

That conclusion seemed inevitable after the INS agents consistently that they had not followed up on even some of the most routine leads which might have helped them locate the witnesses. Also, at the end of the day defense attorneys submitted a memo, from INS District Director Benedict J. Ferro to the Albany INS office, indicating that the Arizona INS office would send an agent to Albany for a "pro-forma visit only for the purpose of satisfying the court" as to the unavailability of the refugee/witnesses.

If it can show that the refugee/witnesses are unavailable to testify, the government stands to gain because it can then use its own paid witness, Jesus Cruz, to give his version of what the refugees might have said in person.

In addition to INS agents, two Sanctuary workers also took the stand during the hearing Tuesday. Alan Doyle, a minister from the Los Angeles area testified that he had at one time assisted one of the refugee groups which the government seeks to bring to testify in the case. Although Doyle's testimony did not give the government any information which would help it find the refugees now, it did indicate that the INS had been in possession of specific information over 10 months ago pertaining to the whereabouts of the refugees, but neglected to use that information to apprehend the refugees.

Prosecutor Reno called another unindicted Sanctuary worker, Elizabeth Franco, to the stand to testify about her knowledge of the government's attempts to locate Juana Beatrice Alvarez, the key refugee/witness in the government's case against defendant Jim Corbett. Initially, Matt Shay, attorney for Ms. Franco made an unsuccessful motion that Franco not be required to testify on the grounds that the information contained in her subpoena was false. Then, Shay indicated that Ms. Franco would plead the Fifth Amendment if asked whether she is acquainted with Juana Alvarez. Acknowledging Shay's avowal, Judge Carroll prohibited further questioning of Franco along those lines, and dismissed her shortly thereafter.

Mrs. K. Kelly, an unindicted co-conspirator in the Sanctuary case subpoenaed to testify Tuesday, was ill and could not appear in court. However, INS agent Lee Morgan told the Court that Kelly's attorney had indicated that she would be available to testify at 8:30 Wednesday morning.

Though Tuesday's hearing was intended to establish the availability or unavailability of the refugee/witnesses to testify, by the end of the day Carroll had not reached a decision. Carroll stated that he would spend the night reviewing testimony Tuesday's testimony, and would deliver a decision after hearing Mrs. Kelly's statement Wednesday morning.

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