

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

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IN THE MATTER OF:                   :  
  :  
Drane Flannery                       :  
Restaurant, LLC                       :  
t/a The Big Board                     :  
421 H Street NE                     : Summary Action  
Retailer CT                           : Hearing  
License No. 87398                    :  
Case #22-CMP-00006                  :  
  :  
(Violation of Mayor's                :  
Orders)                                :  
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Thursday  
February 10, 2022

The Alcoholic Beverage Control Board  
met via WebEx videoconference, Chairperson  
Donovan W. Anderson presiding.

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
- BOBBY CATO, JR., Member
- RAFI ALIYA CROCKETT, Member
- EDWARD S. GRANDIS, Member
- JENI HANSEN, Member
- JAMES SHORT, JR., Member

ALSO PRESENT:

- SARAH FASHBAUGH, DC ABRA Staff
- WALTER ADAMS, DC OAG
- ANTHONY CELO, DC OAG
- KATIE CHAVERRI, Applicant Counsel
- ERIC FLANNERY, Applicant
- INVESTIGATOR RHODA GLASGOW, DC ABRA
- DR. ANIL MANGLA, Witness

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

2 (10:03 a.m.)

3 CHAIRPERSON ANDERSON: Good morning.

4 We're on the record. Good morning, everyone. As  
5 chairperson of the Alcoholic Beverage Control  
6 Board for the District of Columbia, and in  
7 accordance with D.C. Code Section 25764 of the  
8 Open Meetings Act, I am welcoming you to an  
9 emergency meeting of the Alcoholic Beverage  
10 Control Board.

11 This meeting is being conducted  
12 pursuant to guidance made available by the  
13 District of Columbia's Office of Open Government  
14 regarding electronic meetings held by public  
15 bodies during the public emergency.

16 Pursuant to this guidance, notice of  
17 today's meeting was provided 48 hours in advance  
18 of the meeting on ABRA's website and on the  
19 District's central meeting calendar. The notice  
20 included the time, date, agenda, and call-in or  
21 log-in information for public participation.

22 This electronic meeting is being  
23 posted by a Webex account provided by the  
24 District of Columbia government. Please address  
25 any questions or complaints to the OOG at

1 opengovoffice@dc.gov.

2 My name is Donovan Anderson, and I'm  
3 Chairman of the Board. I would like to introduce  
4 the other members of the ABC Board who are also  
5 participating electronically pursuant to Mayor's  
6 Order 2022-007. Please respond when I announce  
7 your name. Mr. James Short?

8 MR. SHORT: Mr. James Short, present.

9 CHAIRPERSON ANDERSON: Mr. Bobby Cato?

10 MR. CATO: Bobby Cato, present.

11 CHAIRPERSON ANDERSON: Ms. Rafi

12 Crockett?

13 MS. CROCKETT: Rafi Crockett, present.

14 CHAIRPERSON ANDERSON: Ms. Jeni

15 Hansen?

16 MS. HANSEN: Jeni Hansen, present.

17 CHAIRPERSON ANDERSON: Mr. Edward

18 Grandis?

19 MR. GRANDIS: Edward Grandis, present.

20 CHAIRPERSON ANDERSON: The Board has  
21 six members in attendance for the conduct of  
22 business today and that constitutes a quorum.

23 Our first order of business today,  
24 it's a summary suspension Hearing Case Number 22-  
25 CMP-00006, The Big Board, License Number 87398.

1 Ms. Fashbaugh, can you please elevate  
2 the rights of the licensee, the licensee's  
3 attorney, and the government, please?

4 MS. FASHBAUGH: Good morning. Please  
5 standby. Katie Chaverri, your rights have been  
6 elevated. I do not see Eric Flannery. Walter  
7 Adams, your rights have been elevated. And  
8 Anthony Celo, your rights have been elevated.  
9 That is all, Mr. Chair.

10 CHAIRPERSON ANDERSON: Good morning.  
11 Ms. Chaverri, is your client participating today,  
12 ma'am? Oh, he's with you, okay. Good morning.  
13 All right.

14 All right. Good morning, everyone.

15 MR. ADAMS: Good morning, Your Honor,  
16 or Mr. Chairman.

17 MS. CHAVERRI: Ah, there we go, okay.  
18 Sorry, guys. I was trying to communicate that we  
19 were unable to unmute ourselves, but it just --

20 CHAIRPERSON ANDERSON: Okay.

21 MS. CHAVERRI: -- it just worked for  
22 the first time. Sorry.

23 CHAIRPERSON ANDERSON: All right.  
24 Thank you. Okay. Good morning. All right. All  
25 right.

1                   The Board today -- let me -- well,  
2 before -- let me have the parties introduce  
3 themselves for the record. Mr. Adams?

4                   MR. ADAMS: Good morning, Mr.  
5 Chairman, and members of the Board. Walter Adams  
6 representing the District of Columbia.

7                   CHAIRPERSON ANDERSON: Good morning,  
8 Mr. Adams. Do you have co-counsel today?

9                   MR. ADAMS: Yes, I do. We have co-  
10 counsel, Mr. Celo, here.

11                   You can introduce yourself.

12                   CHAIRPERSON ANDERSON: Mr. -- you're  
13 on mute, Mr. Celo. We still can't hear you, sir.

14                   MR. CELO: Any better, Mr. Chairman?

15                   CHAIRPERSON ANDERSON: Yes, we can  
16 hear you now. Can you please introduce yourself  
17 for the record? Please spell and state your  
18 name, please.

19                   MR. CELO: And I do apologize.  
20 Somehow my speaker settings and microphone  
21 setting got switched. Attorney Anthony Celo,  
22 Assistant Attorney General, C-E-L-O. Good  
23 morning, Mr. Chairman and members of the Board.

24                   CHAIRPERSON ANDERSON: Good morning.  
25 Good morning.

1 Ms. Chaverri, can you please spell and  
2 state your name for the record, please?

3 MS. CHAVERRI: Good morning,  
4 everybody. My name is Katie Chaverri, C-H-A-V-E-  
5 R-R-I. I am here on behalf of the licensee, Mr.  
6 Eric Flannery, who is also here in my office with  
7 me.

8 CHAIRPERSON ANDERSON: Can you please  
9 have Mr. Flannery spell and state his name for  
10 the record, please?

11 MR. FLANNERY: Eric Flannery, E-R-I-C  
12 F-L-A-N-N-E-R-Y.

13 CHAIRPERSON ANDERSON: Good morning.  
14 All right.

15 All right. Good morning, everyone.  
16 All right. The Board has before it today a  
17 summary suspension hearing involved in Drane  
18 Flannery Restaurant, trade name, The Big Board,  
19 Retailer's Class CT, located at 421 H Street N.E.  
20 This is Case Number 21-CMP-00006.

21 On January 26, 2022, the Alcoholic  
22 Beverage Control Board reviewed Investigator  
23 Report Number 22-CMP-00006, which contained  
24 allegations that the Respondent was in violation  
25 of D.C. Regulations and Mayor's orders.



1                   As a result of the ongoing  
2 noncompliance through the public emergency, the  
3 Board voted six to nothing on January 26, 2022,  
4 to refer the case to the Office of Attorney  
5 General for consideration of a summary suspension  
6 of the establishment's license.

7                   The Respondent was initially served  
8 notice of this matter by personal service on  
9 January 28, 2022, by Supervisor Investigator Mark  
10 Brashears, and again by electronic mail service  
11 by ABRA employee Danette Walker. Both forms of  
12 services are permitted under 23 DCMR Section  
13 1703. The Respondent requested a hearing on  
14 February 2, 2022, under D.C. Code Section 25826C.

15                   On February 4, 2022, the Respondent  
16 filed a continuance motion requesting a six  
17 weeks' continuance for the purpose amongst other  
18 reasons to retain counsel. The Board through  
19 Board Order Number 2022-046 granted in part and  
20 denied in part the Respondent's continuance  
21 motion.

22                   The Board granted Respondent a one-  
23 week continuance. The Board further in its order  
24 advised the parties that the Board based on the  
25 emergency nature of this case was not inclined to

1 grant any further continuances.

2 Today, the Board will be hearing  
3 testimony from the Office of the Attorney  
4 General, the Respondent, and their respective  
5 witnesses. The purpose of this hearing is so  
6 that the Board can determine under D.C. Code  
7 Section 25826 whether the operations of the  
8 Respondent present an imminent danger to the  
9 health and safety of the public.

10 To that end, the Board asks that the  
11 parties stick to the facts and issues related to  
12 the incident. The facts and issues are those  
13 contained in the summary action notice dated  
14 February 28, 2022, and the investigative report  
15 for Case Number 22-CMP-00006.

16 The Board is only interested in  
17 hearing about these matters that can be used to  
18 establish whether the establishment is an  
19 imminent danger to the health and safety of the  
20 public. The Board will begin this case by  
21 hearing the opening statement from the government  
22 represented by Assistants Attorney General Walter  
23 Adams and Mr. Anthony Celo, followed by opening  
24 statement by Katie Lynn Chaverri on behalf of the  
25 Respondent.

1                   But before we begin with opening  
2 statements, are there any procedural matters the  
3 parties would like to bring to the Board's  
4 attention? Mr. Adams?

5                   MR. ADAMS: At this time, Mr.  
6 Chairman, the District is not aware of any  
7 procedural matters. The only thing that we will  
8 say is that the District does have -- we filed an  
9 exhibit list where we intend to have at least  
10 five witnesses testifying on our behalf.  
11 However, outside of that, there are no other  
12 procedural matters.

13                   CHAIRPERSON ANDERSON: Thank you.

14                   Ms. Chaverri? And I'm -- pronounce  
15 your name again for me one more time so that I  
16 make sure that I get it right moving forward,  
17 please?

18                   MS. CHAVERRI: No, Mr. Anderson, you  
19 said it perfectly. It's Chaverri.

20                   CHAIRPERSON ANDERSON: Chaverri.  
21 Thank you.

22                   MS. CHAVERRI: Yes. And there's  
23 nothing at this time that we're aware of on  
24 behalf of the Respondent.

25                   CHAIRPERSON ANDERSON: All right. The

1 Board notes that both parties have filed a number  
2 of pre-hearing exhibits, and for the government,  
3 a lengthy witness list. As you know, the Board  
4 is not here to manage your cases, but I do have  
5 responsibility to manage the hearing.

6 Are there any subject areas or  
7 specific exhibits that the parties can stipulate  
8 to that we can simply put into the record and  
9 reduce the need for lengthy examination and  
10 cross-examination?

11 I know that I'm aware that the  
12 government -- I've seen the government's exhibits  
13 and witnesses. I've also seen your client did  
14 put some documents, so Mr. Adams said that he has  
15 five witnesses.

