

Sealed Proceedings

1 set aside for the moment, then, 7 and 10 and get to 8 and 12.

2 The Government agrees -- I'm not sure if Your Honor
3 does -- but heightened scrutiny applies because this is an
4 occupational -- they're both occupational restrictions.
5 Nos. 8 and 12 both would restrict occupation: No. 12 by
6 requiring officer approval; No. 8, of course, by saying, "You
7 just can't do this. You can't own or operate this former
8 business."

9 So I think the Government is right to concede that
10 heightened scrutiny applies. I also argue that special
11 scrutiny applies. Special scrutiny applies to No. 8, the
12 former operation of the business, because he does have the
13 First Amendment right to speak. And as we can all tell, Your
14 Honor, in looking at this case -- I, of course, wasn't counsel
15 below. But in looking at this, I see why everyone is probably
16 reacting to this business the way they do. But at the same
17 time I note -- and I think Your Honor noted the same thing --
18 it's not illegal. In fact, there's a company out there right
19 now doing the same thing.

20 THE COURT: Well, I told him it wasn't illegal at
21 sentencing. I said as much.

22 MR. INIGUEZ: Correct. That's just what I said, Your
23 Honor, that we all recognize it's not illegal. It's somewhat
24 distasteful. But I would say this. In today's day and age,
25 this day and age of Tinder, of OK Cupid, of these dating

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1 the conviction was for bank larceny; and the Court imposed
2 computer-related restrictions which impeded his occupation.
3 And there, too, the Second Circuit reversed and said, no, the
4 conduct related to the bank larceny conviction is not related
5 sufficiently to the computer restrictions, and it reversed.

6 That's what we have here. These two connections are
7 not sufficient to say you can't go back and earn a livelihood.
8 Mr. Sullivan right now is living with his mother. He's making
9 nothing. And, Judge, I know that the Court knows better than
10 anybody, having a job is the bedrock of success, of successful
11 integration, reintegration into the community.

12 Now, as I say, I know this website seems to some
13 distasteful.

14 THE COURT: Let me ask you this.

15 MR. INIGUEZ: Yes.

16 THE COURT: Do you think running this kind of a
17 website makes people angry, makes people angry?

18 MR. INIGUEZ: I would say, Your Honor, in all
19 likelihood it makes some people angry. But I would have to
20 say, in all likelihood, also, it probably makes some people
21 thankful.

22 THE COURT: We'll get to your other part of that. My
23 question is: Does it make people mad?

24 MR. INIGUEZ: Your Honor, you know what I would say?
25 We've all had to listen, over the past three or four days, to