirm to

15 tell truth, the whole truth, and nothing but the truth?

16 Mr. PENDLETON: I do.

17 Ms. CAPUANO: Yes, I do.

18 THE COURT: Okay, and then I'll start with Miss Capuano, uh, tell us your

19 complete name, spell the, your last name, for the record.

20 Ms. CAPUANO: My name is Desiree Yvonne Capuano, C-A-P-U-A-N-O.

21 Um, I'm requesting an order of protection. Uh, it is my belief that, um—

22 THE COURT: Talk loud and clear so that we make sure everybody can

23 hear.

24 Ms. CAPUANO: Absolutely. It is my belief that, uh, Patrick Fox, also

1 known as Richard Riess, um, is, has an obsession and hatred towards me. Um, he has put up a
2 website detailing information about me. Our relationship ended fifteen years ago.

[10:07]

3 THE COURT: Okay. So, let me explain what your burden of proof is
4 because your, your order is an order of protection. How are you connected to Mr. Fox?

5 Ms. CAPUANO: Uh, we have a child.

6 THE COURT: Okay. So, you have a child in common.

7 Ms. CAPUANO: Yes.

8 THE COURT: And, I'll, I'll ask you to be as specific as possible. Dates,
9 time, what happened that you believe rises to the level of a domestic violence charge.

10 Ms. CAPUANO: Um, I have documentation that he has sent me, um, that is
11 said he intended to hire someone to have sex with me so that he can get intimate photos of me to
12 put on my website. The website that he has created and maintains. He has told our child that,
13 uh, if the risk of jail time were not there that he would shoot me. Uh, physically shoot me. Um,
14 he has, I have no less than three emails where he tells me that he has guns and he shoots guns
15 and he has, um, a gun license. Uh, he was deported from the United States under the name
16 Richard Riess and the gun license is under the name Patrick Fox. And I also have documentation
17 where he shows me a park, in Canada, and tells me that he crosses the border with no legal
18 authorities present...constantly. So, I...am concerned that at any point he could enter the United
19 States with his guns, that he shoots, without any legal, or authority knowing and...clearly the
20 obsession and hatred that he has for me...if...nothing else...will get me to commit suicide...or
21 destroy me, as he said he is trying to do, he would shoot me.

22 THE COURT: When did he say he would shoot you?

23 Ms. CAPUANO: Uh, that conversation was in December.

1 THE COURT: Of what year?

2 Ms. CAPUANO: Uh, 2014.

3 THE COURT: Anything since then?

4 Ms. CAPUANO: Um, yes, there is an email, uh...no threats, like that, but,
5 um...the email with the, um, hatred, um...the threats that have been made are more, um, saying
6 that I will never be able to get a job, um, as long as he's got his website up, doing everything that
7 he can to limit what I can do and cannot do.

8 THE COURT: Okay. You, I have to, I have to stress to you, it's your
9 burden to prove, in your case, with a restraining order, uh, where there's...a connection...um—

[12:32]

10 Ms. CAPUANO: I have—

11 THE COURT: —there has been an act of domestic violence within this
12 preceding year. So, from the date of the injunction that I, or the order of protection that I issued.

13 So—

14 Ms. CAPUANO: Um—

15 THE COURT: So, specific dates and what was, what believe was an act of
16 domestic violence. So—

17 Ms. CAPUANO: Um—

18 THE COURT: —the threat to shoot was...December of last year.

19 Ms. CAPUANO: Yeah. Still within the calendar year.

20 THE COURT: Absolutely. And then, you mentioned him talking to your
21 son about something. When did that happen?

22 Ms. CAPUANO: That was the same conversation. Apparently, they had that
23 conversation about shooting me.

1 THE COURT: Do you know when that was?

2 Ms. CAPUANO: Uh, the email he sent me where he, actually it was in
3 January...of this year—

4 THE COURT: Okay.

5 Ms. CAPUANO: —that he had that conversation and told me about it. I
6 don't know when they had that conversation. He just sent me the email and told me they
7 discussed it. He also told me that, um, that the website will be up until, um, I die [laughing].
8 Um, um, he will keep that going until I'm no longer alive. Um, thought that was interesting
9 wording...for him to use.

10 THE COURT: Anything else?

11 Ms. CAPUANO: Um...[sigh], I, not really, uh, he's not allowed to send me
12 emails anymore, because he was arrested in Canada for criminal harassment.

13 THE COURT: Okay.

14 Ms. CAPUANO: Um, for all of the emails and the stuff he's been doing. Um,
15 so the emails themselves have stopped but he's taken to writing on the website, um, he calls it a
16 blog (INDISCERNIBLE) where, instead of sending the emails to me he, he can then, put them
17 on the website (INDISCERNIBLE).

18 THE COURT: Okay. Do you feel he has any purpose beyond harassment?

19 Ms. CAPUANO: No.

20 THE COURT: Okay. Anything else?

21 Ms. CAPUANO: No.

22 THE COURT: Mr. Fox if you like, would like to ask questions now's your
23 opportunity to ask questions.

24 Mr. FOX: Um, I don't believe I have any questions. No.

1 THE COURT: Alright. Do you have any witnesses that you'd like to call,
2 Miss Capuano?

3 Ms. CAPUANO: Um, for the order of protection, no. Um, we, we have, uh,
4 Officer Montoya here but I think that's more for the harassment than for the order of protection.

5 THE COURT: Okay. So, do you have for your order, because this is your
6 order, do you have any witnesses that you need to call?

7 Ms. CAPUANO: Yeah, I would like to call Officer Montoya.

8 THE COURT: Okay, so Officer I'll have you come on up to the witness
9 stand (INDISCERNIBLE).

[15:01]

10 THE COURT: And then I'll have you raise your right hand, sir. Do you
11 solemnly swear/affirm to tell the truth, the whole truth, and nothing but the truth?