16 Do you plan to call any witnesses  
17 today, ma'am?

18 MS. CHAVERRI: The only witness that  
19 I would call would be my client to make brief  
20 statements in response to any questioning that  
21 the government might ask. We do not have an  
22 objection to stipulating to the exhibits that I  
23 only briefly reviewed.

24 I don't have any reason to object to  
25 their admission for today's purposes, so in order

1 to expedite the process, I'd be happy to  
2 stipulate to the admission of those exhibits and  
3 to any testimony.

4 CHAIRPERSON ANDERSON: All right, so  
5 moved. All right.

6 MS. CHAVERRI: I don't know if there  
7 is any written testimony. I didn't see any  
8 affidavits necessarily, but if there are any,  
9 yes, we approve of those.

10 CHAIRPERSON ANDERSON: All right. So,  
11 what are the exhibits that the government wishes  
12 to move into evidence?

13 MR. ADAMS: Mr. Chair, we have 17  
14 exhibits that we listed on the list here. The  
15 first six of the exhibits relate to what we plan  
16 to provide as background testimony regarding the  
17 nature of the emergency given rise to the Mayor's  
18 orders, so we plan on having an expert witness,  
19 so we have the curriculum vitae of Dr. Anil  
20 Mangla, who is the chief epidemiologist for the  
21 Department of Health.

22 (Whereupon, the above-referred to  
23 document was marked as Government  
24 Exhibit No. 1 for identification.)

25 MR. ADAMS: Along with that, he has

1 several graphs. Exhibit 2 is an immune system  
2 graph.

3 (Whereupon, the above-referred to  
4 document was marked as Government  
5 Exhibit No. 2 for identification.)

6 MR. ADAMS: Exhibit 3 is a vaccination  
7 graph.

8 (Whereupon, the above-referred to  
9 document was marked as Government  
10 Exhibit No. 3 for identification.)

11 MR. ADAMS: Four is a graph regarding  
12 outbreak information.

13 (Whereupon, the above-referred to  
14 document was marked as Government  
15 Exhibit No. 4 for identification.)

16 MR. ADAMS: Five is regarding the  
17 infections, COVID infections by age range chart.

18 (Whereupon, the above-referred to  
19 document was marked as Government  
20 Exhibit No. 5 for identification.)

21 MR. ADAMS: And, also, 6 discusses the  
22 impact of the face masks, how face masks  
23 essentially reduces spread.

24 (Whereupon, the above-referred to  
25 document was marked as Government

1 Exhibit No. 6 for identification.)

2 MR. ADAMS: So, the reason that we  
3 have these exhibits is by, for the record,  
4 information regarding why there is an emergency  
5 with that and to establish the emergency.

6 We are providing -- Exhibits 7 through  
7 12 are the relevant case reports completed by the  
8 ABRA investigators.

9 (Whereupon, the above-referred to  
10 documents were marked as Government  
11 Exhibit Nos. 7-12 for identification.)

12 MR. ADAMS: Exhibit 13 is an email  
13 that uses part of the investigation for January  
14 22, which is Case Number 22-CMP-00006, is  
15 documentation from the Department of Health.

16 (Whereupon, the above-referred to  
17 document was marked as Government  
18 Exhibit No. 13 for identification.)

19 MR. ADAMS: We also are providing a  
20 chart regarding what the, I guess, the violations  
21 of the Mayor's Order for across the city as of  
22 February 1st.

23 (Whereupon, the above-referred to  
24 document was marked as Government  
25 Exhibit No. 14 for identification.)

1 MR. ADAMS: We have information from  
2 Department of Health.

3 (Whereupon, the above-referred to  
4 document was marked as Government  
5 Exhibit No. 15 for identification.)

6 MR. ADAMS: As well as for the  
7 Exhibits 16 and 17, which is information from Big  
8 Board, including one being a Facebook post and  
9 Exhibit 17 being a video based upon an interview  
10 done or video created by Mr. Flannery or created  
11 on behalf of Mr. Flannery.

12 (Whereupon, the above-referred to  
13 documents were marked as Government  
14 Exhibit Nos. 16-17 for  
15 identification.)

16 MR. ADAMS: So, those are the exhibits  
17 that we have identified for the Board.

18 CHAIRPERSON ANDERSON: So, they're  
19 admitted without objection.

20 (Whereupon, the above-referred to  
21 documents were received into evidence  
22 as Government Exhibit Nos. 1-17.)

23 CHAIRPERSON ANDERSON: On behalf of  
24 the Respondent, there were some submissions. Are  
25 there any documents -- what's the government's



1 position on the submissions that were done by the  
2 Respondent?

3 MR. CELO: Mr. Chair, there are  
4 certain exhibits that we will allow the admission  
5 of without objection, and certain that we will  
6 object to. The non-objectionable exhibits are D,  
7 E, F, H, and I. We have no objection to those  
8 exhibits.

9 CHAIRPERSON ANDERSON: I'm sorry. D,  
10 E, F, and what? I'm sorry.

11 MR. CELO: H and I.

12 CHAIRPERSON ANDERSON: All right. So,  
13 D, E, F, H, and I are admitted without objection.  
14 And if Respondent wishes to call, to rely on the  
15 other documents once they, once those are  
16 presented, then we'll hear arguments. And if  
17 there are objections, we'll make a ruling on  
18 whether or not those documents should be allowed  
19 in the record.

20 All right. So, the procedure this  
21 morning that the government will go first. If  
22 the government has an opening statement, they'll  
23 provide an opening statement, then we'll have an  
24 opening statement from the Respondent. Once the  
25 government has presented its opening statement,

1 and the Respondent is going to present its  
2 opening statement, then the government will  
3 present its case by calling its witnesses.

4 The Respondent will have an  
5 opportunity to cross-examine the witnesses. Once  
6 the Respondent has cross-examined the witnesses,  
7 Board members will have an opportunity to ask  
8 questions. Once the Board members have asked  
9 questions, and I will give the Respondent an  
10 opportunity to recross the witness, and then the  
11 government will have an opportunity to redirect  
12 questions of that witness.

13 Once the government has presented its  
14 case, then the Respondent will present its case.  
15 Respondent can elect to make an opening statement  
16 at this juncture or they can make an opening  
17 statement once they have presented their case.

18 All right. Mr. Adams, are you still  
19 with us? Okay. Fine. All right.

20 MR. ADAMS: I'm still with you.

21 CHAIRPERSON ANDERSON: All right.

22 Thank you. One of the beauties of doing this  
23 virtually, if someone disappears from my screen,  
24 then I'm going to ask questions to see whether or  
25 not they're still there, so you had disappeared

1 from my screen for a moment.

2 All right. So, does the government  
3 have an opening statement they wish to make?

4 MR. ADAMS: Yes, we do, Mr. Chairman.

5 CHAIRPERSON ANDERSON: All right. Go  
6 ahead, Mr. Adams. Yes.

7 MR. ADAMS: Thank you very much, Mr.  
8 Chairman and Members of the Board. And may it  
9 please the Board, this case is about a bar owner  
10 doing exactly what he said he was going to do.  
11 Eric Flannery said that The Big Board wouldn't  
12 follow the Mayor's order and the Board's  
13 rulemaking designed to protect the District of  
14 Columbia from a deadly pandemic. And The Big  
15 Board has done exactly that.

16 The Big Board has, and it continues to  
17 refuse to enforce the mask mandate, check for  
18 proof of vaccination, or post signs about vaccine  
19 and mask rules. Because of that, The Big Board's  
20 operations present imminent danger to the health  
21 and safety of the public, and this Board should  
22 affirm the summary suspension.

23 Today you'll hear from Dr. Anil  
24 Mangla, he's the chief epidemiologist from the  
25 Department of Health, about just how dangerous

1 The Big Board's flouting of the pandemic rules is  
2 for community. He'll describe that right here in  
3 D.C., COVID-19 has killed nearly 1,300 people,  
4 has stretched the hospitals to a breaking point,  
5 and has ravaged the city. He'll describe how The  
6 Big Board's action specifically exacerbate this  
7 problem.

8 Bars are among the top three leading  
9 source of outbreaks for COVID. For adult-centric  
10 activities, it is the top source of outbreaks.  
11 And the Mayor's order that The Big Board has  
12 decided to flout our designs to stop community  
13 spread and to help prevent hospitalizations and  
14 deaths.

15 You'll also hear from five ABRA  
16 investigators who can describe exactly what Big  
17 Board is doing. At each time, Big Board refused  
18 to enforce the mask mandate, check for proof of  
19 vaccination, or post signs about vaccine and mask  
20 rules.

21 Starting on January 14th of this year,  
22 the day before the vaccine requirement took  
23 effect, Investigator Rhoda Glasgow went to The  
24 Big Board. She went to advise The Big Board  
25 about the rules taking effect and to -- and at

1 that time, she saw that The Big Board's employees  
2 were not wearing masks, so she issued a verbal  
3 warning for failure to comply with the  
4 requirement.

5 At the time that she also tried to  
6 educate the owner regarding the Mayor's orders,  
7 and Mr. Flannery indicated to her that day that  
8 The Big Board would not comply with the vaccine  
9 checking requirements. And they did exactly what  
10 they said they would do.

11 On January 15th, ABRA Investigators  
12 Kevin Puente and Vanessa Pleitez went to The Big  
13 Board. No vaccine or mask rule signs. Staff did  
14 not wear masks. No one checked for vaccine  
15 status of patrons that arrived.

16 This time, Investigator Puente told  
17 Mr. Flannery about the face masks and vaccine  
18 status requirements and provided him copies of  
19 the Mayor's orders and the required signs about  
20 the masks and vaccine status.

21 Mr. Flannery said at that time that he  
22 had no face mask for him or his employees to wear  
23 and that "Until the Mayor changes her mind on the  
24 orders, I'm not going to change mine."

25 Investigator Puente issued Big Board

1 a written warning about the face masks and a  
2 verbal warning about checking for vaccine status  
3 and posting signs.

4 On January 18th, Investigator Mark  
5 Ruiz went to The Big Board. Again, no vaccine or  
6 mask rule signs, the staff wasn't wearing masks,  
7 nobody was checking for vaccine status of those  
8 who were inside. Investigator Ruiz issued a  
9 citation about the face masks and written warning  
10 about the vaccine status and signs.

11 On January 20th, Investigator  
12 Christopher Condon went to The Big Board. Again,  
13 no vaccine mask rule signs posted, staff wasn't  
14 wearing masks, no check for the vaccine status of  
15 those who were inside. On that day,  
16 Investigators Ruiz and Mitchell then came to The  
17 Big Board that night to issue a citation about  
18 the vaccine status and the face masks. It  
19 continued.

