

1 **MR. WANER:** Your Honor, we're trying to have someone come
2 over so copies could be made.

3 **THE COURT:** Okay.

4 **MR. WANER:** But the exhibits will stay here.

5 **THE COURT:** That's fine. If it's a DAI, is that what
6 you're talking about?

7 **MR. WANER:** Or our IT guy.

8 **THE COURT:** That's fine.

9 **MR. WANER:** But we'll all be present.

10 **THE COURT:** That's fine.

11 But the exhibits don't leave the room.

12 So that will be the order. I'll see you all at 1:30. Know
13 that we have a hard stop today at 3:30.

14 **MR. SCHWAIGER:** Very good.

15 (RECESS TAKEN)

16 (COURT RESUMES)

17 **THE COURT:** We're back on the record.

18 All parties are present, all defendants are present.

19 So, at the break the court did review the most recent
20 filing from the defense. I have that here. The court also went
21 back and reviewed all of its notes. I appreciate the robust
22 argument and robust authorities from all sides on this issue,
23 definitely a novel issue to some degree. And after having
24 reviewed all the cases that are cited and the policy arguments
25 that are being made, it is this court's ruling and opinion that
26 this defense of necessity does not mitigate risk of harm to
27 animals. That is not contemplated in a necessity defense. I'll
28 say about necessity that it is -- the public policy or the

1 policy behind necessity as I can best summarize it and as
2 summarized in much of the cases and other citations that both
3 sides have given me that there are times when the risk of harm
4 to a person is so great and so immediate that there exist no
5 other immediate, legal alternative to preventing the worst case
6 scenario considered to be significant harm or death. And in
7 that very unique set of circumstances then the law can be broken
8 to prevent the loss of significant harm to life or -- excuse me.
9 -- the loss of life or the significant harm to a person. As
10 both sides have conceded, there is no legal authority that says
11 otherwise, no legal authority that says that animals are
12 contemplated or any -- any non-human are contemplated because if
13 we open the door non-human, there's a ton within that category
14 that might be certain animals, it might be all animals, it might
15 be all things to a cellular matter. I don't even begin to
16 anticipate if that door were to open what that would include.
17 What I can say based on the authorities in front of me that it
18 does not include non-human at this time. I appreciate the
19 defense's attempt to string together policy argument to create
20 an inference, to argue an inference, that the common law has
21 evolved to that point. I don't find it compelling. Without
22 distinguishing between the two events, I don't think I need to
23 because the threshold issue is whether or not this set of facts
24 would be included in what's contemplated or what's been
25 throughout the history of law in this country frankly since the
26 evolution of that common law into what is now essentially jury
27 instruction and recognized by the courts. That interpretation
28 has never been either codified or legally sound. So, lacking no

1 authority to do that, no legal authority that requires it, I'm
2 not compelled that the defense has met their burden on that.
3 The closest case would be *Youngblood* as I see it. I don't
4 believe it stands for what the defense argued it stands for.
5 Ultimately what I understand the defense to be arguing is the
6 acknowledgment of the issue -- the issue and the absence of an
7 affirmative ruling means that the alternative ruling is affirmed
8 by implication. I believe that's a wrong assessment of law.
9 Omission of a ruling, even if acknowledging that the legal issue
10 was raised, does not create law by implication and the defense
11 has provided me no case that says that that is true. What the
12 court said in *Youngblood* ultimately I believe in a footnote was
13 we do not decide the issue.

14 I would just note with respect to 597.7 and the other
15 reference statutes, they're incredibly specific, they're very
16 clear to what guidance they're giving that under what scenario
17 what things can occur. I don't think you could say it's an
18 equal assessment to necessity generally. Necessity is a very
19 open-ended, much less specific defense is what I would say that
20 requires certain things to be true. But 597.7 the court thinks
21 is not -- it's not a compelling argument that because that exist
22 that necessity should include risk to non-humans as well.

23 So, that's the threshold issue here as it relates to
24 whether or not risk of harm to animals would make the necessity
25 defense available. And that's the ruling on that. So it is not
26 available as it relates to risk of harm, cruelty to animals as
27 argued by the defense.

28 There is some reference to risk of harm to humans in light

1 of a public health endangerment specifically of salmonella.
2 It's somewhat of a passing or fleeting argument, it's mentioned
3 in the papers, it's mentioned today, but it's definitely the
4 bulk of the argument. That said I need to address it.

5 Overall I think the elements of necessity generally fail,
6 but the crux of it is a failure to demonstrate a belief at the
7 time of the act that there was an actual and immediate emergency
8 situation. Immediate is contemporaneous, immediate is no other
9 available option otherwise the harm will occur to the extent of
10 significant harm or loss of life. You can't unburn the burned
11 body, you can't make undead the dead.