12 Officer MONTOYA: Yes, your honor.

13 THE COURT: Thank you. And, if you would tell us your complete name,
14 for the record, spell your last name.

15 Officer MONTOYA: Yes, my name's, uh, Carlos Montoya. Last name M-O-N-
16 T-O-Y-A.

17 THE COURT: Thank you, sir.

18 Officer MONTOYA: Apologize, I'm a little under the weather, so
19 (INDISCERNIBLE)

20 THE COURT: I'm sorry to hear that. Alright, do you need a tissue or—

21 Officer MONTOYA: No, I'm fine, I'll make due.

22 THE COURT: —anything (INDISCERNIBLE). Okay. Miss Capuano,
23 you can go ahead and ask your questions.

1 Ms. CAPUANO: Um, Officer, Officer Montoya, um, I, I, do you believe that
2 there would be a valid reason to have an order of protection in place?

3 THE COURT: And, and that's not for him to decide—

4 Ms. CAPUANO: I, I don't know what (INDISCERNIBLE)—

5 THE COURT: —that's for me to decide. Well, it's up to you to ask
6 questions but that's...he can't—

7 Ms. CAPUANO: Okay.

8 THE COURT: —answer that. I'm the person who has to decide whether
9 or not you have valid reason for an order of protection.

10 Ms. CAPUANO: Do you feel there is any risk or (INDISCERNIBLE)?

11 Officer MONTOYA: Since, uh, you, uh, first approached me, uh, when I was on
12 patrol (INDISCERNIBLE) been, uh, promoted, uh, to detective, uh, I do have experience in this
13 field. I've been to FBI (INDISCERNIBLE) analysis courses and, uh...um, had a lot of cases like
14 this in domestic violence. Uh, the content of the, uh, website, uh, that is...uh, domain name,
15 uh...desireecapuano, don't know if I—

16 Ms. CAPUANO: Yeah.

17 Officer MONTOYA: —said it right, uh, that is the domain name of, uh, website
18 that is being run by, uh, uh, the defendant, uh, Mr. Fox, due to research he has gone by a different
19 alias also in California prior to being deported, uh, the content of that website in my experience,
20 uh, shows, uh, a...real...i—intending to harass and harm Miss, uh, Capuano's, uh, reputation, uh,
21 when, most alarming part was how he has, uh, linked the website to different, uh, job sites, uh,
22 indeed and, uh, linked in. Which, uh, potential employers have access to, uh, and on the website
23 he, um, spelled out things that are, to me, unusual and harmful to someone's reputation and can
24 cause them harm in, in the future as, uh, their reputation and, uh, getting a job and providing, uh,

1 for their living and household (INDISCERNIBLE) child.

2 THE COURT: Give me an idea of what some of the contents that you're
3 referring to would be.

4 Officer MONTOYA: Uh, I do have some printed out, I, uh, may I read off of it?

[17:30]

5 THE COURT: Sure.

6 Officer MONTOYA: Okay. Uh, on the Desiree Capuano website that is that
7 name of domain name he does speak in third person, uh, acting as Desiree, some of things he
8 says is "I use drugs while I'm at work", "I regularly get high before going to work", "I totally
9 support having sexual relations with my coworkers", uh...on the bottom, uh, he also put a
10 (INDISCERNIBLE), uh, he has a, uh, a sign that is a white pride, world wide, uh, which is a, uh,
11 insignia for, uh, uh, white supremacist group, uh, which with the content and the name Desiree
12 Capuano, uh, he's associating that with her, uh, to, uh, further, uh, I would say, uh, harass and
13 make people think that she is part of a, uh, uh, white supremacist group, (INDISCERNIBLE) my
14 research after being asked (INDISCERNIBLE) this case, I didn't find any, uh, relationship with
15 her to any supremacist or white, uh, faction group in the United States—

16 THE COURT: And Officer, did you tell me that he, that Mr. Fox is the
17 person who you, you discovered is actually responsible for the website?

18 Officer MONTOYA: Yeah. He, uh, I've, uh, looked into, uh, the, uh...I-I-C-A-N-
19 N, who is, which is, that which governs domain names, uh, and discovered that he is the, uh, uh,
20 admin contact and registered contact of the web, of the website. Uh, he does, uh, have specific
21 ownership to the website. Uh, he used a different, he had just recently changed it, the, uh, uh,
22 limited liability corporation of the, uh, registered name, which five months ago was a different
23 corporation which had his name on it. Now it's called Perfect Privacy, LLC. Uh, that change

1 was just recently made on...um...November 23...uh, but the site was created on August 10, 2014.

2 Officer MONTOYA: He continued on the site, stating...anyone, excuse my
3 language, that fucking hires me, don't hire me, whatever, who cares. I don't really need the
4 money. I've got who refers to, uh, her (INDISCERNIBLE) to take care of me and my kids. I am
5 a (INDISCERNIBLE) racist but only towards brown people, Mexicans, Cubans, Guatemalans,
6 blacks, uh...I enjoy telling coworkers about how I used to be a stripper and how we used to get
7 the best coke, cocaine, not the soft drink.

[20:19]

8 Officer MONTOYA: Those are things that he's posted and, uh—

9 THE COURT: How recent are those postings?

10 Officer MONTOYA: Uh, the, they're on the blog, the, that blog was
11 sent...November 23, 2015 was the last update on the blog, itself. It doesn't a specific, uh,
12 (INDISCERNIBLE) domain owner and only the registered owner of the website he can go in
13 and make changes, uh, without getting subpe—subpeonaed I couldn't see the specific changes. I
14 could just get the last updated to the website, uh, so he is constantly updating the website, and
15 several pictures, uh, in my investigation, uh, I, believe that he uploaded the, their, his child, the
16 son they have in common, phone, all the photos onto the website. There's photos of her
17 residence, inside the residence, inside the bedroom. Photos of her and, uh, James together. Uh,
18 just (INDISCERNIBLE) what they've done, their house, their, where they live. He's Google
19 Map and pinpointed her address on the website. Uh, listing her address, along with
20 (INDISCERNIBLE) past employment, uh, on the website, uh, on the website it has drop of
21 original home site, different blogs that he put, uh, down as (INDISCERNIBLE) personal and, uh,
22 the blog types of a recent post are named “of anal sex and cooking oil”, uh, and “just where have
23 all my loving friends gone”, “an open letter to all in, prospective employers you should hire me”,