20 January 21st, a Department of Health  
21 Inspector went to The Big Board. She observed no  
22 masks being worn by staff and that nobody was  
23 checking the vaccine status of those who were  
24 inside. And she asked a server to wear a mask,  
25 the employee's response was, "It is not

1 required."

2 Then, on January 22nd, lastly,  
3 Investigator Puente returned, went to The Big  
4 Board. He observed, again, no vaccine or mask  
5 rule signs posted, the staff wasn't wearing  
6 masks, that nobody checked for vaccine status of  
7 those who were inside. Investigator Puente  
8 advised Mr. Flannery that the establishment was  
9 in violation of the Mayor's orders.

10 Simply stated, Members of the Board,  
11 the establishment flouts the rules. The evidence  
12 will show that The Big Board is putting its  
13 patrons at risk, the staff at risk, and everyone  
14 in the District at risk by deciding they won't  
15 follow the rules, and it won't do its part to  
16 limit community spread of the deadly COVID-19  
17 virus.

18 Mr. Flannery said Big Board would not  
19 follow the rules, and again, Big Board has shown  
20 it is going to do exactly what he said it would  
21 do. So, as a result, the operations of The Big  
22 Board does present imminent danger to the health  
23 and safety of the public, and we will show that  
24 that's the case. The Board will, should affirm  
25 the summary suspension. Thank you.

1 CHAIRPERSON ANDERSON: Thank you.

2 Do you wish to make an opening  
3 statement at this juncture, ma'am?

4 MS. CHAVERRI: Just a brief one, sir.  
5 My client doesn't contest much of the evidence  
6 that has been, that will be presented today, and  
7 that we've seen in the exhibit list. It should  
8 be noted, however, that for many, many months,  
9 almost two years, my client absolutely complied  
10 with all of the mask mandate rules that were in  
11 place.

12 The day that he discovered that he  
13 needed to remove barstools from his  
14 establishment, he did so. He moved tables out.  
15 He became a carryout-only facility. He followed  
16 all of these rules. And then when the Mayor  
17 lifted the mask mandate, things changed. The  
18 business reopened fully, and then again, the law  
19 changed.

20 At this time, my client is simply  
21 exercising what he believes to be his rights to  
22 permit his business to continue to operate  
23 because without -- being required to check  
24 vaccine cards from everybody who enters the  
25 establishment is a burden that should not be



1 placed on the owner of the business, and it's  
2 something that impedes his ability to operate, so  
3 at this time, my client understands that there's  
4 a conflict that he honestly believes that the law  
5 that is currently in place is not actually  
6 furthering the public interest and is instead  
7 hindering business operations, and that's why his  
8 conduct has been what it is.

9 If the Mayor were to promulgate a law  
10 that accurately and narrowly addresses the  
11 issues, certainly he would comply as he did in  
12 the past. He's got a clean track record, ten  
13 years of business on H Street, has never been a  
14 problem to the community, and just wishes to be  
15 able to continue to operate so that he can keep  
16 his employees employed and allow them to have  
17 food on the table for their families. Thank you.

18 CHAIRPERSON ANDERSON: All right. I  
19 think that I'm -- we're at a space in this case  
20 where the government has stated that the  
21 Respondent has refused to comply with the  
22 requirements, and you're basically stating that  
23 your client has conceded, and so I'm not sure  
24 what is it that this Board has been asked not to  
25 do because, yes, I'm asking what is it that this

1 Board has been asked to do if the government  
2 stated that these are the regulations you haven't  
3 complied with?

4 Your client has said, "Yes, we have  
5 not complied with it," and I'm not hearing that  
6 your client is going to say that "Effective  
7 today, I'm going to comply with it," so --

8 MS. CHAVERRI: Well, Mr. Anderson, to  
9 respond to you, the only thing that I can think  
10 of that would be a compromise and a way to meet  
11 in the middle here would be -- and this is  
12 something that I have proposed to counsel for the  
13 government, very informally, we were only engaged  
14 yesterday, so, of course, it's been very  
15 difficult to prepare for this, but looking at the  
16 big picture of what we would request is relief  
17 from ABRA would be that ABRA consider entering  
18 into an agreement with the Respondent to permit  
19 him to operate a carryout business.

20 Now, I understand that ABRA only has  
21 jurisdiction over the license with respect to  
22 alcohol and beverages, but, you know, obviously,  
23 we have to work with the Department of Health and  
24 with BCRA as well, but our proposed resolution  
25 would be something that allows the business to

1 continue, to operate, to permit its employees to  
2 be, to receive their paychecks and to permit Mr.  
3 Flannery to operate the business in a limited  
4 capacity sort of, you know, understanding that he  
5 cannot, he believes, you know, legally and  
6 morally that he cannot comply with the Mayor's  
7 order as it currently stands.

8 He can and is willing to comply with  
9 the laws that apply to take-out facilities where  
10 his employees will be wearing masks. People who  
11 come and pick up food would be wearing masks.  
12 Very similar to Panera and Dunkin Donuts and  
13 Jimmy John's and all the places that I frequent  
14 every day here downtown where I don't need to  
15 show the vaccine card when I walk in.

16 And we're asking for that relief as a  
17 compromise while, you know, Mr. Flannery deals  
18 with his legal issues in the appropriate forum,  
19 which I personally do not believe is before ABRA.  
20 I think that that's a bigger question for, you  
21 know, the United States District Court or another  
22 jurisdiction to consider, so that would be the  
23 relief that we would request today.

24 CHAIRPERSON ANDERSON: Well, one of  
25 the things that the Board can do, we can go in

1 recess and you and Mr. Adams can have a  
2 conversation. And if there is an offer in  
3 compromise that the government wishes to bring to  
4 the Board for the Board's consideration, the  
5 Board will listen to that, so I'll ask Mr. Adams,  
6 do you want us to take, for us to go into recess  
7 for you to speak to --

8 MR. CELO: No.

9 CHAIRPERSON ANDERSON: Mr. Adams? Mr.  
10 Celso?

11 MR. ADAMS: Mr. Celso will address  
12 that.

13 CHAIRPERSON ANDERSON: Mr. Celso?

14 MR. CELO: No, Mr. Chair. At this  
15 time, we have -- counsel is right that we have  
16 discussed that as a possibility; however, at this  
17 time, no offer in compromise along those terms is  
18 possible.

19 We do not have sufficient information,  
20 and we do not believe that that relief is  
21 appropriate right now, particularly considering  
22 that it would be a conditional offer to continue  
23 their non-alcohol-related business when there are  
24 other summary suspensions and shutdowns from  
25 other agencies that we have no control over or

1 authority to speak for.

2 As a result, the requested relief is  
3 not appropriate or possible for us to consent to  
4 at this time and there is no offer in compromise  
5 currently on the table.

6 MR. ADAMS: And I would ask that, Mr.  
7 Chairman, with all due respect to the position  
8 that's been stated by the establishment,  
9 essentially, we're -- because this is an  
10 emergency hearing that was requested by Mr.  
11 Flannery himself, so the District's intention,  
12 and we certainly don't want to take up any more  
13 time as necessary for the Board, but we just to  
14 be able to set the record so that the record is  
15 established for the Board and so that the Board  
16 can make a decision on whether to affirm the  
17 summary suspension or not.

18 And, so we think that in this case  
19 that it's really -- especially with -- because  
20 it's the first time with us dealing with these  
21 emergency rules, it's just best for us to go  
22 ahead and put on the evidence and then, you know,  
23 if anything happens afterwards, you know, that --  
24 we can raise it to the Board at that time.

25 CHAIRPERSON ANDERSON: But I just want

1 to make sure that all parties are aware. Our  
2 jurisdiction falls over the service of alcohol,  
3 so I know that once we issue our summary  
4 suspension notice, I believe that was on January  
5 28th, requesting, demanding that they no longer  
6 serve alcohol, and so that's -- so whatever  
7 decision that we issue today would be whether or  
8 not they will be allowed to sell and serve  
9 alcohol.

10 The other operation of their business,  
11 that's not within ABRA's purview, so we're only -  
12 - this only has to do with whether or not they  
13 will be allowed to serve alcohol based on their  
14 refusal to comply with our regulations regarding  
15 the mask mandate and the vaccine mandate with  
16 regarding the sell and service of alcohol, so as  
17 long as that's clear.

18 Whether or not they can continue  
19 selling food or any other service, that's not  
20 within ABRA's jurisdiction, and so we could issue  
21 a decision today saying you can continue selling  
22 alcohol or no you can't continue selling alcohol  
23 and that does not, that's not going to impact the  
24 operation of your business whether or not you can  
25 be open.

1 All that our decision is whether or  
2 not you can sell or serve alcohol based on the  
3 perceived violation if it's been proven by the  
4 government that you are not compliant with the  
5 established regulations, so with that said, we'll  
6 have a hearing since it's not apparent that the  
7 parties are able to reach any compromise, and we  
8 will make a decision, and we'll make a decision  
9 once we hear the testimony that's presented by  
10 both sides.

11 All right. What I'm going to do --  
12 what I will do is that once you call your  
13 witness, Mr. Adams, I will ask that that person's  
14 right be elevated, so who's the first witness  
15 you're calling, sir?

16 MS. CHAVERRI: Your Honor -- oh,  
17 sorry. Mr. Chairman, it will be Dr. Mangla.

18 CHAIRPERSON ANDERSON: I'm sorry. I'm  
19 sorry. Hold on.

20 Yes, ma'am?

21 MS. CHAVERRI: I'm sorry, Mr.  
22 Chairman. I was just going to say, I've already  
23 stipulated to the admission of testimony, and  
24 also we -- it's an uncontested matter at this  
25 point.

1           Do we really need to go through with  
2           the full substance or, you know, we would concede  
3           that without an agreement from the government,  
4           which we still think, you know, I still would  
5           propose that the conditional agreement is  
6           appropriate, but absent that, I mean, I don't  
7           know if we need to go through with all of this?

8           Of course, I defer to you, but based  
9           on our position, you know, I think that we can  
10          just hear the Board's ruling assuming that it  
11          would be, you know, a denial.

12          CHAIRPERSON ANDERSON: Well, we  
13          haven't heard any testimony, so the Board does  
14          not have -- the Board doesn't have any  
15          submission. Yes, we did an investigative report  
16          and there's an allegation that certain refusals  
17          have occurred, but I don't know that  
18          independently, so I'm not quite sure what it is  
19          that the Board will make a determination.

20          MS. CHAVERRI: Okay. Fair enough.

21          CHAIRPERSON ANDERSON: I mean, if the  
22          parties want to provide a proffer of each  
23          witness, what the witness is going to testify to,  
24          and if, to streamline this process, if the  
25          parties can agree that Mr. Adams or Mr. Celo, if



1 that's -- and I can't tell the government how to  
2 present its case, but I'm just saying if that, if  
3 there's an agreement that the government can  
4 provide a proffer of each witness's testimony and  
5 there's an agreement that this is so, and once  
6 that proffer is in the record and then the  
7 proffer testimony is in the record, and then we  
8 can have closing arguments and both sides ask the  
9 Board to make a decision, that could be  
10 acceptable, but that's up to the government. I  
11 can't tell the government how to present its  
12 case.

