

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
NHV Corporation, :
t/a Haydee's Restaurant :
3102 Mount Pleasant :
Street NW : Show Cause
Retailer CT - ANC 1D : Hearing
License #24663 :
Case #21-CIT-00213 :
 :
(Violation of Mayor's :
Orders [Operating After :
Hours]) :
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Thursday
October 28, 2021

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:

SIMONE ANDREWS, DC ABRA Staff
WILLIAM COWDEN, Licensee's Counsel
ANTONIA FELDMAN, Interpreter
NIMIA VANEGAS, Licensee/Witness
ANTOINE WILLIAMS, DC OAG

CONTENTS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
NIMIA VANEGAS	10		19	

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

2 1:13 p.m.

3 CHAIRPERSON ANDERSON: The next case
4 in our calendar is case #21-CIT-00213, Haydee's
5 Restaurant, license 24663.

6 Ms. Andrews, can you please elevate
7 the rights of the parties in this matter, please?

8 MS. ANDREWS: Sure. Standby.

9 Mr. Williams, your rights have been
10 elevated.

11 Ms. Feldman, your rights have been
12 elevated.

13 Ms. Vanegas, your rights have been
14 elevated.

15 Mr. Cowden, your rights have been
16 elevated.

17 That's all, Mr. Chair.

18 CHAIRPERSON ANDERSON: Thank you very
19 much. Will all the parties, please, turn their -
20 - I'm sorry, their cameras on, if they are able
21 to do so. Give me one moment, please. This is a
22 continuation of the hearing yesterday.

23 Ms. Feldman, you're the interpreter?

24 MS. FELDMAN: Interpreter, yes.

25 CHAIRPERSON ANDERSON: Can you raise

1 your right hand, please?

2 (Interpreter sworn.)

3 CHAIRPERSON ANDERSON: Can you please
4 spell and state your name for the record, please?

5 MS. FELDMAN: Antonia Feldman, F like
6 Frank, E like Edward, L like Louise, D like
7 David, M like Mary, A like apple, N like Nancy.

8 CHAIRPERSON ANDERSON: And please, for
9 the record just state what your position here
10 today is.

11 MS. FELDMAN: A Spanish-English
12 interpreter.

13 CHAIRPERSON ANDERSON: Thank you very
14 much, ma'am. Just a procedural matter, ma'am, do
15 you have any time constraints today? I do not
16 know how long this hearing is going to last, so
17 I'm trying to find out if you have any time
18 constraints.

19 MS. FELDMAN: Yes, I do, 4:30.

20 CHAIRPERSON ANDERSON: 4:30, all
21 right. And again, I'm not sure how long this
22 hearing is going to last. Do you need a break
23 after a specific time or if we're -- I'm just
24 trying to find out, do you need to have a certain
25 break at any specific time before 4:30? I'm not

1 sure if we will be going till 4:30, but do you
2 need a structured break at any specific time?

3 MS. FELDMAN: No, other than I'm not
4 familiar with this situation and this case, so I
5 don't know how it is structured. But I will
6 probably raise my hand if I feel like I need a
7 little, you know, a pause or something. If that
8 is acceptable to you.

9 CHAIRPERSON ANDERSON: I appreciate
10 that, you know, we're doing the hearing, and I
11 sometimes, I forget about the interpreter, and
12 sometimes I forget about the court reporter. And
13 so just to make sure that I'm aware, cognizant,
14 that the interpreter and the court reporter might
15 not have the flexibility of taking breaks because
16 they're always working. So I will try to be
17 cognizant of that.

18 But I think what we will do, if this
19 hearing goes beyond two hours I believe that
20 we'll take a break. We'll take a structured
21 break if this hearing goes beyond two hours, at
22 least for everyone to get their breath. And I
23 would like someone, sometimes I get caught up in
24 this myself, so I would like someone to at least
25 alert me that we're getting on to the two-hour

1 period. If this case will be longer than two
2 hours. Okay?

3 MS. FELDMAN: Thank you.

4 CHAIRPERSON ANDERSON: Thank you. All
5 right, so I would like to have the parties again-
6 - this hearing, case #21-CIT-00213 from
7 yesterday. So I would like the parties to
8 introduce themselves for the record.

9 And we'll start with the Government.

10 MR. WILLIAMS: Good afternoon, Mr.
11 Chairman, board members, my name is Antoine
12 Williams on behalf of the District.

13 CHAIRPERSON ANDERSON: Good afternoon,
14 Mr. Williams. Mr. Cowden, can you please spell
15 and state your name again for the record.

16 MR. COWDEN: Good afternoon, Chairman
17 Anderson. I'm William Cowden on behalf of the
18 restaurant.

19 CHAIRPERSON ANDERSON: All right, good
20 afternoon. Can you please just keep your voice
21 up, please?

22 MR. COWDEN: I am in the same room
23 with my client so I muted her mic to make sure
24 that she's not picking it up.

25 CHAIRPERSON ANDERSON: It's not

1 working. Ms. Feldman, you're interpreting for
2 Ms. Vanegas?

3 MS. FELDMAN: Yes. Yes, I am.

4 CHAIRPERSON ANDERSON: All right.

5 MS. FELDMAN: Vanegas, Vanegas is the
6 way it's --

7 CHAIRPERSON ANDERSON: All right.
8 Yes, okay, fine. So we're having the same
9 problem as we did yesterday, Mr. Cowden.

10 MS. FELDMAN: Mr. Anderson, this is
11 the interpreter. If it can be of assistance to
12 you, the way I have handled a similar situation
13 is that I call Ms. Vanegas on my cellphone and I
14 talk directly to her so that she, you know,
15 there's only one voice coming out of her
16 attorney's office where she's located. I
17 understand she's next to him. So would that be
18 an option?