1 uh, those are some of the blog topics. He also has another drop down menu of pictures, another
2 drop down menu of friends and associates with, uh, he downloaded all her Facebook friends and
3 contacts onto the website. He has another drop down menu of just fun stuff, which is a comp, a
4 compilation of different things, uh...pictures, uh, emails that (INDISCERNIBLE) exchanged.
5 and then, uh, of Apollo Group another drop down menu, which I believe is a past employer of,
6 uh, Miss Capuano. And, uh...and under each drop down there's subsections. It's a very elaborate
7 website that he put in. Someone that has, in my, in my experience, has, uh, has gone to, uh, this
8 extent of, uh, harassing someone is, uh, is...might...might be, uh, scary, and, uh, someone that,
9 uh, (INDISCERNIBLE).

[22:54]

10 THE COURT: Thank you, Officer. Any other, any questions, Miss
11 Capuano?

12 Ms. CAPUANO: Uh, the only, the only, um, other recent thing that again
13 with the white supremacy and racist remarks—

14 THE COURT: Questions for the Officer.

15 Ms. CAPUANO: Oh, no, sorry.

16 THE COURT: So, nothing further for this Officer?

17 Ms. CAPUANO: Um, this is, uh, the hosting location is Burnaby, Canada.
18 The...oh...that it's...oh...[laughing]...yeah. He's also registered the, uh, uh, domain
19 desireetomline, um, which is my maiden name, so he's mirroring that same website—

20 THE COURT: I just need to ask if you have questions for the Officer.

21 Ms. CAPUANO: No, I don't !

22 Mr. PENDLETON: (INDISCERNIBLE)

23 Ms. CAPUANO: Okay, um—

1 THE COURT: Mr. Pendleton, I just have to remind you I can't allow you
2 to represent her, so she has to represent herself.

3 Ms. CAPUANO: Um...no, I don't have any other questions.

4 THE COURT: Okay. Mr. Fox do you have any questions for Officer
5 Montoya?

6 Mr. FOX: No, I don't.

7 THE COURT: Okay. Thank you, Officer.

8 Officer MONTOYA: (INDISCERNIBLE)

9 THE COURT: You may. Any anticipation of recalling the officer?

10 Ms. CAPUANO: Not from (INDISCERNIBLE).

11 THE COURT: What about from Mr., Mr. Pendleton.

12 Mr. PENDLETON: Yes, I anticipate recalling him.

13 THE COURT: Okay. You, why don't we go ahead and have you then ask
14 the questions of him for your case and that way we can proceed. Go ahead.

15 Mr. PENDLETON: Yes, uh, uh, Officer Montoya, uh, so in the, in the process
16 of going through these web pages, uh, as you stated he has recent activity of converting over to a,
17 uh, privacy registrar to, uh, would you assume that's to obfuscate the, uh, the name of the site for
18 these legal proceedings, or future legal proceedings?

19 Officer MONTOYA: Yes, uh, he is prior to, uh, when I was first, uh, brought
20 along to look into this case they di—name, his name was listed under the, uh, admin contact,
21 registered contact, and since then, since they have been changed to, uh, uh, Perfect Privacy, uh, I,
22 uh, know that it's the same website because of a date of, uh, registry and the, uh, mailing address
23 that is, uh, listed under there. And, uh, he has since uploaded a Google doc that if you, uh...type
24 in, say your name or her name it automatically brings up the site. You just Google their names,

1 uh, so, and pictures as well.

[25:23]

2 Mr. PENDLETON: So, I, I guess you, you've lead to that I, I've been, uh, made,
3 made aware of this as well, uh, if you Google for, uh, the words—

4 THE COURT: No, Mr.—

5 Mr. PENDLETON: —G—

6 THE COURT: Mr. Pendleton I'm just going to allow you to ask—

7 Mr. PENDLETON: Ask questions. Okay.

8 THE COURT: —questions regarding your case.

9 Mr. PENDLETON: Okay. Um, uh, I am asking questions regarding my case,
10 so—

11 THE COURT: Okay, go ahead.

12 Mr. PENDLETON: I—if you Google for my name and, uh, and Sahuarita or
13 Tucson, uh, it, I, I've got a printout here I can show the court, uh, it does come up with pictures
14 of both myself, as well as my home, linking to both of these, uh, harassing websites. Uh, do you
15 feel that that harassment is targeted towards me directly?

16 Officer MONTOYA: Yes, I do, uh, the website also mentions, uh, you, uh
17 (INDISCERNIBLE) did in some comments. And also has numerous pictures, uh, which if you,
18 uh, Google doc your pictures, uh, will bring up the website, itself. And, uh, Google your name
19 will bring up the website linking you to the website, uh...Because (INDISCERNIBLE) num—,
20 normal, in ne—, in several postings, uh, your name is mentioned and, uh, referred to, uh, in not
21 so good language...on, on some of the postings (INDISCERNIBLE) blog.

22 Mr. PENDLETON: Fair enough. And, uh, may I have him read something a
23 printout from the website?

1 THE COURT: Sure.

2 Mr. PENDLETON: Could you please read the, uh, highlighted portion of that
3 for me?

4 Officer MONTOYA: Okay. (INDISCERNIBLE) I'm, uh, just, uh, clarify I'm
5 reading, uh, uh, I believe it's, uh, home page of desireecapu (PHONETIC) dot com website. Uh,
6 in the opening of general information it does mention you. It says James has top secret S-C-I
7 security clearance which means he is able to tell me all kinds of juicy national security secrets
8 while we're lying in bed at night.

9 Mr. PENDLETON: And do you believe that that is meant to cause me any sort
10 of, uh, direct personal or—

11 THE COURT: And, I'll just stop you because it's asking for the Officer's
12 speculation.

13 Mr. PENDLETON: Okay. Sorry. Um, so, in, uh...Can I, can I ask him what he
14 thinks that the ramifications of that would be?

