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Aloun Farms Human Trafficking Trial Implodes

BY JIM DOOLEY - The human trafficking prosecution of prominent Hawaii farm owners Alec and Mike Sou imploded in federal court this afternoon, with the lead prosecutor withdrawing from the trial after admitting in the morning that she gave misleading information to the grand jury that indicted the Sou brothers.



Assistant U.S. Attorney Susan French, a senior trial lawyer from the Justice Department's civil rights division headquarters in Washington, left the courtroom after conferring briefly with Judge Susan Oki Mollway in a sidebar conference held after trial convened at 1:30 p.m.

Why French departed wasn't made clear, although lawyers and Mollway indicated it was due at least in part to unspecified health problems afflicting French.

After French left the court, her trial deputy, Asst. U.S. Attorney Kevonne Small, asked Mollway to delay the proceedings until Friday so that new personnel can fly in from Washington to determine how to proceed with the

case.

Small admitted to Mollway that she called her superiors in Washington during today's lunch to discuss "concerns" about the case and about French.

Mollway declined to delay the trial, telling Small and a third prosecutor involved in the trial, Asst. U.S. Attorney Susan Cushman, to question prosecution witnesses while the personnel from Washington review the situation.

Small said she believes a deputy chief of the civil rights division as well a senior trial attorney will be arriving to review the prosecution and decide how to proceed.

Defense lawyer Thomas Bienert Jr., who represents Alec Sou, said he was concerned about French's health but he also believed the government wanted the delay because "the entire case is unraveling."

Thomas Otake, the attorney for Mike Sou, suggested the Washington lawyers have been called in "because there is an ethical problem with what they did in this case."

French admitted under questioning from Mollway in the morning that she had misstated the law when she told grand jurors in 2009 that it was against federal law to pay or collect fees for the recruitment of farm workers.

Such recruitment fees only became illegal after a change in the law in 2009 but they weren't prohibited during the 2004-2005 period covered in the criminal case.

Defense attorney Thomas Otake said he had learned of the issue last week when that grand jury transcript was released to him.

"The United States based its case on a mistaken belief about what the law was at that time," Otake told Mollway.

Private attorney Melissa Vincenty, who represents 44 Thai farm laborers that worked at the Sous' Aloun Farms on Oahu, said she does not believe the grand jury problem is fatal to the

government's case.

"When a grand jury is given misleading information, it's certainly a cause for concern," Vincenty said.

But the Sou brothers are not specifically charged with illegal payment or receipt of a recruiting fee, said Vincenty said.

"It's not a centerpiece of the case," she said.

Nor would problems in the criminal case affect the outcome of civil litigation brought against the Sours by the Thai workers, said Vincenty.

Court observers who have seen French in trial before said they noticed differences in her performance in this case.

When first questioned in the morning by Mollway about what she told the grand jury, French tried to argue that while the law did not "explicitly prohibit" recruitment fees, U.S. Labor Department regulations required disclosure of such fees.

Asked again by Mollway if the fees were legally prohibited, French said, "I would agree that it was not specifically prohibited."

"You agree that you misstated the law?" Mollway asked.

French responded by trying to tell Mollway that the fees were prohibited in Thailand, where farm workers were recruited to come to Hawaii to work for the Sou brothers.

Pressed again by the judge, French finally said that her statement to the grand jury was "not an accurate statement of the law."

The government alleges that the Sours illegally imported the Thai workers, underpaid them and forced them to work at their Kunia agricultural complex in the central plain of Oahu.

The workers alleged that they were required to pay recruiters in Thailand between \$16,000 and \$20,000 for their farm jobs in Hawaii.

The brothers initially pleaded guilty in the case, then withdrew those pleas and were re-indicted on even more charges.

The trial began in federal court last week and is scheduled to run into next month.

A key prosecution witness, recruiter Matee Chowsanitphon, 57, testified this morning that he agreed to pay the Sours as much as \$1,500 for every worker they agreed to hire from Thailand.

Chowsanitphon, a naturalized American who now works at a 7-11 store in Pomona, Calif., pleaded guilty to visa fraud earlier and is serving a five-year supervised release sentence.

It was during his questioning before the federal grand jury in 2009 that French made her

misleading statements about recruiting law.

Chowsanitphon is scheduled to take the witness stand again Wednesday morning for further questioning by Asst. U.S. Attorney Cushman.

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