19 CHAIRPERSON ANDERSON: If it works for
20 the parties, I'm fine with it.

21 MS. FELDMAN: Because my understanding
22 is that I'm translating for her.

23 CHAIRPERSON ANDERSON: Yes.

24 MS. FELDMAN: And if he asks a
25 question I will translate and I will translate

1 for you. So I'm always in touch with you.

2 MR. COWDEN: And what I've done is
3 I've turned off my mic and I've turned off my
4 speakers. And I will just use her video and her
5 speakers so we won't have any background noise.

6 CHAIRPERSON ANDERSON: Ms. Feldman,
7 how would you facilitate the communication with
8 her? How would that occur?

9 MS. FELDMAN: With my cellphone, I
10 call her cellphone and she listens to me on her
11 cellphone. And she doesn't have to -- her
12 cellphone should be muted. She just listens to
13 me. And my cellphone is muted so she just hears
14 me.

15 (Simultaneous speaking.)

16 CHAIRPERSON ANDERSON: Is that
17 something that would work for your client, sir?

18 MR. COWDEN: Chairman Anderson, I
19 think that the way we set it up right now will
20 work better. It will work the way it worked
21 yesterday, so she can hear the interpreter this
22 way, through the screen, and there won't be any
23 background noise because mine is off.

24 MS. FELDMAN: Okay.

25 CHAIRPERSON ANDERSON: Ma'am, thank

1 you for the offer that you made.

2 MS. FELDMAN: That's fine. Okay.

3 CHAIRPERSON ANDERSON: But that's
4 their call, not my call. Thank you.

5 All right, Mr. Cowden, do you have a
6 witness you wish to call?

7 MR. COWDEN: Yes, we call Nimia Haydee
8 Vanegas.

9 CHAIRPERSON ANDERSON: Ms. Vanegas,
10 can you please raise your right hand please?

11 WHEREUPON,

12 NIMIA HAYDEE VANEGAS

13 was called as a witness by Counsel for the
14 Defendant and, having been first duly sworn,
15 assumed the witness stand, was examined and
16 testified as follows. NOTE: UNLESS OTHERWISE
17 NOTED, ALL ANSWERS ARE GIVEN THROUGH THE
18 TRANSLATOR, ANTONIA FELDMAN, WHO WAS ALSO FIRST
19 DULY SWORN.

20 CHAIRPERSON ANDERSON: Thank you.

21 Your witness, sir.

22 DIRECT EXAMINATION

23 BY MR. COWDEN:

24 Q Good afternoon, Ms. Vanegas. Will you
25 please introduce yourself?

1 A My name is Nimia Vanegas, owner of the
2 restaurant Haydee's since 1990.

3 Q Where is Haydee's Restaurant located?

4 A 3102 Mount Pleasant Street.

5 Q Ms. Vanegas, have you served alcohol
6 at Haydee's since 1990?

7 A Yes.

8 Q From 1990 until March of 2021, have
9 you ever received a citation from ABRA for any
10 alcohol violations?

11 A No.

12 Q Directing your attention to March 17,
13 2021, you were working at Haydee's that night?

14 A Yes.

15 Q Please tell members of ABRA what
16 happened at about 10:00 p.m. that evening.

17 A Yes, a man and a woman came in, known
18 to us, and they asked for food and drink. And I
19 told them that we stopped serving alcoholic
20 beverages by 10:00 p.m.

21 So we asked whether they were going to
22 eat in or it was carry-out, and they said they
23 were going to eat something, and have something
24 in, and then carry out something. So they had
25 some drinks, and they paid, and they were going

1 to take some -- they wanted the food to go.

2 Q When you said they want it to go, you
3 mean they want it to go, bags to take with them?

4 A Yes, they want to take their leftover
5 food that they had not been able to finish at
6 dinner. So we gave them the bag, and we provided
7 them bags, and they also asked for some sodas
8 because they were going to drive. And then they
9 left and I didn't see them. I couldn't see. I
10 didn't see them, I couldn't see them from the
11 vantage point where I was.

12 Q Please tell the members of ABRA where
13 you were working that night.

14 A I was sitting. I was reviewing the
15 order from Uber because we get Uber orders. And
16 I was reviewing the order when I thought that
17 those people had already left.

18 May I continue?

19 Q Tell her I'll ask some questions at
20 the end, and then she can answer the question.

21 From where the couple was sitting,
22 were you able to see both people where you were
23 located?

24 A No, we cannot see them.

25 Q Did there come a time when an ABRA

1 inspector entered your restaurant?

2 A A person, somebody came in; I didn't
3 know that that person was an inspector and he
4 said take your time, I'll wait here. I went to
5 wash my hands. I thought he was somebody who had
6 a reservation or somebody who had placed an
7 order.

8 Q And when you went to wash your hands,
9 where did you go?

10 A To the bar.

11 Q And when you went to the bar, what did
12 you see?

13 A The person said I'm going to give you
14 a citation or a fine, and he showed me a book.

15 Q When you went to the bar to wash your
16 hands, were you able to see the gentleman
17 customer back in the restaurant?