[27:34]

15 THE COURT: You're asking for his spec—speculation
16 (INDISCERNIBLE).

17 Mr. PENDLETON: Okay. So again, on, on that web page, uh, that you have in
18 front of you, does it have my photograph as well as my home address.

19 Officer MONTOYA: Yes, it does. The (INDISCERNIBLE) the, the, uh, site
20 does list your, it has photos of you and your address, uh, on the website.

21 Mr. PENDLETON: And, in your past experience, does having those sorts of
22 materials, since you have had training in this area and experience with domestic abuse, so those,
23 does that present a risk to me, in your past experience?

1 Officer MONTOYA: In general just, uh, at...(INDISCERNIBLE) looking at it,
2 no, but with accumulation of other things that he's done, they, with...placing you in the same
3 content as Desiree Capuano I would be, in my experience, I would be concerned.

4 Mr. PENDLETON: And, and, and since you have gone through FBI behavioral
5 training, do you feel that there, uh, that his continued act—, that his actions without an injunction
6 of harassment will continue? Do you feel that he has a stable personality?

7 Officer MONTOYA: I, I cannot, uh—

8 Mr. PENDLETON: Fair enough.

9 Officer MONTOYA: —(INDISCERNIBLE) to that, I'm not a psychiatrist or a
10 doctor, uh, about his personality, uh, (INDISCERNIBLE), first question, uh, he has been in
11 contact, he has been contacted, uh, by the, uh, Canadian Mounted Patrol, which I have had
12 contact with, uh, and asked to remove the site, advising him that this content does, uh, uh, is
13 offensive. And without being asked by Mounted Patrol, uh, of Canadian, and myself and him not
14 doing so, uh, does show me that he has no intentions of removing it without a court order.

15 Mr. PENDLETON: Um, I think that really covers everything that I have. Um,
16 the, uh, I have, in the past, uh, contacted his, uh, domain registrant, uh, who informed him
17 through their abuse department that, uh, that, uh—

18 THE COURT: (INDISCERNIBLE) don't testify. You (INDISCERNIBLE)
19 —

20 Mr. PENDLETON: I, I, I, I'm not testifying, um, but I, I would like you to, uh,
21 to go ahead and, uh...I guess what I'm getting at is, um...Did you see the, uh, the posted email
22 from the domain registrant, that was sent to him regarding the abuse on the website?

23 Officer MONTOYA: Yes, I did.

24 Mr. PENDLETON: Does that contain your name?

1 Officer MONTOYA: Yes, it does.

2 Mr. PENDLETON: Does that show a disregard and an intent to continue?

[30:03]

3 Officer MONTOYA: Yes, it does.

4 Mr. PENDLETON: No further questions.

5 THE COURT: Okay. Mr. Fox, do you have any questions for Officer

6 Montoya after hearing these most recent questions?

7 Mr. FOX: No, I don't. No.

8 THE COURT: You are excused. Any anticipation of recalling him?

9 Mr. PENDLETON: I, I don't believe so.

10 THE COURT: Okay. Thank you, Officer. Any other witnesses, Miss

11 Capuano?

12 Ms. CAPUANO: I do not have—

13 THE COURT: Okay. So, on your case I do find based on the testimony
14 and evidence presented today reasonable cause to believe the defendant has committed an act of
15 domestic violence during this preceding year. Which is a preliminary finding and means we
16 would proceed to Mr. Fox.

17 THE COURT: Before we hear that I think we should go ahead and hear
18 from Mr. Pendleton, as well, on his injunction request, um, I'll have you stand and raise your
19 right, well, I already did. I swore you in. I'll just remind you (INDISCERNIBLE). Um, how do
20 you know Mr. Fox?

21 Mr. PENDLETON: So, this, uh, this hearing here actually constitutes the first
22 interaction that Mr. Fox and I have ever had. Um, Mr. Fox, upon finding out that, uh, Miss
23 Capuano was, uh, staying at my residence, uh, immediately began, uh, what I deem to be

1 unnecessary surveillance of my person, uh, which I have, uh, in emails that he sent to Miss
2 Capuano, stating that he has gone through my LinkedIn and all of my social media accounts.
3 And, uh, further he started to surveil (PHONETIC), uh, my contacts through LinkedIn and, uh, I
4 actually have, uh, evidence and, uh, one of the contacts here with me, uh, showing that he went
5 to their LinkedIn profile, as well. Um, he has then taken, uh, media and, uh, intellectual property
6 that I possess, from said site, uh, sites, and reposted it and reposted it on, uh, this defamatory,
7 harassment website. Um, Mr. Fox, in his—

8 THE COURT: Give me some idea of this timing. When did this happen?

9 Mr. PENDLETON: Uh, so all of this really started with me, uh, in July. About
10 the time that his son returned from their, uh, their trip up there to Canada.

11 THE COURT: July of this year?

12 Mr. PENDLETON: July of this year, 2015, yes ma'am. Um, uh, upon his
13 return, um, Mr. Fox obviously because of this, uh, ongoing harassment and web page, had been
14 given a post office box for the address in the area, to reach Miss Capuano. Uh, unsatisfied with
15 that he, uh, he used other resources which he did not get from his, uh, from his son, to, uh,
16 attain my location. Uh, presumably that is from the GPS in his son's phone, as, uh, there is
17 realistically no other plausible explanation for how he would have tracked the, uh, location. Uh,
18 in the email from him, he states that he has tracked the location, or, indicates that he has, at least,
19 on multiple different occasions—

20 THE COURT: Your home?

[32:51]

21 Mr. PENDLETON: To my home. Uh, so he has trend, uh, through tracking
22 movements of another individual, uh, used that to track my location. From that, uh, he seems to
23 have discerned the GPS location, looked up the address, my name is a matter of public record,