12 The defense has failed to offer -- make offerings of proof
13 that are specific and that are related specifically to the
14 belief or knowledge immediately upon the action or immediately
15 before. And most of the immediacy that's discussed is related
16 to actually the animal cruelty side, not public health
17 endangerment side. But to the degree that it is, there are no
18 actions as described by either the defense or the prosecution,
19 but no offers of proof from the defense that detail actions that
20 would be consistent with that belief of immediate risk as it
21 relates to salmonella and harm to people. Theoretically if
22 there was an actual and immediate belief that the harms that
23 leaving -- eggs that were leaving to that facility, harbored
24 salmonella or there was such a high risk of salmonella based on
25 known information in that moment, perhaps stopping the trucks
26 from leaving until that could be intercepted by a regulatory
27 agency, shutting down egg production. None of that is what's
28 described even in the offers of proof from the defense. The

1 offers of proof are animals are suffering, belief that animals
2 are suffering, removing animals because they're suffering.
3 There's no offers of proof about actions taken as it relates to
4 the action harm of human health.

5 Furthermore, generally speaking when you talk about
6 necessity and the immediacy of the known danger -- immediate or
7 the perceived danger, it's so immediate, so real and so
8 threatening, there is some inherent conflict with affirmatively
9 organizing an event to combat it. So, by all accounts this was
10 a planned action. What that action will be called by the jury
11 is for the jury to decide. But it was a planned action. It
12 undermines the argument of immediacy. And again we're talking
13 now -- because the only possible way this could relate to the
14 case would be harm to humans. And I'd also just note that the
15 defense in their -- this is the 24th filing. So, August 24th
16 filing in a motion to compel, there's an assertion from the
17 defense there, and it's related to an argument about Sunrise,
18 where it stated quote "the risk to the food supply was a
19 significant evil which we're attempting to avert by quote
20 "exposing the farm's practices," not to stop an outbreak of
21 salmonella, not to -- to intervene on something that was
22 actively occurring or believed was actively occurring and no
23 other intervening less destructive, less interference source
24 could come in in time. What that says to the court is the goal
25 was to draw attention to the issue, to generate interest
26 possibly in the interest -- interest in the issue either amongst
27 public or amongst agencies that regulate this, and to create
28 arguably a future consequence, some future outcome or some

1 future sanction. But I think any argument about meeting the
2 emergency, the immediate emergency requirement is undermined by
3 that language.

4 So I will say any other commentary in terms of offers of
5 proof regarding salmonella were general, national, epidemic.
6 These are policy arguments, these are policy considerations and
7 may be very appropriate policy considerations in the right
8 venue. This is not that venue. We are not doing a trial on
9 policy, we are not doing a trial about policy regarding
10 salmonella. So, I think it's worth mentioning that in terms of
11 statistics or national outcomes, or long-term risk of harm is
12 not appropriately brought into this trial. Those are not facts
13 for this jury to consider. Facts for the jury to consider are
14 those facts that are relevant to the crime itself, not relevant
15 to a desire to change regulation, change law, or to influence
16 interpretation of law. So I just want to make that clear at
17 this point.

18 All right. So that's the ruling as to necessity. It is
19 not available to the defense in this case under the facts as the
20 court noted them. If there were facts to be presented at trial
21 that change the court's opinion on that, the court will initiate
22 a reopening of this conversation in a limited fashion that is
23 appropriate on its own motion. This is not an invitation to
24 bring that motion, but the court will keep an open ear and
25 listen to the point that Mr. Andrian made that things do come up
26 in trial.

27 The distinction I would make between what Mr. Andrian
28 argued and this case is that that generally -- that general

1 philosophy that things come up in trial that would support the
2 giving of an instruction for defendants is generally based upon
3 a set of facts where the People are offering most, if not all of
4 the evidence and that the defense doesn't necessarily know
5 everything the People's witnesses may say especially on
6 cross-examination because they haven't had that opportunity to
7 introduce the questions that might merit or open the door to
8 other instructions not contemplated. This is the opposite.
9 This is a situation in which the facts in the mind of each
10 defendant are known only to the defense and only to the defense.
11 So, it would be the proffer of the defense as to any facts that
12 might open that door. And so I would say the defense is not
13 permitted to attempt to open that door. And if you had
14 appropriate offers of proof, then they should have been brought
15 forward. But again that would only be related to this issue of
16 the people and how it affected people.

17 So I say all this to say the defense is not available. The
18 court will listen keenly for anything that what might influence
19 the court to reopen a conversation. That's otherwise the
20 ruling.