18 A At that moment I saw him.

19 Q Were you surprised that he was still
20 at the restaurant?

21 A Yes. I told the inspector they had
22 arrived at nine, and they said that they were
23 going to leave right away.

24 MR. COWDEN: Okay, I need to share a
25 screen.

1 CHAIRPERSON ANDERSON: Ms. Andrews,
2 can you please give him the opportunity to share
3 his screen, please?

4 MS. ANDREWS: Okay Mr. Cowden, you can
5 share your screen now.

6 BY MR. COWDEN:

7 Q I'm showing you what has been admitted
8 as Defendant's Exhibit 4. You recognize this
9 photograph?

10 A Yes, it's the person who bought the
11 food.

12 Q And in the photograph, there is a
13 person at the bottom. Is that the inspector?

14 A He is inspector.

15 Q Does this photograph come from your
16 surveillance video?

17 A That's so.

18 Q And the photograph has a date of March
19 17, 2021, and a time of 10:54 and 22 seconds p.m.
20 Is that accurate?

21 A That is correct.

22 Q And in the photograph, the customer
23 has a to-go bag. Is that correct?

24 A That's correct.

25 Q And the photograph shows a margarita

1 glass that's empty in front of her. Is that
2 correct?

3 A That is correct. They were only -- it
4 was empty with maybe some water because
5 margaritas are made of 60 percent of ice.

6 Q I will show you this; it's marked
7 Defendant's Exhibit 5. Now, is this photo also
8 taken from your surveillance video?

9 A That is so.

10 Q In the prior photo it was 10:54 and
11 22, and now it's 10:54 and 27. Is that correct?
12 Does this photo accurately show that five seconds
13 after the inspector enters your restaurant, the
14 male customer returns to his seat?

15 A That is correct.

16 Q Do you know where the male customer
17 had been before he came back to his seat at about
18 10:54 p.m.?

19 A I saw in my video that he was coming
20 out of the bathroom.

21 Q Does this photo also show the
22 inspector taking a picture of the couple in the
23 restaurant with his iPhone?

24 A Yeah, I saw that when I looked at the
25 video.

1 Q And is it also reflected in the photo?

2 MR. WILLIAMS: Objection, Mr.
3 Chairman, it calls for speculations.

4 CHAIRPERSON ANDERSON: I'm going to
5 sustain the objection.

6 MR. COWDEN: If I may comment on that,
7 why does that call for speculation? The photo
8 shows what it shows.

9 CHAIRPERSON ANDERSON: We're talking
10 about -- I'm sorry, go ahead, Mr. Williams.

11 MR. WILLIAMS: He's holding his phone.
12 You can't tell whether he's actually taking a
13 photo or not. He could be checking his email,
14 and she specifically said that she saw this in
15 this still photo. She didn't see it live and in
16 person. That's entirely speculation.

17 MR. COWDEN: I'll redirect my
18 question. Ms. Vanegas, when you viewed your
19 video, did you see the inspector take photos
20 before he came over and approached you?

21 MS VANEGAS: I saw it on a video, that
22 he had taken pictures before he came to see me.
23 At that time I didn't know that he had taken
24 pictures.

25 MR. WILLIAMS: Objection, Your Honor.

1 There's no video in evidence, currently. I'm
2 sorry, Chairman.

3 CHAIRPERSON ANDERSON: Are you
4 objecting to her answer or to the question?
5 Because you didn't object to the question, you
6 objected after she -- I'm going to overrule the
7 objection. Let's move on.

8 MR. COWDEN: After the inspector came
9 and talked with you, did he ever go back to you,
10 where the customers had been sitting?

11 MS VANEGAS: No, I didn't see him.

12 BY MR. COWDEN:

13 Q After the inspector came and spoke
14 with you, did you ever see him go back and take
15 any pictures?

16 A No.

17 Q Directing your attention to
18 Defendant's Exhibit #7. Do you recognize this
19 photograph?

20 A That was where I was seated.

21 Q When you say where I was seated, where
22 in the photograph were you sitting when the
23 inspector entered?

24 MS. FELDMAN: Your Honor, can I take
25 a quick pause? My neighbor is making a lot of

1 noise. I would like to have them stop that
2 noise. Can you please give me a second?

3 CHAIRPERSON ANDERSON: All right,
4 we'll take a five minute. I apologize, but we'll
5 just take a five minute.

6 MS. FELDMAN: Thank you, Your Honor.
7 It's very disruptive. Thank you.

8 (Whereupon, the above-entitled matter
9 went off the record at 1:43 p.m. and resumed at
10 1:45 p.m.)

11 CHAIRPERSON ANDERSON: Back on the
12 record. Go ahead.

13 MR. COWDEN: Where you were located
14 that evening, March 17, 2021, were you able to
15 see the customers we're discussing in this
16 matter?

17 MS VANEGAS: No.

18 BY MR. COWDEN:

19 Q When the inspector arrived, did you
20 think that they had already left?

21 A That's what I thought because they
22 paid at 9:32, and we gave them the bag, and we
23 just thought that, you know, we had to just clear
24 the table.

25 Q Why hadn't you cleared the table by

1 the time the inspector arrived?

2 A First of all, you know, you cannot
3 really see that table and they had been the only
4 customers, so I thought that I would first check
5 on my orders because delivering the food was
6 first, and then we would have, you know, would
7 clear the table.

8 MR. COWDEN: No further questions.

9 CHAIRPERSON ANDERSON: You can close
10 your screen.

11 MS. ANDREWS: Mr. Cowden, take your
12 cursor all the way to the top of your screen and
13 hit stop sharing.

14 MR. COWDEN: I can't seem to get it.
15 There we go.

16 CHAIRPERSON ANDERSON: Mr. Williams,
17 do you have any questions?

18 CROSS EXAMINATION

19 BY MR. WILLIAMS:

20 Q I'm going to, actually, first
21 question. Ms. Vanegas, when the patrons arrived,
22 you told them, based on your testimony here
23 today, that alcohol service concluded at 10 p.m.
24 Is that correct?

25 A We explained to them that they could

1 take things out in carry-out until 12 p.m., but
2 alcoholic beverages only until 10 p.m.