1 associated with the address. Uh, from there he has taken photographs from (INDISCERNIBLE),
2 which is a legal website for tracking real estate, and he has posted those on his website. Um, he
3 put my address up, on his website. Uh, he put my home phone number up on his website. My
4 photograph up on his website. And, uh, and in emails to, uh, Miss Capuano he has actually, uh,
5 created, or alluded to threats towards my, uh, towards my clearance which, uh, affects me
6 professionally, on the front page of the website which I just had the officer read. Uh, he
7 mentions my, uh, top secret clearance and in the third person, while pretending to be Miss
8 Capuano, uh, infers that, uh, I would reveal national security secrets, uh, in bed or otherwise that
9 is not the case. Uh, I believe that his intent is to, uh, isolate Miss Capuano by attacking both
10 myself and others, uh, in an intent, classic narcissistic, user behavior, uh, to make her feel
11 hopeless and, uh, basically de-empower (PHONETIC) her. Uh, so his harassment towards me is
12 a means to an end, which he has already showed an obvious obsession towards Miss Capuano.
13 An unhealthy one. Uh, he has also stated in an email to Miss Capuano, uh, which affects me, by
14 the way, uh, that he could not, I don't have it right in front of me, but essentially, I can find it if
15 you need me to find the exact wording, by the way. He says that, uh, when brought to the
16 attention that putting the address and photographs up online present, uh, endangerment for their
17 mutual child, as well as her and others in the household, he essentially states that, uh, he couldn't
18 possibly be held responsible if an, pardon my, uh, vernacular here, angry Mexicans broke in and
19 caused harm to anyone in the household. Uh, I take that as a threat on my person and, uh, as a
20 threat on everyone residing in my household. Um, [laughing] I, I have a stack of paperwork
21 here. I could continue to go on but, uh, essentially he has reposted my resume, uh, in an effort to
22 discredit me professionally. Uh, he's threatened the, uh, security clearance that I hold which is
23 my profession. And, uh, I have had no contact with, uh, Mr. Fox, and I have done nothing to
24 provoke such actions. Uh, the most that I have done is file this injunction, as well as contact his

1 domain provider in the hopes of, uh, having the site taken down. His immediate response was,
2 of course, to repost that, uh, in a blog titled "James' attempts to get this site taken down". Uh—

[35:59]

3 THE COURT: What's the date on that? Is there a date on that?

4 Mr. PENDLETON: Uh, yes, that is August 16, 2015.

5 THE COURT: So after this injunction was issued?

6 Mr. PENDLETON: Uh, yes, ma'am. I do not know if it was before he received
7 it or not, but it was certainly after the injunction was received. Uh...I can read from the blog, if
8 you'd like. Uh, he has posted my email to the, uh, abuse site. And, uh, it says that registrant,
9 web dot com, has received the complaint below regarding website activities associated with your
10 domain name desireecapuano dot com. Please take a moment to review the complaint below and
11 respond directly to the complaint to address any issues to resolve the complaint. Uh, we thank
12 you, fraud and abuse, from web dot com. And, below, stated is, is my email outline the, uh, uh,
13 roughly the harassment and we feel that this is harassed. Um, his, uh, his blog, again, uh,
14 pretending to be Miss Capuano, uh, states anybody with half a brain should realize, uh, should be
15 able to realize fairly quickly that this site is not maintained by me. Even though the content is
16 generally written in the first person, there's a very clear statement at the bottom of each page,
17 clarifying that the site was created and is maintained by the immediate family of Desiree
18 Capuano. Since Richard and I are still legally married, he is my legal, uh, he is my immediate
19 family. Uh, that statement is actually not true. Their marriage has been annulled.

[37:30]

20 THE COURT: Oh, I don't need you to represent her—

21 Mr. PENDLETON: Okay. I know. That's fair.

22 THE COURT: —just your own case, please.

1 Mr. PENDLETON: Okay. Uh, for some time now I've been trying to get this
2 site taken down because I don't really want all the ugly truths about me made public knowledge
3 on the Internet. Unfortunately, though, since there is no libel, no defamation of character on the
4 site, since everything on the site is actually true and correct — which in and of itself is not a true
5 statement — I haven't been able to pursue any legal avenues. Sure, I've filed claims and charges
6 of harassment against Richard, but since he's not actually harassing me, uh, publishing the truth
7 about someone does not amount to harassment, uh, so my latest attempt has been to have James
8 file a harassment complaint with Richard's domain registrar. That is fundamentally untrue. Uh, I
9 took those actions on my own. Uh, unfortunately, since the website is not actually being hosted
10 by a provider, it's running on one of Richard's own servers in his own data center, there's not
11 much that can be done, uh, in that respect. Uh, here we have an admission that he is hosting
12 these from his own servers in his own house, on his Internet service provider. Uh, and I suppose
13 even if the domain registrar did refuse to provide the domain registration service, Richard could
14 simply move the domain to another registrar. Uh, this goes to intent to continue harassment. Uh,
15 and even if the Canadian authorities did tell him to take down, the site down, in complete
16 violation of his rights to free speech, uh, he could simply move it to another server which is not
17 located in the US or Canada. Uh, essentially going to the fact that he will continue this
18 harassment, uh, by international means if necessary. Uh, I can continue reading but I believe that
19 goes to prove my point.

20 Mr. PENDLETON: Uh, he mentions me in multiple ways in the third person,
21 pretending to be Desiree in a defamatory way. Uh, I deem that to be personal harassment.

22 THE COURT: Anything else?

23 Mr. PENDLETON: [laughing] I could go on but I won't waste the court's time.

24 THE COURT: Mr. Fox do you have any questions for Mr. Pendleton?

1 Mr. FOX: Um, not questions. No.

2 THE COURT: Okay. Mr. Pendleton do you have any witnesses that you'd

3 like to call?

4 Mr. PENDLETON: Uh, yes, at this time I would actually like to call my, uh, my

5 mother, Wendy Pendleton.

6 THE COURT: Okay.

7 THE COURT: Good morning.

8 Ms. PENDLETON: Good morning.

9 THE COURT: Before you're seated I'll have you raise your right hand,

10 please. Do you solemnly swear/affirm to tell the truth, the whole truth, and nothing but the

11 truth?