13 MS. CHAVERRI: Okay. Sure.  
14 Understood. Thank you.

15 MR. ADAMS: I'll say this, Your Honor.  
16 We appreciate Ms. Chaverri's sentiments, however,  
17 we think that it is the best interest for all  
18 parties involved to simply just put on the  
19 record, again, we'll make this as expeditious as  
20 possible; however, we think it's best for us to  
21 move forward and ensure that there's a proper  
22 record for the --

23 CHAIRPERSON ANDERSON: Okay, that's  
24 fine. I'm sorry. Again, so who's your first  
25 witness, Mr. Adams?

1 MR. ADAMS: Dr. Anil Mangla.

2 CHAIRPERSON ANDERSON: Ms. Fashbaugh,  
3 can you please elevate the rights of Dr. -- I'm  
4 sorry, what's her last name, please?

5 MR. ADAMS: It's Mangla.

6 CHAIRPERSON ANDERSON: Mr. Mangla,  
7 please.

8 MS. FASHBAUGH: This has been  
9 accomplished.

10 CHAIRPERSON ANDERSON: Thank you.

11 MR. CELO: Mr. Chair, before I begin  
12 questioning Dr. Mangla --

13 CHAIRPERSON ANDERSON: Mr. Celo, one  
14 of the things I would ask that you do is that  
15 please so we can have a clear record, just  
16 identify yourself before you ask the question,  
17 please. All right, so go ahead, Mr. Celo.

18 MR. CELO: How would like me to handle  
19 reference towards exhibits? Should I share my  
20 screen or will we have the administrator unlock  
21 the exhibits when we request them?

22 CHAIRPERSON ANDERSON: No. If you  
23 have the documents, then I'll allow you to share  
24 your screen and -- all right, so let's have --  
25 Dr. Mangla, can you raise your right hand,

1 please?

2 WHEREUPON,

3 DR. ANIL MANGLA

4 was called for examination by Counsel for the  
5 Government, and after having been first duly  
6 sworn, was examined and testified as follows:

7 CHAIRPERSON ANDERSON: All right. Your  
8 witness, sir.

9 DIRECT EXAMINATION

10 BY MR. CELO:

11 Q Dr. Mangla, please state and spell  
12 your name for the record?

13 A Yes. It's Anil Mangla. First name A-  
14 N-I-L, and the last name Mangla, M-A-N-G-L-A.

15 Q What is your current position?

16 A I'm the state epidemiologist for the  
17 District.

18 Q And can you briefly describe what that  
19 position entails?

20 A Yes, so the position entails a few  
21 things. Number one is I am the subject matter  
22 expert for all infectious diseases. I am also  
23 over all the investigations for infections,  
24 especially at this time COVID. I'm also  
25 spearheading a team that does all the contact

1 investigation for the District. And finally, I  
2 also am part of the team that recommends all the  
3 guidances.

4 Q And your curriculum vitae has already  
5 been entered into evidence, so I'm not going to  
6 go over that, but can you briefly just describe  
7 the different positions you've held as an  
8 epidemiologist in your career?

9 A Absolutely. My career started 20  
10 years ago in public health. I have -- prior to  
11 the two years, I've been in D.C. as the state  
12 epidemiologist as well as the supervisory  
13 epidemiologist. Prior to this, I served as the  
14 deputy health director for the City of San  
15 Antonio, as well as the director of public health  
16 and associate professor for the UIW School of  
17 Medicine, and then prior to that, I was the  
18 director for immunizations in infectious disease  
19 for the State of Georgia and the acting state  
20 epidemiologist for Georgia. Prior to that, I was  
21 the chief epidemiologist for the State of  
22 Indiana.

23 MR. CELO: Mr. Chair, at this time, I  
24 offer Dr. Mangla as an expert witness.

25 CHAIRPERSON ANDERSON: Ms. Chaverri,

1 do you have any objection?

2 MS. CHAVERRI: No objection.

3 CHAIRPERSON ANDERSON: Without  
4 objection, Dr. Mangla has been presented as an  
5 expert witness and will be accepted. All right.  
6 Go ahead.

7 BY MR. CELO:

8 Q Dr. Mangla, are you familiar with the  
9 Board's orders -- I'm sorry. Are you familiar  
10 with the Mayor's orders concerning bars and  
11 restaurants in the District of Columbia?

12 A Yes.

13 Q And can you please explain to the  
14 Board what is the purpose of the orders  
15 surrounding COVID-19 and the vaccinations?

16 A Yes. The orders are that there is a  
17 mandatory -- it's a mandate for individuals to be  
18 showing their vaccination cards and people to be  
19 vaccinated when entering these facilities.

20 Q And why are -- well, let's start with  
21 the mask order. Why is the mask order relevant  
22 and important in the time of COVID?

23 A Yes, so a mask order is crucial in the  
24 layered mitigation of COVID within the District  
25 as well as nationally. The COVID-19 virus, which

1 is a variant of the Omicron, is very infectious.  
2 It is an airborne disease.

3 That means it is spread by breathing,  
4 by coughing, by sneezing, by talking, by eating,  
5 and so it is very clear that when you wear a  
6 mask, you're actually protecting any of these  
7 minute particles that are coming out of your  
8 mouth, and so these particles are airborne. If  
9 there's another person on the other side, they  
10 could be exposed and because of the  
11 contagiousness, individuals get infected much  
12 quicker than the previous strength that we have  
13 seen in D.C. or nationally.

14 MR. CELO: At this time, Mr. Chair, I  
15 request permission to share my screen.

16 CHAIRPERSON ANDERSON: Ms. Fashbaugh,  
17 can you please allow Mr. Celo the opportunity to  
18 share his screen?

19 MS. FASHBAUGH: This has been  
20 accomplished.

21 CHAIRPERSON ANDERSON: Thank you.

22 BY MR. CELO:

23 Q Dr. Mangla, I am sharing with you what  
24 has been marked and entered into evidence as  
25 Government's Exhibit 3. Please let me know if

1 you can see this.

2 A Yes, I can.

3 Q Can you please identify what this  
4 exhibit is?

5 A Yes. This is an exhibit kind of  
6 showing the importance of individuals that are  
7 vaccinated as well as boosted.

8 Q And can you please describe what each  
9 column here shows?

10 A Absolutely. So, the first column that  
11 is a column on the far left is when an individual  
12 is fully vaccinated with a booster, they are ten  
13 times less likely to get infected compared to an  
14 individual that is unvaccinated.

15 The middle column, actually,  
16 reiterates the importance of a booster, so if  
17 anybody that is fully vaccinated with a booster  
18 is two and half times less likely to get infected  
19 compared to someone who's fully vaccinated, which  
20 means the initial two doses that they got, and  
21 then, of course, four times less likely to die  
22 which is really important because we are seeing  
23 an increase in the death rate.

24 And then the third one is actually  
25 really focusing on if you're fully vaccinated and

1 boosted, you are 20 times less likely to die  
2 compared to anybody that is unvaccinated.

3 Q I'm moving down to page two of this  
4 exhibit. And this shows a chart. Can you please  
5 explain what this chart is and what it shows?

6 A Yes, so this chart actually is showing  
7 the local data on individuals that have been  
8 fully vaccinated compared to individuals that  
9 have not been vaccinated. And this is actually  
10 assisting us in how the cases of unvaccinated  
11 appears compared to individuals that are  
12 vaccinated and boosted. The graph really shows  
13 that if you are boosted and if you are  
14 vaccinated, your likelihood of getting infected  
15 is significantly, orders of significantly less  
16 than individuals that are not vaccinated.

17 Q When did the Omicron surge begin?

18 A My apologies. The Omicron surge began  
19 just after Thanksgiving. As a matter of fact,  
20 internationally, it started Thanksgiving weekend.

21 Q So, I don't know if you can see my  
22 mouse here, but this spike on the right hand  
23 starting right around November 28th, would that  
24 correlate to the Omicron surge?

25 A Yes.



1           Q       And, so, in the time of Omicron, are  
2 vaccines even more important for helping to  
3 reduce the spread?

4           A       Yes, vaccines are very important to  
5 avoid spread for two reasons. Number one, the  
6 vaccine does two things. Number one is the  
7 vaccines help protect an individual from being  
8 infected, and number two, vaccines actually help  
9 an individual who is infected from transferring  
10 the virus to others in a very less manner  
11 compared to people that are unvaccinated.

12          Q       I'm scrolling down to what is page  
13 three of this exhibit. Can you please explain  
14 this chart to the Board?

15          A       Yes. This is local data kind of  
16 showing individuals that are vaccinated and  
17 boosted, have a much, much less likelihood being  
18 hospitalized compared to individuals that have  
19 not been vaccinated.

20          Q       And this chart shows a red line that  
21 is hovering near zero as fully vaccinated. Does  
22 that refer to fully vaccinated but not boosted?

23          A       Yes, it does.

24          Q       Okay. And, again, on this chart, it  
25 starts at November 29th, but would that be the

1 Omicron spike?

2 A Absolutely.

3 Q And does this spike in hospitalization  
4 put a strain on the District? And can you please  
5 explain what strain, if any?

6 A Oh, absolutely. We actually had a  
7 significant strain and that was, as a matter of  
8 fact, Christmas weekend where my staff worked  
9 significantly, and I'll tell you why. We  
10 actually had to provide a new guidance for the  
11 city of the District regarding individuals, all  
12 healthcare workers, that actually were getting  
13 infected and were being isolated and quarantined,  
14 and we had to approach CDC to change some of the  
15 guidelines to allow individuals to work because  
16 there was a significant shortage of staff members  
17 and that was a very huge concern with the  
18 infrastructure of hospitals and staff operating  
19 within the District.

20 Q I'm turning to what has been marked  
21 and admitted as Government Exhibit 4. Are you  
22 familiar with this chart?

23 A Yes.

24 Q Can you please explain it?

25 A Yes. This is a chart that one of my

1 teams, which is the data team provides the  
2 District on a weekly basis. We update this on  
3 every Monday of the week. This chart actually  
4 identifies the number, not cases, but the number  
5 of outbreaks that occur within the District. And  
6 as you can see, we have stratified that by  
7 different locations.

8 Q Looking at specifics here, bars and  
9 restaurants have had 58 outbreaks during this  
10 pandemic, correct?

11 A Yes.

12 Q And as far as I can see, that is the  
13 third leading cause of outbreaks behind K through  
14 12 school and daycare. Is that correct?