3 Q And that was because of the Mayor's
4 emergency order, correct?

5 A That's correct.

6 Q Your testimony today is that you gave
7 them a carry-out bag at 9:30. Is that correct?

8 A We gave them bags and the bill before
9 9:30.

10 MR. WILLIAMS: Okay. Can I have
11 permission to share my screen, please?

12 CHAIRPERSON ANDERSON: Ms. Andrews,
13 can you give him the ability to share his screen.

14 MS. ANDREWS: Okay, Mr. Williams, you
15 can share your screen now.

16 MR. WILLIAMS: I want to show you
17 Exhibit 1, Investigative Report. On the screen
18 is the bill.

19 CHAIRPERSON ANDERSON: You said
20 Exhibit 1?

21 MR. WILLIAMS: I'm sorry, it's our
22 Investigative Report, it's Exhibit 1. Inside the
23 report is Exhibit 3, the bill.

24 The bill says 2132, which is 9:32. Is
25 that correct?

1 MS VANEGAS: That's correct. The
2 moment after they ask for bill and then we go and
3 we print the bill.

4 BY MR. WILLIAMS:

5 Q Okay. Now I'm going to show you
6 Defense Exhibit 4. You testified that this, it's
7 from your surveillance video, this still photo,
8 the time and date are correct? So the time is
9 10:54 p.m. Is that correct?

10 MS VANEGAS: That's correct.

11 MR. WILLIAMS: Your testimony is that
12 for about an hour and a half these customers sat
13 in your restaurant and you had no idea.

14 MS VANEGAS: No, yeah, I couldn't see
15 them from where I was. But then I saw them on a
16 video but they were allowed to stay there until
17 midnight based on the ordinance. They were able
18 to stay there if they wanted to.

19 MR. WILLIAMS: So in your mind they
20 could have stayed there up until midnight?

21 MS VANEGAS: Well, the law at that
22 time said that I could sell food and alcoholic
23 beverages until midnight. And you know, I didn't
24 -- no, no, we explained to them the law, that
25 they could order carry-out food and beverage

1 alcoholic until 12, but they said no, they were
2 not going to carry-out. We then gave them some
3 Coca-Cola at no charge. And you can see that
4 there are glasses on the table.

5 MR. WILLIAMS: Okay, I'm going to zoom
6 in on Defense Exhibit 4 closer. If you can see
7 my cursor on the right side, you see, right side
8 of the table, you see the female patron's glass
9 and in that pitcher there is still alcohol. Is
10 that correct?

11 MS VANEGAS: No, I don't think, it has
12 to be ice. I've been making margaritas for 30
13 years and I know that I put a lot of ice. So no,
14 I cannot say that it is full of alcoholic
15 beverage. It's probably ice.

16 MR. WILLIAMS: That is a margarita
17 pitcher that you utilized, correct?

18 MS VANEGAS: They ordered a pitcher.

19 MR. WILLIAMS: Okay. Now you see her
20 glass. Her glass looks empty, correct?

21 MS VANEGAS: Yes, it's empty.

22 MR. WILLIAMS: Okay. Investigator
23 Prout came in at approximately 11:54. Is that
24 correct?

25 MS VANEGAS: No, 10:54.

1 MR. WILLIAMS: I'm sorry, my mistake,
2 10:54. Okay. Had Investigator Prout been in the
3 building prior to that?

4 MS VANEGAS: Well, he said that
5 yesterday that it had been the first time that he
6 had been there, but actually he was the one who
7 came at the beginning of the pandemic to tell me
8 that the maximum capacity was 99 people.

9 MR. WILLIAMS: Okay, let me clarify.
10 Was that evening the first time you saw
11 Investigator Prout enter your establishment?

12 MR. COWDEN: Can I ask, I think I
13 object to the form of the question. Are you
14 asking if that was the first time she saw him?

15 CHAIRPERSON ANDERSON: Hold on, Mr.
16 Cowden, are you -- I didn't hear an objection.
17 So I heard no objection unless I missed you raise
18 an objection, sir.

19 MR. COWDEN: I object to the form of
20 the question. I think he's asking if the witness
21 knows if Inspector Prout came earlier. And I
22 think he needs to ask if she saw him earlier.

23 CHAIRPERSON ANDERSON: That's not the
24 question that was asked.

25 MR. WILLIAMS: My question is, had she

1 seen Investigator Prout in the establishment
2 before 10:54 p.m. on March 17th.

3 MS VANEGAS: No.

4 BY MR. WILLIAMS:

5 Q And, when you, as your testimony
6 stated, you observed him on the video taking
7 pictures from his phone. Correct?

8 MS VANEGAS: I saw him after he had
9 left when I reviewed the surveillance camera.

10 MR. WILLIAMS: Okay, and so what I'm
11 showing you now is back to the Investigative
12 Report, the Photo Exhibit 1.

13 Now look at the patron's glass. Does
14 her glass now look full?

15 MS VANEGAS: That is not -- what they
16 bought was a margarita called Fiesta, and it is
17 green. And the color of that margarita, which is
18 colored gold, I don't know that one. I did not
19 do that. I did not make that one. The only ones
20 I make are the ones, the Fiesta. So I don't
21 know.

22 MR. WILLIAMS: But you're saying that
23 there is drink in the glass at 11:54 when he took
24 the picture. Correct?

25 MR. COWDEN: Wait, I object to the

1 form of the question.

2 CHAIRPERSON ANDERSON: Hold on, hold
3 on. Sustained. Mr. Williams?

4 MR. WILLIAMS: Yes, sir.

5 CHAIRPERSON ANDERSON: Can you please
6 pay attention to the times that you've been
7 utilizing. I don't know if you're trying to
8 trick the witness, but I need you to be more
9 careful in asking a question, sir, when it comes
10 to time. Time is of the essence in this case,
11 sir.