12 Ms. PENDLETON: Yes, your honor.

13 THE COURT: Okay. Please be seated. Start by telling us your complete

14 name for the record, and spell your last name, if you would.

[40:01]

15 Ms. PENDLETON: (INDISCERNIBLE)

16 THE COURT: Okay, lean forward—

17 Mr. PENDLETON: Due—

18 THE COURT: Yes.

19 Mr. PENDLETON: Due to the nature of the harassment and, uh, Mr. Fox

20 posting everything that he gets on, uh, on the website, uh, (INDISCERNIBLE) her write that

21 down so that he is not privy to that information?

22 THE COURT: I hate to say it but he has the right to pro—, know who is

23 accusers are and if it's you, um—

1 Ms. PENDLETON: Um, I'm okay with that.

2 Mr. PENDLETON: Sorry.

3 Ms. PENDLETON: Um, Wendy Pendleton. P-E-N-D-L-E-T-O-N.

4 THE COURT: Thank you, Miss Pendleton. You can have a seat, as well.

5 Ms. PENDLETON: Okay.

6 THE COURT: Okay? And you have Miss Pendleton?

7 Mr. PENDLETON: Yes, ma'am. Uh, I also have, uh, something for her to, uh,
8 to look at (INDISCERNIBLE).

9 Ms. PENDLETON: I, I, I don't have a problem stating my name because he has
10 already stalked me on LinkedIn. So that, that's what I'm attesting to. Um, to be perfectly honest
11 (INDISCERNIBLE) attorney.

12 THE COURT: Okay, thanks. (INDISCERNIBLE) I have to just allow Mr.
13 Pendleton to ask you questions (INDISCERNIBLE).

14 Ms. PENDLETON: Okay.

15 Mr. PENDLETON: Alright. So, what is that that you're holding right there?

16 Ms. PENDLETON: Uh, this is a copy of, in July, uh, of my LinkedIn page,
17 whose viewed my profile.

18 Mr. PENDLETON: Correct. And, and who is the number one view on your
19 profile, there off to the left?

20 Ms. PENDLETON: Uh, name's Patrick Fox. Software engineer, project lead. I
21 believe it says one week ago. And this is dated July 24.

22 Mr. PENDLETON: Is there any reason why, uh, Mr. Patrick Fox would have
23 reason to go to your LinkedIn profile?

24 Ms. PENDLETON: Uh, none whatsoever.

1 Mr. PENDLETON: Uh, have you sought legal counsel regarding the fact that,
2 uh, Mr. Fox has visited your profile, uh, after seeing actions towards myself and Miss Capuano?

3 Ms. PENDLETON: Uh, yes, I did, as a matter of fact. I have, I have an
4 excellent attorney who's represented me in a number different, uh, cases, uh, regarding business
5 and so I consulted him regarding this on a personal note and he advised me to, uh, offer you all
6 the moral support that you need but to keep out of it because he could be very detrimental. He's
7 re—, he's been involved in cases like this before, uh, where he has, uh, put in place orders of
8 protection, only to arrive or his home to, uh, have windows broken and graffiti spray painted all
9 over his house—

10 THE COURT: Okay. I'm going to, I'm going to stop you because we're
11 going beyond today's—

12 Ms. PENDLETON: I'm sorry. He, he advised me not to get involved.

13 THE COURT: Okay.

14 Mr. PENDLETON: And, and, and yet you chose to become involved. Why did
15 you be—, choose to, uh, come here and testify today?

[42:30]

16 Ms. PENDLETON: Because I think insane and, and, uh, insane people, people
17 need to be stopped.

18 Mr. PENDLETON: Thank you.

19 Ms. PENDLETON: And I, I've witnessed what it has done to both of you.

20 Ms. CAPUANO: Nice.

21 Mr. PENDLETON: Sorry. Thank you. I have no further questions.

22 THE COURT: Okay. Mr. Fox, do you have any questions?

23 Mr. FOX: Um, yes, just one. Um, is your, or at the time that I viewed

1 your LinkedIn profile, was it publicly accessible on the Internet?

2 Ms. PENDLETON: Of course. Uh, LinkedIn is, uh, a network and obviously,
3 uh, for business purposes anyone that is a professional, uh, is on LinkedIn. But you had no
4 reason to access my LinkedIn profile.

5 Mr. FOX: Okay. Um, no further questions.

6 THE COURT: Okay. Thank you. Any other witnesses?

7 Mr. PENDLETON: No, ma'am.

8 THE COURT: In this case I am also, uh, going to make a preliminary
9 finding, um, a prima facie case has been made by a preponderance of the evidence, reasonable
10 evidence, of harassment, of plaintiff by the defendant does exist. Mr. Fox, what that means is
11 that now I will hear from you, so, um, where ever are at, if you would raise your right hand and
12 do you solemnly swear/affirm to tell the truth, the whole truth, and nothing but the truth?

13 Mr. FOX: I do.

14 THE COURT: Tell me your complete name for the record. Spell your last
15 name.

16 Mr. FOX: Patrick Henry Fox. F-O-X.

17 THE COURT: Are you also known as Richard Riess?

18 Mr. FOX: Previously, I was. yes.

19 THE COURT: Okay. If you would, pronounce that name, uh, and spell the
20 last name, as well.

21 Mr. FOX: Uh, Richard Riess. R-I-E-S-S.

22 THE COURT: R-I-E-S-S?

23 Mr. FOX: Yes.

24 THE COURT: Okay. And, I'm going to proceed by calling you Fox

1 because you are on my orders as Fox, uh—

2 Mr. FOX: Yes.

3 THE COURT: —Tell me why you believe I should dismiss these orders,
4 today.

5 Mr. FOX: Okay, well, first, with respect to Miss Capuano's claims,
6 um, I guess the most egregious one being that I had stated at some point that I would shoot her,
7 um, I think that that, or I believe that that statement is completely false. Um, I've never uttered
8 any kind of threat toward her. And any time the topic of my firearms or my firearms license has
9 ever come up in any emails or other communication, I've always been very clear that I'm not
10 mentioning firearms to be in any way threatening, but only as a matter of course or a statement
11 of fact. Um—

[44:58]

12 THE COURT: Give me an example. How would you state in any
13 correspondence with Miss Capuano, um, as a statement of fact, the fact that you have and
14 possess firearms? How would that just come up?