15 A Yes. I just want to kind of make it  
16 clear that it's not throughout the entire  
17 pandemic. There's a very clear distinct  
18 timeline. And if you look at the timeline, this  
19 is between July 30, 2021, to February 2022, so  
20 that number is that timeline. If it's the entire  
21 pandemic, it will be higher.

22 Q Thank you for clarifying. So, the two  
23 leading causes, schools K through 12 and  
24 daycare/childcare, are primarily child-focused  
25 activities, correct?

1           A       Yes.

2           Q       Okay. And if we look at the spike in  
3 outbreaks as it relates to bars and restaurants,  
4 I see here that were 24 outbreaks the week of  
5 December 10th. Is that correct?

6           A       Yes.

7           Q       The Mayor's order reimposing the mask  
8 mandate from bars and restaurants was December  
9 18th, was it not?

10          A       Yes.

11          Q       So, as I read this graph, there were  
12 24 outbreaks the week before the mask mandate  
13 went into effect and 3 outbreaks the week that  
14 the mask mandate went into effect, correct?

15          A       Correct.

16          Q       And since that time, we have only seen  
17 two outbreaks stemming from bars and restaurants?

18          A       That's correct.

19          Q       Now, in terms of adult-centric  
20 activities, can we infer from these numbers that  
21 bars and restaurants are the leading source of  
22 outbreaks for adult-centric activities?

23          A       Yes.

24          Q       And is there any overall conclusion  
25 regarding the source of outbreaks that you can

1 draw?

2 A Yes. Overall conclusion in the  
3 outbreaks is very clear. These outbreaks occur  
4 where people gather where they unmask. You know,  
5 vaccination plays a very vital role and that's  
6 because this is airborne.

7 Because of Omicron specifically being  
8 a strain or variant that has a smaller or shorter  
9 incubation period as well as, even more  
10 important, it is more transmissible, if you're in  
11 an enclosure where there's not much ventilation,  
12 where there's a large amount of people, where  
13 there's crowds, where there's talking, eating,  
14 laughing, there is a very high possibility of  
15 people getting infected.

16 Q Turning to what has been marked and  
17 admitted as Government Exhibit 5, can you please  
18 explain this table?

19 A Yes. This table actually provides an  
20 analysis stratified by the number of cases that  
21 we have received in D.C. by age groups.

22 Q And looking at the table on the left,  
23 if we look at the percent column for age groups  
24 20 through 44, by my math that's about 52 percent  
25 of all cases?

1           A       Correct.

2           Q       Would you agree that that age group,  
3           20 to 44, is the most likely to frequent bars in  
4           the District?

5           A       I would assume that, yes.

6           Q       Okay. Looking at Government Exhibit  
7           6, this is another table. Can you please briefly  
8           explain this table for the Board?

9           A       Yes. This table was a publication  
10          that was peer-reviewed and released a week ago.  
11          It clearly identifies the importance and the  
12          success of individuals wearing masks.

13                 As you can see from the data, the  
14          control was, the reference of the control as we  
15          call it is line one. That means there was  
16          individuals that were unmasked.

17                 And then you go down, they have three  
18          different types of masks. You have a cloth mask,  
19          you have a surgical mask, and then you have an  
20          N95. It is very clear if you wear a mask, let's  
21          start by a cloth mask, you are 56 percent less  
22          likely to get infected, if you wear a surgical  
23          mask, you are actually 66 percent less likely to  
24          get infected, and if you wear N95, it is very  
25          clear that you are 83 percent less likely to get

1 infected.

2 Q And looking at page two of this  
3 exhibit, this is a different table, but can you  
4 please describe the importance of this table and  
5 what that means to the Board?

6 A Yes, so this table kind of, again, is  
7 related to the use of masks, but is related to  
8 how often you use the mask. And as you can see,  
9 it's very clear if you wear a mask all the time,  
10 you are less likely to, you are 66 -- so you are  
11 actually 54 percent less likely to get infected,  
12 and if you wear it most of the time, you are 45  
13 percent less likely to get infected, so again,  
14 very clearly signifying the importance of masks.

15 Q And because I'm not a scientist or a  
16 statistician, could you please just briefly  
17 explain on the right of both of these tables, we  
18 have an odds ratio adjusted and unadjusted p-  
19 values. Can you just explain what those are and  
20 what those mean for our understanding?

21 A Yes, so an odds ratio is the odds of  
22 someone getting infected, so it is -- you  
23 interpret it as two. If the number is one, that  
24 means it's stationary. There is no, you know,  
25 there is not an individual that is a certain fold

1 at risk or protective, right, so if the number is  
2 higher than one, say, two, that means the  
3 likelihood of someone being infected is two times  
4 higher.

5 If it's a number that's less than one,  
6 then it means it's protective. The way we look  
7 at this is it's one minus the odds ratio to give  
8 you a percentage, so for example, if you had --  
9 you know, I'm looking at the last one, all the  
10 time, it's 0.44, so that's your odds ratio. It's  
11 protective, so 1 minus 0.44 gives you 0.56, which  
12 is 56 percent.

13 The more important number is a p-  
14 value. A p-value actually signifies the  
15 significance. Significance means there is a  
16 clear comparison between the control group and  
17 the group that wore masks and any number that is  
18 a 0.05 or less means it is very significant, so  
19 if you look at the last one, most of the time and  
20 all the time, those numbers are 0.07, 0.01. That  
21 means these are very significant when we're  
22 looking at odds ratios, and when we're looking at  
23 the use of these, in this particular case, masks.

24 Q All right. Now, Dr. Mangla, I would  
25 next like to show you one of petitioner's



1 exhibits, which has been admitted into evidence,  
2 Exhibit E, and I'm showing that on my screen.  
3 Are you familiar at all with this exhibit? And I  
4 can scroll out if you need to see the larger  
5 context.

6 A Yes, I see it very clearly.

7 Q Now, this exhibit purports to be the  
8 daily case rate for the District of Columbia.  
9 Does that part appear accurate to you?

10 A Yes, it is.

11 Q Okay. And right around this November  
12 time that we've seen in the other charts, we do  
13 see a very large Omicron spike, correct?

14 A Yes.

15 Q Now, cases seem to have been falling  
16 since late January, but right now, the daily case  
17 rate according to this is 31.1 per 100,000.

18 A Correct.

19 Q Is that still above the substantial  
20 community spread line?

21 A Yes, absolutely, so again, you know,  
22 everything is relative, so relative to where we  
23 were with the peak in the pandemic, we're doing a  
24 phenomenal job where we are. However, if you  
25 look at those colored lines, where we should be

1 is something known as "minimum community spread."  
2 And the minimum community spread is five cases or  
3 less. We're nowhere near five cases.

4 If you look at the number, as you  
5 said, it's 33, which is 7-fold higher than where  
6 we should be, and so even if you look at the 33,  
7 that's where we were last year December, and last  
8 year December that was significant, so, yes, it  
9 may look like we're decreasing, and we are moving  
10 in the right direction, but we're nowhere near  
11 where we should be, which is less than 5 cases  
12 per 100,000.

13 Q And talking specifically about last  
14 year in December, the numbers are not precise on  
15 this chart, but it does appear that we are right  
16 around the same peaks as we saw at the height of  
17 the third, second, and first waves of the COVID  
18 pandemic. Is that an accurate interpretation?

19 A Correct.

20 Q So, even though we're far less than  
21 the worst of Omicron, are we still roughly as bad  
22 as the worst we saw of the pandemic in the last  
23 two years?

24 A I agree, yes.

25 MR. CELO: Okay. I'm going to stop

1 sharing my exhibits at this time, Mr. Chair.

2 BY MR. CELO:

3 Q And, Dr. Mangla, looking at all this  
4 data, and I realize that it was a lot we got  
5 through very quickly, but can you tell the Board  
6 where are we in the pandemic and what, if any,  
7 need is there for masks and vaccine mandates?

8 A We're nowhere near where we should be  
9 as the graph has clearly illustrated. We're  
10 still sevenfold higher than where we should be to  
11 get any of these mandates removed. That's number  
12 one.

13 Number two, again, to err on the safer  
14 side, you know, just because of what happened  
15 last year and because of this variant being  
16 unpredictable, masks should continue because we  
17 know masks is safe. Even more important, the  
18 best prevention for this type of a virus is  
19 clearly get vaccinated.

20 Vaccinations have shown to increase  
21 the amount of antibodies. These antibodies do  
22 two things again. It's going to help individuals  
23 who are exposed to avoid them getting infected.  
24 That's number one.

25 And number two is the spread that we

1 talk about. Even if an individual is infected,  
2 their spread to others is also going to be  
3 increased because of vaccinations.

4 Unvaccinated individuals, two things  
5 are going occur. They're going to get infected,  
6 number one. That causes a burden to the state.  
7 Number two is they're going to be actually  
8 transmitting this to others, and we may, you  
9 know, cause another explosion of numerous cases  
10 regarding the pandemic, so again, the masks and  
11 the vaccine mandates are of crucial essence to  
12 continue with the trend we see right now.

13 Q And if a bar or restaurant were to not  
14 follow the mask rule or the vaccine check rule,  
15 would that pose an imminent threat of harm to the  
16 community?

17 A So, from science and from data-driven  
18 evidence that we have seen, I will agree,  
19 absolutely, yes. And the reason behind it is,  
20 again, as we saw the number of outbreaks in  
21 restaurants and bars have been increasing over  
22 the past few weeks here in the District. Number  
23 two is it's clear that this is airborne, and if  
24 you are in an enclosed area without a mask, not  
25 vaccinated, you are at very high risk of getting

1 the disease, and number two, spreading the  
2 disease.

3 Q Dr. Mangla, are there any other  
4 considerations concerning the Mayor's orders that  
5 we have not discussed which you believe the Board  
6 should be aware of?

7 A No, we've discussed all. I also just  
8 want to make it very clear that we are not in the  
9 clear zone as you have seen that the death rate  
10 nationally still continues to go up, and so this  
11 is a concern. People don't look at that, but,  
12 you know, we are seeing almost 2,000 deaths per  
13 day nationally.

14 Q Dr. Mangla, were all of your expert  
15 opinions today offered to a reasonable degree of  
16 scientific and medical certainty?

17 A Yes.

18 MR. CELO: No further questions at  
19 this time.

20 CHAIRPERSON ANDERSON: Thank you.

21 Do you have any questions for the  
22 witness?

23 MS. CHAVERRI: Yes, Mr. Anderson.

24 CROSS EXAMINATION

25 BY MS. CHAVERRI:

1           Q       So, my first -- first of all, good  
2           afternoon, Dr. Mangla.

3           A       Good afternoon.

4           Q       It's hard to see whether, I guess,  
5           even get called out. So, I have a few questions.  
6           With respect to the Government Exhibit 4, that  
7           exhibit refers to an outbreak. Can you describe  
8           for us the definition of an outbreak?