21 **MR. SCHWAIGER:** Can I have a point of clarification, Your
22 Honor?

23 **THE COURT:** Yes.

24 **MR. SCHWAIGER:** The court mentioned something from Mr.
25 Hsiung's motion to compel regarding what appeared to be
26 inconsistent explanations for the impetus of the action.

27 **THE COURT:** I sense you're trying to relitigate the
28 issue.

1 **MR. SCHWAIGER:** I'm not, Your Honor. Not at all.

2 **THE COURT:** All right.

3 **MR. SCHWAIGER:** I wanted to make sure that the court
4 understood and that I'm correct in this that that argument, to
5 the extent it was made by Mr. Hsiung, is not also joined by
6 Ms. Sawhney. I don't believe she filed that motion to compel.
7 So I would just like to preserve any arguments that remain that
8 relied -- that may benefit from not having Your Honor's I guess
9 pointing out what might be a judicial admission for
10 Ms. Sawhney.

11 **THE COURT:** And I think that's a fair record to make. That
12 was solely a Mr. Hsiung motion. I will say so many things have
13 been filed. The vast majority from the defense do have all
14 names on them, so I do make assumptions and that's a fair
15 clarification.

16 With that we are moving on.

17 **MR. HSIUNG:** Your Honor, just one other point of
18 clarification just so I understand the nature of the ruling. I
19 think the nature of the ruling is while you have not even proof
20 so far that the necessity instruction would be appropriate, it
21 is appropriate at least with respect to human health for us to
22 present evidence at trial?

23 No, it's not.

24 **THE COURT:** The defense does not get to open their own
25 door. You are the keeper of the information as to what evidence
26 is known -- what is known to the defense, what was known to the
27 defendants is only known to the defense and the defendants, and
28 if there was information that was relevant, you had many an

1 opportunity to provide sufficient offers of proof. The defense
2 has failed to make those offers of proof. So the court will be
3 listening to any evidence that is not elicit -- the defense does
4 not get to elicit that they seek to get a reverse ruling. That
5 is just going to be a general principle.

6 **MR. HSIUNG:** I understand, Your Honor.

7 **THE COURT:** All right. So all I'm saying is that this is a
8 ruling, I understand the issue, I'll be listening for anything
9 that makes me reconsider at least a conversation on the issue.
10 That is all.

11 **MR. HSIUNG:** Okay.

12 **THE COURT:** All right.

13 **MR. HSIUNG:** I did not understand up to this point we were
14 making an offer of proof on necessity. I thought we were
15 arguing the law. Because there has not been a 402 evidentiary
16 hearing requested on necessity, we have not been requested to
17 make an evidentiary offer of proof, and to the extent we were
18 requested to do so, we are able to do so. I think under the
19 public health arguments there is plenty of evidence that could
20 be presented that this was a public health emergency.

21 **THE COURT:** All right.

22 So, Mr. Hsiung, we are here, we are in motions for limine.
23 You have asked for affirmative rulings about what defenses
24 apply. We've litigated for an hour today about what defenses
25 apply. I have no less than ten motions that are filed with
26 statements of facts. Any offer of proof about what was known at
27 the time was not provided. Nonetheless, my ruling is that I
28 believe the argument fails on all prongs, but for the

1 people meeting the -- it's about people, not animals, so prong
2 one is satisfied. So the ruling is necessity failed. That's
3 the ruling. We're moving on.

4 All right. So, next would be mistake of fact.

5 All right. So mistake of fact was also asserted by the
6 defense. It was not the majority of any of the motions. We're
7 not dedicated to it. So I will say it was asserted without much
8 support or description in the moving papers.

9 So, a question I have for the defense before I turn the
10 floor to you to argue why mistake of fact should be available,
11 what facts are you asserting you were wrong on?

12 So as I see it there has to be a concession. So what is
13 the concession?

14 Are you conceding that you were wrong about the level of
15 care or the conditions of the animals?

16 If that were the argument, then that's one conversation.

17 Other than that -- and I don't believe I've heard a
18 concession as to that. Perhaps you'll clarify now. Other than
19 that, there's been no articulation of what the error was.

20 So, I don't know who's going to be the primary arguer from
21 the defense for this, but --

22 **MR. SCHWAIGER:** I believe that argument will be shared
23 between Mr. Hsiung and myself, Your Honor.

24 **THE COURT:** All right.

25 **MR. SCHWAIGER:** The -- so some of this is going to be
26 dependent on how the information comes out at trial. Of course,
27 because the court and I think the prosecution briefed this, is
28 under no sua sponte duty to instruct on these unless the