15 Mr. FOX: Um, well, one, one circumstance, um, in which I have
16 brought up the firearms is, she, she has often accused me of being very deceitful and dishonest,
17 um, and living under fake names, et cetera. And, so, I pointed out to her that here in Canada, in
18 order to obtain a firearms license, you have to go through a very extensive background check,
19 and so if there was anything dishonest about me, um, that would have come up and I would not
20 have been able to obtain the firearms license. Um, and then I would include with that, a
21 statement that I'm mentioning the firearms license only to make this point, not to, uh, provide
22 any kind of intimidation.

23 THE COURT: Okay. Go ahead.

11 THE COURT: Let me, let me before you go any further Mr. Fox, define
12 for you what Arizona law says harassment is. Harassment is a series of acts over any period of
13 time, directed at a specific person, that would cause a reasonable person to be seriously alarmed,
14 annoyed, or harassed, and that in fact seriously alarms, annoys, or harasses the person, and serves
15 no legitimate purpose. So, in Miss Des—, in Miss Capuano's case she has, she has the burden of
16 proving domestic violence. One, one act of domestic violence would fall under harassment. In
17 Mr. Pendleton's case, he has the burden of proving harassment. So, in, in both cases, tell me how
18 any of your actions, aimed at either Miss Capuano or Mr. Pendleton, serve a legitimate purpose.

[47:45]

22 THE COURT: So to give credit—

23 Mr. FOX: (INDISCERNIBLE)

1 THE COURT: —to give credit to her, as writing this, these blogs, on this
2 website, to give her credit, um, as if these were words coming from her, how does that serve a
3 legitimate purpose?

4 Mr. FOX: Well, writing them in the first person is intended more for
5 entertainment value. Um, each page does contain a disclaimer, at the bottom, clarifying that the
6 content of the site is not, uh, created by Miss Capuano.

7 THE COURT: So, what, tell me what your legitimate purpose in this
8 website is.

9 Mr. FOX: Um, to inform any interested parties, um, who may want to
10 know, uh, the realities of the things that Desiree has done, uh, over her life.

11 THE COURT: And the purpose in posting her home address, or Mr.
12 Pendleton's home address, and the Google map of the home address is what? What's the
13 legitimate purpose there?

14 Mr. FOX: In the event, um, parties such as creditors, uh, are trying to
15 locate her, then that would assist them.

16 THE COURT: Let me ask this question in reverse. If this were someone
17 doing all of this to you would you feel that there was a legitimate purpose behind this kind of
18 website (INDESCERNIBLE) venue?

19 Mr. FOX: I firmly believe that if I have done bad or inappropriate
20 things and those things become public knowledge then I have to accept the responsibility for my
21 actions. So, I would not be upset, well maybe I'd be upset, but I wouldn't, um, I would certainly
22 understand and accept it.

23 THE COURT: Would you feel harassed harassed if pictures of you were
24 posted on the—

1 Mr. FOX: I would no.
2 THE COURT: —site. You would not. Would you feel harassed if your
3 home address and your employer's information were posted on a public website?

[50:02]

4 Mr. FOX: Again, no I would not, because—
5 THE COURT: Would you feel harassed if you had security clearance and
6 these types of things were posted against you and it could potentially cause you the loss of your
7 job?

8 Mr. FOX: Well, with respect to the security clearance, let me just say,
9 um, the information that was posted regarding, uh, Mr. Pendleton was obtained from the Internet
10 to begin with. It was already publicly posted on the Internet by himself.

11 THE COURT: Okay, so let me—

12 Mr. FOX: um

13 THE COURT: —let me ask you this: If you were in Mr. Pendleton's case,
14 in his shoes, would you feel that he were not harassing you, by including you in this website and
15 directing yourself to him?

16 Mr. FOX: Um, given that it is published on the Internet merely as
17 statements of fact, and that no allegations are made against, uh, Mr. Pendleton, no, I would not
18 feel harassed.

19 THE COURT: Okay. Um, anything else I should hear from you, Mr. Fox?

20 Mr. FOX: Um, no. I believe that, uh, that should be sufficient. The
21 main thing was whether or not any threats of harm have ever actually been made. Oh, um, I
22 guess, well I guess I should state, just as a matter of record, um, because I in Canada, now I, I
23 understand that the order required me to surrender my firearms but, uh, I've discussed it with the

1 RCMP already and they've advised me that the current order, or any order of protection issued in
2 the United States has no legal weight in Canada, so, I've not, in fact, surrendered by firearms
3 because I've not legally been required to do so.

4 THE COURT: Well, legally, here in Arizona and the United States you are
5 prohibited from possessing any firearms at this point.

6 Mr. FOX: Yes.

7 THE COURT: Okay. So, and you are also, legally, not allowed to make,
8 reach into the United States to make contact with any of these persons named in these orders.
9 You do understand that?

10 Mr. FOX: Yes.

11 THE COURT: Okay. Alright, at this point I'll ask Miss Capauno, do you
12 have any questions for Mr. Fox?

13 Ms. CAPUANO: No.

14 THE COURT: Okay. And Mr. Pendleton, do you have any questions for
15 Mr. Fox?

16 Mr. PENDLETON: Absolutely [laughing]. So, obtaining from the Internet you
17 do understand that under the DMCA, which is the Digital Millennium Copyright Act, the
18 intellectual property resides with the person that's, uh, that originates the document. Therefore,
19 that intellectual property actually belongs to me. Your reposting of that not only violates the, uh,
20 agreements of all of said sites, which have been reviewed. But it also interferes with my
21 copyright and my intellectual property holdings as the originator of said documents. Further, I
22 am the subject of those photographs—

[52:46]

23 THE COURT: Bu—, ask just one question at a time. Do you understand

1 that Mr. Fox?