9           A       Yes. An outbreak is two or more cases  
10          that are epidemiology linked in a certain area,  
11          so again, an outbreak could be, not a case, but  
12          an outbreak that could be linked, meaning there  
13          was a very clear link within the facility where  
14          one person was actually infected and exposed and  
15          infected others.

16                   And I say "others" because the link  
17          could not just have been one person, but it could  
18          be secondary transmission to more than one within  
19          that area, so when we say "one," when we look at  
20          one outbreak, it may be one outbreak, but there  
21          may be ten people associated with just that one  
22          outbreak.

23          Q       Okay. And thank you for that. What  
24          would be -- if I were to identify somebody who  
25          was COVID-positive, who was in the same family as

1       somebody else who had traveled to a restaurant,  
2       would the two of their cases be considered an  
3       outbreak?

4               A       That's a really good question.  No.  
5       Our definition of outbreak on our dashboard makes  
6       it very clear that these outbreaks are outbreaks  
7       within areas, and they are not related to family  
8       or household contacts.

9               Q       Thank you.  You mentioned that  
10       restaurants and bars are considered the largest  
11       source of outbreaks or infection among adults.  
12       Is that right?

13              A       From the data and from the outbreaks  
14       with that age group, correct.

15              Q       And have you reviewed any specific  
16       data with respect to bars and restaurants within  
17       the District of Columbia when reaching that  
18       conclusion?

19              A       Well, we -- I mean, this is very clear  
20       when we are looking at our data analysis.  We  
21       actually make a very robust data set to actually  
22       provide us with this type of information, so this  
23       information is completed by a robust team of data  
24       analysts as well as epidemiologists to make these  
25       types of conclusions.

1           Q       So, have you reviewed records and data  
2 from specific restaurants within the District of  
3 Columbia?

4           A       What we do is in every case that comes  
5 in is thoroughly investigated, and we then  
6 conclude on the data we collect from individuals  
7 that were infected, that means our cases, and  
8 then we also interview all the contacts that that  
9 case was in touch with.

10          Q       And do you know how many restaurants  
11 or bars within the District of Columbia have had  
12 outbreaks?

13          A       I don't disclose that. It's just we  
14 use aggregate data.

15          Q       You use aggregate data?

16          A       Well, I mean I have the numbers. I  
17 just can't tell you which bars or what, you know,  
18 where we kind of -- I mean, we get that  
19 information. I can't share it because of  
20 privacy.

21          Q       But can you tell me how many bars and  
22 restaurants in the District of Columbia have had  
23 an outbreak?

24          A       I don't have that information on hand,  
25 but I can provide it to my attorney.



1 Q Thank you.

2 MS. CHAVERRI: I have no further  
3 questions for this witness.

4 Thank you very much, Dr. Mangla.

5 CHAIRPERSON ANDERSON: All right.  
6 Thank you. Any questions by any Board members?  
7 All right, there are none.

8 Do you, Mr. Celo, do you have any  
9 redirect?

10 MR. CELO: No redirect, Mr. Chair.

11 CHAIRPERSON ANDERSON: All right.  
12 Thank you.

13 Dr. Mangla, thank you very much for  
14 your testimony today. Have a great day, sir.

15 THE WITNESS: Thank you. Bye-bye.

16 CHAIRPERSON ANDERSON: All right. Do  
17 you have another witness?

18 MR. ADAMS: Yes, Mr. Chairman. Our  
19 next witness is Rhoda Glasgow. I will state that  
20 we will provide testimony for her. She did not  
21 have an investigative report, and then  
22 afterwards, after her testimony, Mr. Chairman, I  
23 think the government will discuss our ability to  
24 be able to make proffers or at least to ensure  
25 what's being covered by the stipulations by The

1 Big Board, and with that said, then we might be  
2 able to make proffers from that.

3 CHAIRPERSON ANDERSON: All right,  
4 fine.

5 Ms. Fashbaugh, can you please elevate  
6 the rights of Ms. Glasgow?

7 MS. FASHBAUGH: This has been  
8 accomplished. Thank you.

9 CHAIRPERSON ANDERSON: Good morning,  
10 Ms. Glasgow. Can you raise your right hand,  
11 please?

12 WHEREUPON,

13 RHODA GLASGOW  
14 was called for examination by Counsel for the  
15 Government, and after having been previously  
16 sworn, was examined and testified as follows:

17 CHAIRPERSON ANDERSON: Thank you. Your  
18 witness, sir.

19 MR. ADAMS: Thank you very much, Mr.  
20 Chairman.

21 DIRECT EXAMINATION

22 BY MR. ADAMS:

23 Q Ms. Glasgow, can you please state and  
24 spell your name for the record?

25 A Rhoda Glasgow, R-H-O-D-A, Glasgow, G-

1 L-A-S-G-O-W.

2 Q And, Ms. Glasgow, you're an  
3 investigator for the Alcoholic Beverage  
4 Regulation Administration, correct?

5 A Yes, I am.

6 Q And how long have you been in that  
7 position?

8 A Approximately three years.

9 Q As part of being an investigator, have  
10 you conducted investigations related to the --  
11 first of all, are you familiar with the Mayor's  
12 rules and orders regarding the current COVID  
13 emergency?

14 A Yes, I am.

15 Q And how did you become familiar with  
16 that, with those?

17 A With the Mayor's Order 2021-47, that's  
18 staff and employees must be wearing masks,  
19 patrons must enter the establishment wearing  
20 masks. And Mayor's Order 2021-148 says that you  
21 have to provide your vaccine before you enter an  
22 establishment, your vaccine card before you enter  
23 an establishment.

24 Q And did you -- during your time as an  
25 investigator, you provided checks for various

1 establishments for compliance with those  
2 requirements?

3 A Yes.

4 Q So, turning to January 14th of 2022,  
5 were you on duty?

6 A Yes.

7 Q And what was your assignment in  
8 general on January 14th?

9 A My assignment on January 14th, we were  
10 assigned to go to establishments to educate them  
11 on the Mayor's orders that were going into effect  
12 on the 15th. And on that day, I visited The Big  
13 Board.

14 Q And which requirement was going into  
15 effect on the 15th?

16 A The Mayor's Order 2021-148 which  
17 requires establishment to ask patrons for their  
18 vaccine card along with their ID.

19 Q And you checked several establishments  
20 that day for their compliance?

21 A Yes, I checked a couple. There were  
22 three establishments I got to that night.

23 Q Did you have occasion to come to The  
24 Big Board?

25 A Yes.

1           Q       And what happened when you were at The  
2 Big Board?

3           A       So, I entered the establishment, and  
4 I saw that the staff were not wearing masks. I  
5 proceeded to the bar area, and I asked the  
6 bartender for the ABC manager or owner, and he  
7 directed me to the owner.

8                   I went to the owner, Mr. Flannery, and  
9 I identified myself as an ABRA investigator, and  
10 I advised him that we are aware that he has been  
11 posting that he would not be compliant with the  
12 Mayor's order. And I'm just here to let him know  
13 that, you know, I gave him all the details of the  
14 Mayor's order that was going into effect.

15                   I asked him if he was going to comply  
16 with it. I asked him if he was familiar with it.  
17 He says, yes, he is familiar with the Mayor's  
18 order. I asked him if he was going to comply  
19 with it. He responded shaking his head no.

20                   And I told him, well, his staff needs  
21 to be wearing masks today because that order went  
22 into effect on December 20th, and he said, "You  
23 came here, you gave me my verbal warning, so  
24 now..." in a gesture, he was like, "...you can go  
25 now."

1 Q And what happened at that point?

2 A Well, I completed my regulatory  
3 inspection. He signed it, and I exited the  
4 establishment.

5 Q And very quickly, so your purpose in  
6 going to the establishment was in part as it be  
7 the establishment regarding the requirements and  
8 to ensure that they'll be able to comply?

9 A Yes.

10 Q Very quickly -- the Board's  
11 indulgence.

12 A I'm sorry?

13 CHAIRPERSON ANDERSON: There's no  
14 question?

15 MR. ADAMS: No question.

16 CHAIRPERSON ANDERSON: There's no  
17 question. There are no questions.

18 MR. ADAMS: I would like to share a  
19 screen, Mr. Chairman.

20 CHAIRPERSON ANDERSON: Ms. Fashbaugh,  
21 can you please allow Mr. Adams to share his  
22 screen?

23 MS. FASHBAUGH: This has been  
24 accomplished.

25 BY MR. ADAMS:

1           Q       I just want to make sure. Are you  
2           able to -- Ms. Glasgow, are you able to see my  
3           screen at this point?

4           A       Yes.

5           Q       Now, I'm showing to you what has  
6           already been made as the District's Exhibit 14.  
7           And what is this -- exhibit appears to be a  
8           chart?

9           A       Yes, it's a chart of establishment  
10          that were in violations of the Mayor's order.  
11          This is like a running spreadsheet, so we are  
12          aware of the steps we need to take because it's a  
13          tier step of violations, so if, like for  
14          instance, The Big Board is, which is on line 11,  
15          their first charge that day was staff not wearing  
16          masks, so the next, we would know for the next  
17          investigator when they go there, the next tier of  
18          violation would be a written warning.

19          Q       And just to be clear, you state that,  
20          you point to line 11. Does line 11 reflect the  
21          visit that you made on January 14th?

22          A       Yes.

23          Q       And it reflects a violation, which was  
24          the staff not wearing masks?

25          A       That is correct.

1           Q       And this is, this chart is created for  
2 all establishments in the District as of February  
3 1st of 2022?

4           A       Yes.

5           MR. ADAMS: I'm going to stop sharing  
6 screen. I have no further questions for Ms.  
7 Glasgow.

8           CHAIRPERSON ANDERSON: Ms. Chaverri,  
9 any questions for Ms. Glasgow?

10          MS. CHAVERRI: No questions at this  
11 time. Thank you.

12          CHAIRPERSON ANDERSON: Any questions  
13 by any Board members?

14          MR. SHORT: Yes, Mr. Chair, I have  
15 one.

16          CHAIRPERSON ANDERSON: Go ahead, Mr.  
17 Short.

18          MR. SHORT: Good morning, Investigator  
19 Glasgow.

20          THE WITNESS: Good morning.

21          MR. SHORT: Thank you for your report.  
22 Looking at Exhibit 14 which we just saw on the  
23 screen, you said you went there on the 14th of  
24 January and that you were there to educate and  
25 also to let them know that the Mayor's order was



1 in place and that the following day on the 15th,  
2 it would be even a little more stringent. Is  
3 that correct?