12 MR. WILLIAMS: We've established that
13 Investigator Prout entered the establishment at
14 approximately 11:54.

15 CHAIRPERSON ANDERSON: Mr. Williams.

16 MR. WILLIAMS: I mean, 10:54. My
17 apologies, my apologies, 10:54. This glass is
18 now full, and you just stated it's full of a
19 margarita different than the one that you
20 originally made at approximately 9-9:30.

21 MR. COWDEN: Objection. Objection,
22 this mischaracterizes the testimony. She said
23 that it appears to be full of something other
24 than the margarita that they purchased.

25 MR. WILLIAMS: Okay.

1 CHAIRPERSON ANDERSON: I'm going to
2 overrule the objection. She can answer the
3 question if she can.

4 MS VANEGAS: Yes, that's correct.
5 That margarita is not my margarita. That
6 margarita is silver, and it's not the color of my
7 margaritas. And that pitcher and the drink shown
8 in that picture is different from the picture
9 from my camera at 10:54.

10 MR. WILLIAMS: You've established that
11 Investigator Prout arrived at 10:54
12 approximately, is that correct?

13 MS VANEGAS: That is correct.

14 MR. WILLIAMS: No further questions,
15 Mr. Chairman.

16 CHAIRPERSON ANDERSON: All right,
17 thank you. I have a question to ask.

18 Is it the same person who is in
19 Exhibit 1 that is in Exhibit 4?

20 MS VANEGAS: No, it's not, she can't
21 -- it's not clear. She don't see that very, very
22 clearly, very clear. The area is dark, it's not
23 clear.

24 CHAIRPERSON ANDERSON: All right, Mr.
25 Williams, can you show Defendant's Exhibit 4,

1 please?

2 MR. WILLIAMS: Yes. Just give me a
3 minute on my computer so you can see it. Okay,
4 let me shrink it down, please, Mr. Chairman.
5 Okay.

6 CHAIRPERSON ANDERSON: No, we don't
7 have the picture, Exhibit 4, please, that's been
8 recently shown. Are you able to bring that
9 picture closer for us to --

10 MR. WILLIAMS: Mm-hm.

11 CHAIRPERSON ANDERSON: Ms. Vanegas,
12 can you take a look at it. Is this picture taken
13 in your establishment?

14 MS. VANEGAS: Correct.

15 CHAIRPERSON ANDERSON: And at
16 approximately 10:54 that night, how many
17 customers did you have in your restaurant?

18 MS. VANEGAS: Those two people, two
19 staff, and one person who came to buy french
20 fries or potatoes.

21 CHAIRPERSON ANDERSON: So is it
22 correct that at approximately 10:54, there were
23 only two customers seated. Is that correct?

24 MS. VANEGAS: Well, yeah, that's what
25 I thought. And I, you know, that's what I

1 thought. I noticed that later when I got up from
2 my seat where I was.

3 CHAIRPERSON ANDERSON: Yeah, I'm
4 sorry, the question was, were there just, at
5 approximately 10:54, were there just two seated
6 customers in your establishment that night?

7 MS. VANEGAS: Yes. Yes, when the
8 inspector came there was just one, and the other
9 one came out of the bathroom.

10 CHAIRPERSON ANDERSON: All right,
11 thank you. Mr. Williams, can you please show us
12 Exhibit 1, Government's Exhibit 1, please?

13 Ms. Vanegas, is this the same woman
14 who was in the previous picture?

15 MS. VANEGAS: No, according to me, it
16 doesn't look like they're neither the same people
17 nor the same margaritas, and it's also very dark.

18 CHAIRPERSON ANDERSON: Ms. Vanegas, is
19 this a picture of your establishment?

20 MS. VANEGAS: No, it doesn't look like
21 it. Only on the left, on the left it seems like
22 there is a montage with a Virgin Mary, where you
23 have Virgin Mary there on the left.

24 CHAIRPERSON ANDERSON: Is there a
25 montage of the Virgin Mary in your establishment,

1 ma'am?

2 MS. VANEGAS: For us, if you kindly
3 could repeat the question.

4 CHAIRPERSON ANDERSON: Is there a
5 montage of the Virgin Mary, as you just
6 mentioned, is there a montage or a video or a
7 picture of the Virgin Mary in your establishment,
8 ma'am?

9 MS. VANEGAS: I do have a picture of
10 Virgin Mary on the corner, but here it seems that
11 it is something on top of her, and in my place
12 it's very bright, it's on top of a wooden piece
13 and yeah, it's bright, blue, and on a wooden
14 support.

15 CHAIRPERSON ANDERSON: Is it your
16 testimony that this picture is not of your
17 establishment?

18 MS. VANEGAS: Correct. That's what I
19 think.

20 CHAIRPERSON ANDERSON: All right,
21 thank you. I have no further questions. You can
22 close the screen.

23 Are there any other questions by other
24 Board Members? Mr. Grandis, please.

25 MR. GRANDIS: We may ask the licensee

1 a question?

2 CHAIRPERSON ANDERSON: Go ahead, Mr.
3 Grandis.

4 MR. GRANDIS: Hello. Are you
5 suggesting that the photograph we were just
6 looking at with the depiction of the Virgin Mary
7 may not be in your establishment? That picture
8 itself, are you suggesting that to us?

9 MS. VANEGAS: Virgin Mary is correct.
10 The rest of the things around is not correct.

11 MR. GRANDIS: So then you're
12 suggesting to the Board that the exhibit provided
13 by the Government is either fake or not a
14 depiction of your establishment?

15 MS. VANEGAS: That's the reason I am
16 here in front of the Board, so that the Board can
17 hear me in good faith. I've been doing my job,
18 doing a good job, doing so for 30 years, and I
19 want just to be heard in good faith.

