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Poultry firm: Deportations hurt defense

Columbia Farms wants charges in immigration case dropped, saying key witnesses are gone.

**By Ames Alexander
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Columbia Farms, set to face trial soon on charges that it knowingly employed illegal immigrants, is taking an unusual legal approach: It's arguing the charges should be dismissed because the government deported workers who might have helped the defense.

Last October, federal authorities raided the poultry company's Greenville, S.C. plant, and quickly deported more than 300 workers. Authorities have also charged the company and two of its top managers - Greenville complex manager Barry Cronin and human resources director Elaine Crump.

In a recent court motion, company attorneys argue the government denied their clients "favorable and material testimony" because it didn't give them a chance to interview workers before deporting them.

It's unclear what the deported immigrants might have provided to the defense. But defense attorneys contended the government wouldn't have deported the workers so quickly if it thought they would help the prosecution.

In their motion filed Oct. 9 in federal court in Greenville, the defense attorneys argued that legal precedent is on their side.

In 2002, a federal judge in Omaha dismissed immigration charges against Nebraska Beef, concluding the government acted "in bad faith" when it deported more than 150 workers before giving the defense a chance to get their testimony. The government had not followed its own deportation procedures, the judge found.

But later the same year, a federal court rejected a similar argument.

It denied Tyson Foods' request to dismiss immigrant smuggling charges, arguing that the government did not act in bad faith when it lost track of illegal immigrants. A jury in Tennessee later acquitted the company.

In 1982, the U.S. Supreme Court found that the government can deport witnesses - provided the defense can't make a "plausible showing" that the testimony of the deported witnesses would have helped its case.

Defense attorneys in the Columbia Farms case said in the filing that most of the government's interviews with 10 former company supervisors - all found to be in the country illegally - have already proved helpful to their case. The lawyers didn't elaborate.

In interviews with the Observer, legal experts were split on the merits of Columbia Farms' arguments.

"It's an astoundingly disingenuous and bad-faith argument," said Tony Alfieri, director of the Center for Ethics and Public Service at the University of Miami Law School.

Alfieri argued that there's nothing to stop company lawyers from traveling to other countries to depose the deported witnesses.

But Deborah Weissman, a professor at UNC law school with expertise in immigration law, questions whether the depositions of remote witnesses would carry much weight in court.

"You don't try a case on paper," she said. "You need witnesses in court."

Several experts, however, said they doubted Columbia Farms' motion would torpedo the government's case.

If push comes to shove, the government could give many of the deported workers permission to return temporarily to the U.S. - and then compel them to testify, according to Joseph Reina, an immigration lawyer from Dallas.

David Abraham, a professor of immigration law at the University of Miami, said that given the government's increased efforts to deport illegal immigrants in recent years, the new motion isn't likely to sink the prosecution's case.

Kevin McDonald, first assistant U.S. attorney for South Carolina, declined to discuss the company's motion but said that he expects a hearing on it.

Cronic, Crump and Columbia Farms have all pleaded not guilty.

Columbia Farms is owned by House of Raeford Farms, a N.C.-based poultry company with \$600 million in annual sales, 6,000 employees and operations in the Carolinas and Louisiana.

In a February 2008 series on workplace safety in the poultry industry, the Observer reported that some House of Raeford managers knowingly employed illegal immigrants.

Current and former supervisors said the plants preferred undocumented workers because they were less likely to question working conditions for fear of being fired.

Five months later, Crump was charged with instructing employees to use fraudulent employment forms.

This year, a federal grand jury indicted both Cronic and Columbia Farms, accusing them of knowingly hiring illegal workers from 2000 until October 2008. Hundreds of the company's workers used counterfeit documents, authorities found.

Columbia Farms has contended that it follows all employment laws.

Cronic, Crump and Columbia Farms have all hired leading S.C. criminal defense lawyers. Cronic's attorney - Bart Daniel - formerly served as U.S. Attorney for South Carolina and has successfully defended many white-collar prosecutions.

John Simmons, the lawyer representing Columbia Farms, also served in the early 1990s as South Carolina's top federal prosecutor. Crump is represented by William Coates, of Greenville, who has been recognized as one of the state's best lawyers.

The defendants could be tried as early as next month. Authorities declined to speculate about whether the case will be resolved without a trial.

"We are in discussions with defense attorneys but I can't tell you if those discussions are going to result in a resolution," McDonald said.

Staff researcher Marion Paynter and staff writer Franco Ordoñez contributed.