2 Mr. PENDLETON: Do you understand that?

3 Mr. FOX: Um, I understand what he's saying but I don't completely
4 agree with it. I think, uh, there's some inaccuracies in it.

5 THE COURT: Inaccuracies in his recitation of the statute or th—, the law
6 that he's re—, reciting to?

7 Mr. FOX: Um, well, whether or not he is the copyright holder of the
8 information.

9 THE COURT: Okay. Any other questions, Mr. Pendleton?

10 Mr. PENDLETON: Yes, um, just for the record that is actually how it works
11 here. Uh, uh, do you also understand that as the subject of the, uh, the photos which you have
12 pic—, uh, put up there of me, uh, I actually have (INDICERNIBLE) rights to publicity of those
13 images? And you've violated that.

14 Mr. FOX: Um, again, I would say that I understand what you are
15 saying, though, I don't entirely agree that it is correct.

16 Mr. PENDLETON: Alright. Uh, so you, you've also stated that you would not
17 feel harassed if, uh, pictures of you, your name, or your address were, uh, published on the
18 website. Uh, in posting the injunction against harassment that you were served with, you
19 blacked out your name and pertinent details. Uh, if you don't feel harassed by having your
20 information up on this website, uh, why is your picture, your personal details, and that of your
21 shared son not on the website?

22 Mr. FOX: Because I feel embarrassed and ashamed that—

23 Mr. PENDLETON: You should.

24 Mr. FOX: —I have been involved with a person like Miss Capuano

1 and that is why I don't want to be associated with her or with that website. Not because I would
2 feel harassed.

3 Mr. PENDLETON: A—a—and then in, in those actions, uh, do you not also
4 feel that, uh, you stated that finding something that is true you would have to, uh, you, you, if
5 you have done bad things, you would have to own up to them and accept them, so your
6 embarrassment aside, do you not feel that doing that to others constitutes annoyance or
7 harassment?

8 Mr. FOX: I do not. No. Oh, sorry, sorry, let me clarify, um, I do not,
9 comma, no. I didn't mean know, as in K-N-O-W.

[55:06]

10 Mr. PENDLETON: Thank you for the clarification. Do you have any intention
11 of ceasing this harassment now or in the future?

12 Mr. FOX: Um, I have no intention of discontinuing or of removing
13 the website from the Internet or of, um, gathering information that may relate to the safety and
14 security of G [REDACTED] while he is in Desiree's care and in your home, and there is a custody matter
15 going on. And, if there were a court order, um, with appropriate jurisdiction, that required me or
16 compelled me to remove the site then I would do so.

17 Mr. PENDLETON: And if said court order with proper jurisdiction were served
18 to you, uh, would you cease trying to put the website and other activities up, uh, internationally
19 to skirt the law?

20 Mr. FOX: Um, if the, hmm—, what I would say to that is, if the order
21 was to remove the website, um, then I would simply move it to another jurisdiction, such as
22 another country. If the order was to not engage in maintaining the website, that would be a
23 different story.

1 THE COURT: Mr. Fox, I'm going to interrupt here and—
2 Mr. FOX: Sure.
3 THE COURT: —and ask how you do not see this as harassment. Because
4 I see clear harassment. This is the judge speaking. I don't even know—

5 Mr. FOX: Sure, yeah.
6 THE COURT: —if I need to hear any further questions or arguments in
7 this matter. Is there anything else I should hear from you as to how I should not consider this
8 harassing?

9 Mr. FOX: Um, well, I believe that the reason I would not see it as
10 harassment is because if people, if people do things that they're ashamed of and they don't want it
11 to become public knowledge then they shouldn't do those things.

[57:14]

12 THE COURT: Uh, I'm going to leave it at that and I think I've heard
13 enough from everybody today. At this point this is what I'm going to find: I do find evidence in
14 this, in the case of Desiree Capuano versus Patrick Fox, uh, C-V-2-0-1-5-0-0-2-4, clear
15 evidence of, uh, acts of dur—domestic violence during this preceding year, uh, formally I will
16 say harassment, domestic violence harassment, uh, aimed at Miss Capuano from Mr. Fox, uh,
17 with no legitimate purpose other than to harass. I'm going to order it be, this particular remain in
18 effect, Brady law in Ar—in the United States does apply. We will process and per—present a,
19 uh, Brady, uh, notice to the Sheriff. You do have the right to appeal my decision, Mr. Fox. We
20 will provide you with a notice of the right to appeal, um, however, you seem to be pretty savvy
21 on, on how to, to do things so I, I would bet that you could find the notice of right to appeal, uh,
22 on Arizona's website. We will still send that out to you. Since you chose to be here
23 telephonically rather than in person, we cannot provide that to you in person. You have 14 days

1 from today to file your notice of right to appeal. I am going to keep the order in place, as
2 written.

3 Ms. CAPUANO: Your honor—

4 THE COURT: Your are not, you are not to have any contact in any way,
5 shape, or form, uh, with Miss Capuano. You are not to have any contact at her place of
6 residence, and you are not to, uh, possess or purchase any firearms or ammunition. Uh, this is
7 within the state—the United States jurisdiction. This order is valid across the United States.

8 THE COURT: In the case of James Pendleton versus Patrick Fox, C-V-2-
9 0-1-5-0-0-2-5, I do find, um, reasonable evidence of harassment of the plaintiff by the
10 defendant, uh, during this preceding year. You do have the right to appeal my decision. I'm
11 going to keep the order in place. Mr. Pendleton has met his burden of proof by a preponderance
12 of the evidence. You will receive copies in the mail today's order. Other than that, again, you
13 have the right appeal. We'll send you the notice in this case, as well, of the right to appeal, uh,
14 you have 14 days from today's date to appeal. If there is nothing further—we are adjourned.

[59:28]

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