20 MR. GRANDIS: Excuse me, you did not
21 answer my question. Are you suggesting that the
22 Government has provided an exhibit in this
23 hearing that may not be a true picture of the
24 interior of your establishment? Yes or no,
25 ma'am.

1 MS. VANEGAS: Correct. That picture
2 is not the interior inside of my establishment.

3 MR. GRANDIS: Thank you very much.

4 CHAIRPERSON ANDERSON: Any other
5 questions by any of the Board members? Yes, Ms.
6 Crockett.

7 MS. CROCKETT: Good afternoon. In
8 your Exhibits 4, 5 and 6, I don't know if you can
9 pull those up, but in your Exhibits 4, 5 and 6,
10 there appears to be maybe another person in these
11 photographs aside from the ABRA investigator and
12 the two people seated. Are you able to pull
13 those photographs up, please?

14 CHAIRPERSON ANDERSON: Mr. Williams,
15 can you pull it? I think that it's easier for
16 Mr. Williams than it is for us.

17 MR. WILLIAMS: Right.

18 CHAIRPERSON ANDERSON: Can you? Can
19 you? Yes.

20 MS. CROCKETT: They're the licensee's
21 exhibits.

22 CHAIRPERSON ANDERSON: In a minute,
23 yes.

24 MR. WILLIAMS: Which one do you want?

25 MS. CROCKETT: Four, five and six.

1 MR. WILLIAMS: Okay, which one would
2 you like to see first?

3 MS. CROCKETT: Five. I'd go to five,
4 I think it's the clearest.

5 MR. WILLIAMS: Okay, I'll put them up
6 one at a time.

7 MS. CROCKETT: If you zoom in on the
8 left of that photograph, there's a table. The
9 left rear.

10 MS. VANEGAS: May I answer?

11 MS. CROCKETT: Sure. Is there another
12 person sitting at that table, right where it's
13 closer in?

14 MS. VANEGAS: Yeah, it is the person
15 who tried to get some beverage, alcoholic
16 beverages, but he just bought potatoes or french
17 fries, I'm sure. She said papas, he bought
18 potatoes.

19 MS. CROCKETT: Do you recall around
20 what time that person entered your establishment?

21 MS. VANEGAS: Those people came
22 probably around 10 or so. We told them we could
23 not serve alcoholic beverages, and that he was
24 just chatting with the bartender, no, the waiter,
25 and that he ordered some french fries or

1 potatoes. And actually there were two of them,
2 and they were coming in and coming out of the
3 establishment. They were going out and coming
4 back in, but just with potatoes. We did not
5 serve any alcoholic beverage.

6 MS. CROCKETT: Okay, so it is your
7 testimony that for an hour, hour and a half, you
8 didn't have eyes on the two individuals who
9 appear to be drinking margaritas. Did you have
10 eyes on these two individuals for an hour? You
11 say they came in about 10; this is at 10:54.

12 MS. VANEGAS: I was the only person,
13 I mean, I was the only person working, working
14 pretty much on my own that night. I had a lot,
15 there were a lot of things that I was trying to
16 take care of, the orders, and the waiter came to
17 tell me about these two people, and he said that,
18 you know, he had mentioned that they could not
19 serve alcoholic beverages, but he served them
20 potatoes and that was fine because they could
21 stay there until midnight, according to the
22 ordinance. So I was just busy with reviewing the
23 orders that were coming for the Uber orders.

24 MS. CROCKETT: So I think this is, you
25 know, so there was a waiter that was working

1 alongside you that evening. So you told us that
2 you didn't see this side of the dining room and
3 where these individuals were seated. So you
4 didn't know that they had finished the alcohol,
5 that they were still there, but you had someone
6 else working with you.

7 And so the waiter had gone to this
8 side. So someone else knew that these people
9 were still there. Is that correct?

10 MS. VANEGAS: I use my brother-in-law,
11 who works at Galaxy 16 -- who works at this other
12 place, and -- so yeah, my brother-in-law was
13 helping me as a waiter. And he works at Club 16,
14 and usually the way they do it at that place is
15 that they don't clean until the clients are gone.
16 So that's just his practice, and I don't know if
17 it's a good practice, but --

18 MS. CROCKETT: And since he works at
19 another alcohol establishment, was he aware of
20 the rule governing alcohol service per the
21 mayor's order?

22 MS. VANEGAS: Yes, he does work with
23 alcoholic beverages. He works at Club 16, and
24 I'm pretty sure that the members of the Board
25 know that place, and know that they serve

1 alcoholic beverages there.

2 MS. CROCKETT: So if these other
3 people came in around 10, and he took their
4 order, and he told them he couldn't serve them
5 because it was after 10, then he saw this table
6 with the people with the margaritas after 10
7 p.m., correct?

8 MS. VANEGAS: Yes, when I ask him, he
9 said it was only ice. It was only ice in the
10 drink.

11 MS. CROCKETT: Thank you, Ms. Vanegas.
12 I have no further questions.

13 CHAIRPERSON ANDERSON: You can stop
14 sharing your screen, Mr. Williams.

15 Any other questions by any other Board
16 members? Mr. Williams, any questions of Ms.
17 Vanegas based on the questions that were asked by
18 the Board?

19 MR. WILLIAMS: No, Mr. Chairman.

20 CHAIRPERSON ANDERSON: Mr. Cowden, any
21 questions, or you're okay to redirect based on
22 the questions that were asked by the Board?