4 THE WITNESS: Yes.

5 MR. SHORT: And you addressed the  
6 owner at that time with Mr. Flannery?

7 THE WITNESS: Yes.

8 MR. SHORT: And you addressed him as  
9 of an agent of the city working for ABRA as an  
10 investigator?

11 THE WITNESS: Yes.

12 MR. SHORT: And, again, what was his  
13 response to you?

14 THE WITNESS: I asked him if he knew  
15 about the Mayor's order. He said, "Yes." I  
16 asked him if he was going to comply with the  
17 Mayor's order. He stared at me in my face that,  
18 for like five seconds, then he shook his head,  
19 and he said, "Look, you came here, you gave me my  
20 verbal warning, now you can..." in a gesture that  
21 you can leave.

22 MR. SHORT: To your knowledge, was  
23 that the very first ABRA warning he received to  
24 your knowledge?

25 THE WITNESS: Yes.

1 MR. SHORT: Okay. I do thank you.  
2 Thank you for your testimony.

3 That's all I have, Mr. Chair.

4 CHAIRPERSON ANDERSON: Thank you, Mr.  
5 Short. Any other questions by any Board members?

6 All right. Ms. Chaverri, do you have  
7 questions of the witness based on the questions  
8 that was asked by Mr. Short?

9 MS. CHAVERRI: No, I do not. Thank  
10 you.

11 CHAIRPERSON ANDERSON: Mr. Adams, do  
12 you have any redirect?

13 MR. ADAMS: No, Your Honor. No, Mr.  
14 Chair.

15 CHAIRPERSON ANDERSON: All right. Ms.  
16 Glasgow, thank you very much for your testimony.  
17 All right. Thank you very much.

18 THE WITNESS: Thank you.

19 CHAIRPERSON ANDERSON: Mr. Adams, do  
20 you have another witness?

21 MR. ADAMS: Before we call any other  
22 witnesses, we want to revisit statements that  
23 were made by Ms. Chaverri. First of all, we want  
24 to -- the District wants to understand that the  
25 nature of what's being stated, so our question at

1 this point would be whether the establishment  
2 stipulates to facts stated and the other  
3 exhibits, essentially the other investigative  
4 reports, which would be -- briefly, Board's  
5 indulgence just to make sure that I have that  
6 list. That will be Exhibits 7, 8, 9, 10, 11, and  
7 12, as well as Exhibits 13 and 15.

8 CHAIRPERSON ANDERSON: That's for you,  
9 ma'am. Do you stipulate -- so you're talking  
10 about the case reports. What are the case  
11 reports, Mr. Adams?

12 MR. ADAMS: I can go through that  
13 individually, so -- and I apologize. I have too  
14 many documents going on at the same time.

15 MS. CHAVERRI: I think I'm generally  
16 aware of the ones you're referring to, and if  
17 they are just duplicates of the report of the  
18 investigator, I'd stipulate to that. It's no  
19 problem.

20 MR. ADAMS: And I do want to make --  
21 it should be good for us to at least read into  
22 the record. All right. So, for the record, Mr.  
23 Chairman, the exhibits specifically is for  
24 Exhibit 7, which is Government's Exhibit Number  
25 7, which is a case report for Case Number 22-CIT-

1 0008.

2 This is dated January 15, 2022, and is  
3 drafted by Investigator Kevin Puente and records  
4 the events that occurred on January 15 where both  
5 he and Investigator Pleitez was at the  
6 establishment. Includes photographs taken by  
7 Investigator Pleitez of both the, a bartender and  
8 the photograph of Mr. Flannery being handed the  
9 actual signs that were to be posted at the  
10 establishment as well as copies of the Mayor's  
11 order.

12 It also includes the regulatory  
13 inspection form and the citation that was, the  
14 written citation that was issued by the  
15 investigators on that day, so that is the  
16 Government's Exhibit Number 8. Government  
17 Exhibit Number -- sorry, 7. My apologies. This  
18 is Government Exhibit 7.

19 Government Exhibit Number 8 is for  
20 case report, is a case report for Case Number 22-  
21 CIT-0010. This is for January 18th of 2022.  
22 This was provided by Investigator Ruiz who made  
23 observations at the establishment regarding  
24 compliance at that time.

25 He provided a -- for this specific

1 report is regarding the Citation Number 4215,  
2 which was for an amount of -- I apologize; I just  
3 want to make sure that I have that right -- yes -  
4 - in the amount of, that was the citation for  
5 \$1,000 for staff not wearing masks. And it also  
6 includes a photograph of unmasked patrons and a  
7 staff member as well as Mr. Flannery. And it  
8 also includes the Citation 4215 itself.

9 Exhibit 9, Mr. Chairman and members of  
10 the Board, is for a case, is for Case Number, or  
11 Investigation Number 22-CIT-0011, again, by  
12 Investigator Ruiz for January 18th. There's a  
13 separate investigative report for the same visit;  
14 however, this documents the citation that was  
15 issued, which was a written warning for the  
16 failure to check the vaccinations. And it  
17 includes facts regarding that visit as well as  
18 the citation itself.

19 Exhibit 10 is Case Report, or is a  
20 case report for Case Number 22-CIT-00013. This  
21 is -- the date for this is January 20, 2022, for  
22 a visit conducted by Investigator Condon.

23 We will note that there -- it states  
24 within the report that it occurred on January  
25 18th, which is an error which will be explained

1 by the next exhibit. It also has a copy of  
2 receipt as well as a citation issued, which is  
3 4217, which leads us to the next exhibit which is  
4 the updated version of the very same, of Exhibit  
5 10 for Case Number 22-CIT-00013, which updates  
6 the fact that the incident -- or the report was  
7 for observations made on January 20th.

8 We also as a part -- this will be  
9 Exhibit 12, which is for Case Number 22-CMP-00006  
10 for -- the date is for this is for January 22nd,  
11 which was the last visit by ABRA, which was  
12 conducted by Investigator Puente which includes  
13 facts. It also includes a regulatory inspection  
14 form as well as a, which would be a second  
15 exhibit, of that exhibit, of Exhibit 12, which is  
16 a food and establishment inspection form  
17 completed by the Department of Health that was  
18 dated from January 21st that mentions that the  
19 establishment was out of compliance.

20 It is important to note that within  
21 this was noted within his report that he, that  
22 Investigator Puente incorporated the  
23 investigation done by the Department of Health on  
24 January 21st.

25 And the corollary to that is Exhibit

1 No. 13, which is, has already been admitted,  
2 which is an email that was provided by the DOH,  
3 Department of Health, Investigator Hilda Bengé  
4 which states her observations from her visit on  
5 January 21st, that Investigator Puente included  
6 his consideration when he created the case report  
7 for -- that's stated in Exhibit 12.

8 So, those are some of the exhibits.  
9 The other exhibits -- there's another exhibit,  
10 Exhibit 15, and I'll allow my co-counsel, Mr.  
11 Celó, to proffer the information for Government  
12 Exhibit 15.

13 MR. CELO: Mr. Chair, Exhibit 15 is a  
14 series of Department of Health records which were  
15 incorporated into Mr. Puente's, Investigator  
16 Puente's investigation by reference. These refer  
17 to three separate DOH investigations occurring on  
18 January 19th, January 21st, and February 1st of  
19 2022.

20 All three of which identified  
21 violations for not having employees wear masks,  
22 not checking vaccination status of patrons, and  
23 not having patrons wear masks when they were not  
24 eating or drinking, and ultimately resulted in a  
25 summary suspension from the Department of Health,

1 Food, and Safety Division issued at approximately  
2 six p.m. on February 1, 2022.

3 MR. ADAMS: And, Mr. Chairperson, if  
4 the Respondent stipulates to those facts, you  
5 know, we proffered those are facts that would be  
6 testified to by our witnesses.

7 MS. CHAVERRI: Hi. In response to  
8 that, we're okay with Exhibit 15 and stipulating  
9 to those facts. We would like to make a note for  
10 the record that with respect to Exhibit 12, there  
11 is a statement on the page Bates marked 56 that  
12 Mr. Flannery stated that he, in quotes, "He is  
13 here to violate me for not following the Mayor's  
14 order."

15 Mr. Flannery just wants to note for  
16 the record that he, in fact, did not say that.  
17 He thinks that that's a misstatement, so, you  
18 know, we don't object to the admission, but just  
19 wanted to note that we do object to the content  
20 of that particular statement.

21 CHAIRPERSON ANDERSON: Mr. Adams?

22 MR. ADAMS: Mr. Chairman, if anything  
23 else, Mr. Chairman, we can just have Investigator  
24 Puente -- we're fine with the rest of the  
25 stipulations that are made. Since there is



1 dispute regarding that quotation, we can provide  
2 direct examination by Investigator Puente on  
3 their statement.

4 MS. CHAVERRI: Thank you.

5 CHAIRPERSON ANDERSON: All right. So,  
6 where are we then? We can admit those -- we can  
7 admit, I mean, those exhibits without -- and  
8 there's a stipulation that the parties have  
9 agreed to the contents of all the exhibits with  
10 the exception of the statement that was  
11 attributed to Mr. Flannery.

12 I'm not quite sure if we necessarily  
13 need direct testimony on that because that's --  
14 we'll take the statement for what it's worth.  
15 I'm not sure at the end of the day if that's that  
16 important as a fact that we need to call a  
17 witness just for that factual statement since the  
18 rest of the report has not been disputed, so if  
19 the Respondent has stipulated to that, then there  
20 is really no need for us to have any witnesses  
21 testify to the contents of these reports.

22 MR. ADAMS: Understood, Mr. Chairman.  
23 I believe that we agree with the Chair's  
24 recommendation. We do not need the rest of the  
25 material (audio interference).

1 CHAIRPERSON ANDERSON: So, where then  
2 are we then, Mr. Adams?

3 MR. ADAMS: With the stipulations to  
4 both the admission of the exhibits, as well as  
5 the contents of the exhibits, we believe the  
6 government can rest this case.

7 CHAIRPERSON ANDERSON: I'm sorry. I  
8 did not hear what you said, Mr. Adams. The last  
9 thing, I didn't hear what you said. You trailed  
10 off.

11 MR. ADAMS: I apologize. I agree. I  
12 did trail off. Thank you. The District can rest  
13 this case with, since we do have -- we have a  
14 stipulation to the contents of the admitted  
15 exhibits.

16 CHAIRPERSON ANDERSON: All right.  
17 Thank you. All right.

18 Ms. Chaverri, we can take a ten-minute  
19 break or we can -- I mean, we've been going since  
20 ten o'clock. Normally, I would take a break  
21 after two hours, but we could take a ten-minute,  
22 15-minute break before you present your case or  
23 we can go straight ahead, so it's your call.

24 MS. CHAVERRI: We would like to take  
25 a 10-minute break just to use the restroom and

1 whatnot.