23 MR. COWDEN: No, Mr. Chairman.

24 CHAIRPERSON ANDERSON: Mr. Cowden, do
25 you have another witness?

1 MR. COWDEN: I do not.

2 CHAIRPERSON ANDERSON: Do you rest?

3 MR. COWDEN: I do.

4 CHAIRPERSON ANDERSON: Did we admit
5 all of the documents that you wish to be admitted
6 in the record?

7 MR. COWDEN: We did. Some of my
8 exhibits were just duplicate of the Government's
9 Exhibit 1.

10 CHAIRPERSON ANDERSON: And Mr.
11 Williams, we did admit all the documents and
12 evidence that you wanted to be admitted into
13 evidence?

14 MR. WILLIAMS: That's correct Mr.
15 Chairman.

16 CHAIRPERSON ANDERSON: Fine. The
17 parties, well, I guess I should have asked Mr.
18 Williams if he had -- I'm sorry, all right.

19 All right, Mr. Williams, you have here
20 -- we should close our closing statements, and
21 our closing statements are ones that both parties
22 will specifically advise the Board what it is
23 they want the Board to do.

24 MR. WILLIAMS: All right, today the
25 District has shown ABRA Investigator Prout

1 entered Haydee's Restaurant on March 17, 2021, at
2 approximately 10:54 p.m. He observed patrons
3 drinking alcoholic beverages after 10 p.m. in
4 violation of the mayor's emergency order. The
5 testimony during this hearing has shown that he
6 was in the building at 10:54 and there were
7 patrons with alcohol, and we also established
8 there were other patrons that arrived at
9 approximately 10:00.

10 The owner was fully aware of the ABRA
11 regulations and she knew that the alcohol should
12 have been removed from the premises. Based on
13 this clear violation, we request that the Board
14 review the findings of fact and take action
15 appropriately in accordance with ABRA
16 regulations.

17 CHAIRPERSON ANDERSON: Thank you, Mr.
18 Williams. Mr. Cowden, your closing, sir.

19 MR. COWDEN: Thank you Chairman
20 Anderson. The evidence in this case establishes
21 from exhibits which we have submitted, which are
22 timestamped, show that at 10:54 p.m. -- that at
23 that time the investigator entered the premises
24 and was standing behind the table with his
25 cellphone in a position that appeared to be

1 taking photographs.

2 Those photographs do not show the
3 patrons consuming alcohol. The photos the
4 Government has introduced also do not show the
5 patrons consuming alcohol. Investigator Prout
6 has Exhibit 1 and 2, the Government's Exhibit 1,
7 first photograph, showing two full margarita
8 glasses, was the first photo he took, and he says
9 the second photo was a second photo he took.
10 Exhibit 2 was the second photo. Unlike our
11 photograph, these have no timestamp. We don't
12 know when they were taken.

13 Remarkably, they do not show the
14 patrons consuming alcohol. The testimony the
15 board heard in this case is that after
16 Investigator Prout took some photographs, he
17 approached the owner of the restaurant and did
18 not go back to view the patrons. The
19 investigator's initial testimony also said that
20 when he entered the restaurant he observed the
21 patrons consuming beverages and alcohol.

22 Consuming beverages, but he said he
23 saw the patrons eating their meal and consuming
24 alcohol. In his testimony he also indicated that
25 the owner of the establishment told him that she

1 served the patrons at 9:32 p.m. But his report
2 refutes his testimony; he does not mention that
3 he was told the patrons were served at 9:32. He
4 was told the patrons were served at 9:00.

5 His investigative report on his
6 details also incorrectly suggest that he enter
7 the establishment, identified himself as an ABRA
8 investigator to a male employee and requested to
9 speak with the agency manager or owner. He says
10 in his report, Investigator Prout observed two
11 patrons seated inside the establishment consuming
12 alcohol beverages, Exhibits 1-3.

13 But the photos he took do not show
14 patrons consuming alcoholic beverages, and the
15 photos that we've admitted show empty glasses at
16 the time he entered the restaurant, and the food
17 had been packed up for departure. The testimony
18 also establishes that these patrons not only
19 asked for a to-go bag, but asked for some Cokes
20 because they were driving, thereby indicating
21 also that they were leaving the premises.

22 The Government asserts that it had
23 been a violation of the law because the alcoholic
24 beverages were not removed from the premises by
25 10 p.m. But the law doesn't say that the

1 alcoholic beverages must be removed from the
2 table by 10 p.m. These alcoholic beverages were
3 sold before 10 p.m.

4 The patrons were informed that they
5 could not consume them after 10 p.m. The patrons
6 had indicated that they were leaving with their
7 food, and asked for some Cokes before they left.
8 And there is just no evidence in this case that
9 the licensee knew that these patrons were still
10 in the restaurant, and no evidence that she knew
11 that they might have been consuming alcohol after
12 10 p.m.

13 Based on the evidence that the Board
14 has seen, and I will point out that the licensee
15 certainly is concerned about the Government's
16 first photo that shows margaritas that appear to
17 be two different colors, and photos that are
18 exceedingly dark despite the clear indication
19 from licensee's exhibits that the restaurant is
20 well lighted. Those photos call into question,
21 when compared with our photos, when they were
22 taken, or as she suggests, whether they were
23 modified.

24 In any event, the law requires that
25 the violation of the ABRA regulations be a

1 knowing violation, the mayor's order be a knowing
2 violation. The mayor's emergency order requires
3 that violations of her order to be punished must
4 be knowing. In this case, Government seems to
5 suggest she should have taken the alcohol off the
6 table before 10 p.m. Regardless of whether that
7 might be a better practice, that did not
8 establish knowledge of a violation.

9 Based on the evidence, we submit that
10 the fine should be rescinded.

11 CHAIRPERSON ANDERSON: Thank you. I
12 want to thank the parties as well for their
13 presentation. Do the parties wish to file
14 proposed findings of fact and conclusions of law,
15 or waive the right to do so? Mr. Cowden?

16 MR. COWDEN: We would prefer to do
17 that, Mr. Chairman.

18 CHAIRPERSON ANDERSON: All right.
19 Since the parties then, Mr. Williams, since
20 counsel will file a proposed findings of fact and
21 conclusion of law, 90 days from when the Board
22 receives proposed findings and fact and
23 conclusion of law, and so you will receive the
24 transcript, will be emailed to the parties in
25 approximately three weeks. And then you will

1 have 30 days after receipt of the transcript to
2 provide us with proposed findings of fact and
3 conclusions of law. Is this clear to everyone?

4 MR. COWDEN: It's clear to us.

5 CHAIRPERSON ANDERSON: And I just want
6 to reiterate that these proposed findings of fact
7 and conclusions of law that's based on what was
8 the evidence, the facts and evidence that were
9 presented over the last two days. This is not
10 new facts or new evidence that was not presented.
11 So it has to be based on what specifically was in
12 the transcript as testified in the hearing. Is
13 that clear? Are both parties aware of that?

14 MR. COWDEN: Yes, sir.

15 CHAIRPERSON ANDERSON: All right,
16 thank you. And you'll, after you receive the
17 transcript, if you want to change your mind you
18 can advise the Board, the Agency, that you have
19 changed your mind. You have an option to change
20 your mind if you so choose. All right, I will
21 now close the record.

22 As Chairperson of the Alcoholic
23 Beverage Control Board for the District of
24 Columbia and in accordance with D.C. Code Section
25 2574B of the Open Meetings Act, I move that ABC

1 Board hold a closed meeting for the purpose of
2 seeking legal advice from our counsel on case
3 #21-CIT-00213, Haydee's Restaurant, pursuant to
4 D.C. Code Official 274B4 of the Open Meetings Act
5 and the deliberate upon case #21-CIT-00213,
6 Haydee's Restaurant, for the reason cited in D.C.
7 official code section 2574V13 of the Open
8 Meetings Act. Is there a second?

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

10 CHAIRPERSON ANDERSON: Mr. Short has
11 seconded the motion. I will now take a roll call
12 vote on the motion before us now and that has
13 been seconded.

14 Mr. Short?

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

16 CHAIRPERSON ANDERSON: Mr. Cato.

17 MR. CATO: Bobby Cato, I agree.

18 CHAIRPERSON ANDERSON: Ms. Crockett.

19 MS. CROCKETT: Rafi Crockett, I agree.

20 CHAIRPERSON ANDERSON: Ms. Hansen.

21 MS. HANSEN: Jeni Hansen, I agree.

22 CHAIRPERSON ANDERSON: Mr. Grandis.

23 MR. GRANDIS: Edward Grandis, I agree.

24 CHAIRPERSON ANDERSON: And Mr.

25 Anderson, I agree. As it appears that the motion

1 has passed 6-0-0, I hereby give notice that the
2 ABC Board will recess this proceeding to hold a
3 closed meeting in the ABC Board conference room
4 based on Code Section 2574V of the Open Meetings
5 Act.

6 Thank you everyone, for their
7 presentation to have their appearance today.
8 This case is adjourned and the parties are
9 excused. And the interpreter is excused.

10 MS. FELDMAN: Thank you, Your Honor.

11 MR. COWDEN: Thank you.

12 MR. WILLIAMS: Thank you very much.

13 CHAIRPERSON ANDERSON: All right,
14 having no further business for the day, I will
15 now close the record. As Chairperson of the
16 Alcoholic Beverage Control Board for the District
17 of Columbia, in accordance with Title 3, Chapter
18 405, Office of Open Government, I move that ABC
19 Board hold a closed meeting on November 3, 2021
20 for the purpose of discussing any inherent
21 reports, concern ongoing, or planned
22 investigation of alleged criminal or civil
23 misconduct, or violations of law or regulations,
24 and seeking legal advice from our legal counsel
25 on the Board's investigative agenda, legal

1 agenda, licensing agenda, for November 3, 2021,
2 as published in the D.C. Register on October 29,
3 2021. Is there a second?

4 MS. CROCKETT: Ms. Crockett seconds.

5 CHAIRPERSON ANDERSON: Ms. Crockett
6 has seconded the motion. I will have to take a
7 roll call of the Board on the motion of the Board
8 now that it's been seconded. Mr. Short.

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

10 CHAIRPERSON ANDERSON: Mr. Cato.

11 MR. CATO: Bobby Cato, I agree.

12 CHAIRPERSON ANDERSON: Ms. Crockett.

13 MS. CROCKETT: Rafi Crockett, I agree.

14 CHAIRPERSON ANDERSON: Ms. Hansen.

15 MS. HANSEN: Jeni Hansen, I agree.

16 CHAIRPERSON ANDERSON: Mr. Grandis.

17 MR. GRANDIS: Edward Grandis, I agree.

18 CHAIRPERSON ANDERSON: And Mr.

19 Anderson, I agree. As it appears that the motion
20 has passed, I hereby give notice that the ABC
21 Board will hold the aforementioned closed meeting
22 pursuant to the Open Meeting Act. Notice will
23 also posted on the ABC Board here on the bulletin
24 board, placed on the electronic calendar and
25 ABRA's website, and published in the D.C.

1 Register in a timely manner as practical.

2 We're now adjourned for the day. I
3 want to thank the ABC Board members for their
4 active participation in this hearing today. I
5 also want to thank the members of the public who
6 also participated in this hearing. We're now
7 adjourned for the day and I now request that all
8 ABC Board members turn to exit the session for
9 further discussion. Thank you very much and have
10 a great day.

11 (Whereupon, the above-entitled matter
12 went off the record at 2:59 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Haydee's

Before: DCABRA

Date: 10-28-21

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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