2 CHAIRPERSON ANDERSON: All right. So,  
3 we're off the record for ten minutes. I will say  
4 it's 11:30. We will be back on the record at  
5 11:40.

6 (Whereupon, the above-entitled matter  
7 went off the record at 11:29 a.m. and resumed at  
8 11:40 a.m.)

9 CHAIRPERSON ANDERSON: All right,  
10 we're back on the record.

11 MR. ADAMS: Thank you, Mr. Chairman.

12 CHAIRPERSON ANDERSON: All right. Do  
13 you have a witness you wish to call, ma'am?

14 MS. CHAVERRI: Chairperson Anderson,  
15 we've decided that we are not going to present  
16 any further or affirmative evidence in the matter  
17 and that the Respondent rests.

18 CHAIRPERSON ANDERSON: All right.

19 Mr. Adams, do you wish to make a  
20 closing statement? And what I'm asking in the  
21 closing statements by our -- and I'm not sure if  
22 Mr. Adams you're ready for closing statement, so  
23 if you need a further break for us to, for both  
24 parties to prepare for closing arguments, I'll  
25 accommodate that. Are you ready to make closing

1 arguments or do we another break?

2 MR. ADAMS: Well, Mr. Celo, I think,  
3 is ready to make one.

4 CHAIRPERSON ANDERSON: I'm not sure  
5 who's making that, but -- all right, so if the  
6 parties are ready to make a closing statement  
7 that's fine. All right. So, what I'm asking the  
8 parties to do, what I'm asking the government  
9 specifically, what is it that the government,  
10 what is it the government is asking the Board to  
11 do? And for the respondent, I'm asking  
12 specifically what is it that is being requested  
13 from the Board.

14 And I just want to just get some  
15 clarification. I know that the proffer that at  
16 least the stipulation that the respondent was  
17 asking, I think, was asking something about a  
18 carryout and delivery.

19 And just generally, I don't know  
20 whether or not this licensee has such an  
21 endorsement on their license, so the Board itself  
22 cannot, couldn't order a carryout and delivery  
23 endorsement unless such a request has been made  
24 by the, from the licensee to the agency, and then  
25 we would go through that process to see whether

1 or not such an endorsement can be issued, but I'm  
2 just saying generally, the Board just doesn't say  
3 one can do carryout and delivery, that there has  
4 to be a process that the licensee would have to  
5 follow independently by requesting and then the  
6 agency would make a determination whether or not  
7 such an endorsement can be issued for that type  
8 of license generally, okay? So, I just wanted to  
9 clarify generally how such an endorsement would  
10 come about.

11 All right, so, Mr. Celo, you do have  
12 an opening statement? Go ahead, please.

13 MR. CELO: Yes, Mr. Chairman.

14 CHAIRPERSON ANDERSON: I'm sorry.  
15 Closing. I apologize. Closing.

16 MR. CELO: And before I present my  
17 close, I do ask to reserve time for rebuttal  
18 close if necessary.

19 CHAIRPERSON ANDERSON: That's fine.

20 MR. CELO: Thank you. Mr. Chair,  
21 ladies and gentlemen of the Board, may it please  
22 the Board? This is a case in which the facts are  
23 not in dispute, in which the law is clear, and  
24 which the evidence is uncontested.

25 Mr. Flannery and Big Board made a

1 public statement that they were not going to  
2 follow the rules that the Mayor laid out, and  
3 they proceeded to not follow those rules.

4           There has not been testimony, but you  
5 will see in the evidence and in the proffers that  
6 there were a total of eight different  
7 investigations all of which found violations  
8 consistent throughout.

9           Every time an investigation occurred,  
10 there were no signs of masks being worn by the  
11 employees, there was no check of vaccination at  
12 the door, there was no sign of masks being worn  
13 by patrons who were not engaged in eating or  
14 drinking. There is no dispute that these  
15 violations occurred, nor is there any dispute in  
16 the harm that this could cause the District.

17           Dr. Mangla testified before you in  
18 great detail about exactly how hard COVID has hit  
19 the District and exactly why the Mayor's orders  
20 are in place. Bars and restaurants constitute  
21 the third-leading source of outbreaks in the  
22 District of Columbia, and they constitute the  
23 leading source of outbreaks for adult-centric  
24 activity. Once you get outside a school and  
25 daycare, bars and restaurants are how this

1 disease spreads.

2 Now, we looked in depth at Government  
3 Exhibit 4. And if you examine that and look in  
4 the timeframe with the relevant context, we had a  
5 major spike in outbreaks in bars and restaurants  
6 the week of December 10th. Twenty-four outbreaks  
7 that week.

8 The Mayor imposed the mask mandate  
9 order on December 18th. The week he imposed it,  
10 there were three outbreaks in bars and  
11 restaurants. Since then, there have been two.  
12 These rules are in place for a reason, and they  
13 work.

14 We saw through Exhibit 3 the effect  
15 that vaccination has on transmission,  
16 hospitalization, and death due to COVID. We saw  
17 that the vaccination check is necessary to help  
18 protect the community from imminent harm and to  
19 help prevent the spread of COVID-19 in bars and  
20 restaurants.

21 The purpose of these rules is not in  
22 dispute. The facts of this case are not in  
23 dispute. I do not know exactly what Big Board is  
24 seeking from this Board, but I can tell you that  
25 the appropriate outcome of this hearing is an

1 indefinite summary suspension.

2 Their continued operation places the  
3 community at risk and cannot be allowed by this  
4 Board. Thank you.

5 CHAIRPERSON ANDERSON: Thank you.

6 Ma'am, a closing?

7 MS. CHAVERRI: In closing, we're  
8 simply going to say -- and good afternoon to the  
9 Board again -- that Mr. Flannery and the licensee  
10 believe that the regulations around the vaccine  
11 card are simply unfounded, that there is no  
12 reason for checking vaccine status. We  
13 understand the mask mandate; however, we believe  
14 that this is just going too far and too intrusive  
15 into the business's operations.

16 And for that reason, Mr. Flannery and  
17 the licensee respectfully request, as we stated  
18 earlier, a modified license or modified grants of  
19 rights that would permit the restaurant to  
20 operate in a carryout basis with the  
21 understanding that masks would be used and that  
22 patrons that come in will be wearing masks to  
23 pick up the food or the alcohol depending on,  
24 obviously, the Department of Health's input into  
25 this.



1           So, again, our position is simply, you  
2 know, as stated by ABRA, we understand we're not  
3 contesting the facts at issue here. My client  
4 understands precisely what is happening, and his  
5 number one goal is to preserve the value of his  
6 operation, one that's been in northeast D.C. for  
7 the last ten years, and to continue to serve the  
8 public and what has in track history been a safe  
9 manner.

10           And that's all we have. Thank you.

11           CHAIRPERSON ANDERSON: Thank you.

12           Mr. Celso, you said you reserve the  
13 right for rebuttal. Do you wish to make any  
14 rebuttal arguments?

15           MR. CELO: Yes, Mr. Chair, I do.

16 Ladies and gentlemen of the Board, there were two  
17 arguments made in that close. Number one that  
18 the regulations are unfounded. The science in  
19 this case is clear. Dr. Mangla's testimony was  
20 clear and convincing. The regulations exist for  
21 good reason.

22           The second argument they raised is  
23 that it is too intrusive into the business  
24 operations, that they go too far, that they're  
25 too much of a burden to check vaccination on the

1 patrons.

2 Now, I did not have a chance to ask  
3 Mr. Flannery about this, but if you look at the  
4 photographs, which are admitted into the record,  
5 this is a small bar. It has a small footprint.  
6 There is a bar with seating at the bar, a single-  
7 lane walkway, and then seating at the windows.  
8 There is no separate seating area. There is no  
9 separate restaurant in this facility.

10 That means that Mr. Flannery has a  
11 legal obligation to check ID for everyone who  
12 enters his establishment. I ask you, how can it  
13 be that it is too intrusive to check vaccination  
14 cards for every patron when he already checks  
15 every ID?

16 There is no basis for the claim of  
17 intrusiveness. There is no basis for the claim  
18 that the regulations are unfounded. There is  
19 only one outcome that makes sense before this  
20 Board, and I renew my request for an indefinite  
21 summary suspension of Big Board. Thank you.

22 CHAIRPERSON ANDERSON: All right.  
23 Thank you.

24 All right, the record is now closed.  
25 The Board has up to three days to issue a

1 decision, and we will issue our decision within  
2 three days.

3 All right. I want to thank both  
4 parties for their presentation today. And, yes,  
5 I just want to thank both parties for their  
6 presentation today. All right.

7 So, as chairperson of the Alcoholic  
8 Beverage Control Board for the District of  
9 Columbia and accordance with D.C. Code Section  
10 2574B of the Open Meetings Act, I move that ABC  
11 Board Holder close the meeting for the purpose of  
12 seeking legal advice from our counsel on Case  
13 Number -- give me one minute please -- on Case  
14 Number 22-CMP-00006, The Big Board.

15 Pursuant to D.C. Official Code Section  
16 2574B4 of the Open Meetings Act and deliberating  
17 upon Case Number 22-CMP-00006, The Big Board, for  
18 the reasons cited in D.C. Official Code Section  
19 2574B13 of the Open Meetings Act.

20 Is there a second?

21 MR. SHORT: Mr. Short, I second.

22 CHAIRPERSON ANDERSON: Mr. Short has  
23 seconded the motion. I will now take a roll call  
24 vote on the motion that has been properly  
25 seconded. Mr. Short?

1 MR. SHORT: Mr. Short, I agree.

2 CHAIRPERSON ANDERSON: Mr. Cato?

3 MR. CATO: Bobby Cato, I agree.

4 CHAIRPERSON ANDERSON: Ms. Crockett?

5 MS. CROCKETT: Rafi Crockett, I agree.

6 CHAIRPERSON ANDERSON: Ms. Hansen?

7 MS. HANSEN: Jeni Hansen, I agree.

8 CHAIRPERSON ANDERSON: Mr. Grandis?

9 MR. GRANDIS: Edward Grandis, I agree.

10 CHAIRPERSON ANDERSON: And Mr.

11 Anderson, I agree.

12 As it appears that the motion has  
13 passed 6-0, I hereby give notice that the ABC  
14 Board will recess these proceedings to hold a  
15 closed meeting at the ABC Board conference room  
16 pursuant to Section 2574B of the Open Meetings  
17 Act. Thank you very much. This case is  
18 adjourned. Have a great day.

19 And I'll now ask all Board members to  
20 return to executive session for further  
21 development. Have a great day.

22 (Whereupon, the above-entitled matter  
23 went off the record at 11:52 a.m.)

24

25

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: The Big Board

Before: DCABRA

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