

# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

JOSE L. VELESACA and ABRAHAM )  
CARLO UZATEGUI NAVARRO, on his )  
own behalf and behalf of )  
others similarly situated, )  
) )  
Petitioners-Plaintiff, )

vs. )

THOMAS R. DECKER, in his )  
official capacity as New York )  
Field Office Director for U.S. )  
Immigration and Customs )  
Enforcement; MATTHEW ALBENCE, )  
in his official capacity as )  
the Acting Director for U.S. )  
Immigration and Customs )  
Enforcement; UNITED STATES )  
IMMIGRATION AND CUSTOMS )  
ENFORCEMENT; CHAD WOLF, in his )  
official capacity as Acting )  
Secretary of the U.S. )  
Department of Homeland )  
Security; UNITED )  
STATES DEPARTMENT OF HOMELAND )  
SECURITY; CARL E. DUBOIS, in )  
his official capacity as the )  
Sheriff of Orange County, )  
) )  
Respondents-Defendants. )  
-----)

Index No.  
20 Civ. 1803 (AKH)

REMOTE VIDEOTAPED

DEPOSITION OF JUDITH ALMODOVAR

Wednesday, November 18, 2020

Reported by:  
FRANCIS X. FREDERICK, CSR, RPR, RMR  
JOB NO. 186581

1 J. ALMODOVAR

2 arrested by defendants or officers or agents  
3 directly or indirectly supervised by  
4 defendants in any manner more stringent or  
5 more onerous than those used or applied prior  
6 to June 6, 2017."

7 What does the New York Field  
8 Office believe it needs to do to comply with  
9 this Order?

10 A. New York Field Office understands  
11 that complying with this Order would mean that  
12 immigration officers should be conducting  
13 individualized custody determinations relating  
14 to whether the person is a danger to the  
15 community or a flight risk.

16 Q. Okay. What does the New York  
17 Field Office believe was enjoined? What  
18 policy or practice does the New York Field  
19 Office believe was enjoined by the Court?

20 A. I'm sorry. I don't understand the  
21 question.

22 Q. I can rephrase.  
23 So basically my question is what  
24 do you think the New York Field Office could  
25 not do?

1 J. ALMODOVAR

2 comply with the injunction.

3 Q. Did New York Field Office attempt  
4 to identify any policies or practices that  
5 might be more stringent than those in place  
6 prior to June 2017?

7 A. No. Not that I know of.

8 Q. Was anyone consulted about what  
9 the policy was prior to June 2017?

10 A. I only prepared to talk about  
11 things after the injunction, so anything after  
12 March 31st. And, you know, I did not prepare  
13 to speak about anything from 2017.

14 Q. Okay. So just to clarify, no one  
15 at the New York Field Office tried to find out  
16 what the policies were in place prior to June  
17 2017 in order to comply with the preliminary  
18 injunction?

19 A. Not that I know of.

20 Q. Okay. So to understand a little  
21 bit better how ICE's current policies relate  
22 to the policies that were prior to June of  
23 2017 as the Court said in the Order, I'd like  
24 to just ask you some questions about what  
25 those policies were.

1 J. ALMODOVAR

2 about procedures, I'm asking you about what  
3 people are supposed to do in the office,  
4 right? And when I'm asking you about  
5 practices, I'm asking you what actually people  
6 did. And maybe there's no difference there.  
7 Maybe there is. But that's the distinction  
8 I'm trying to make. Does that make sense?

9 A. Okay.

10 Q. Okay. So what custody  
11 determination procedures were in place at the  
12 New York Field Office before the preliminary  
13 injunction?

14 A. We would conduct custody  
15 determinations based on the RCA tool.

16 Q. Okay. And you know what? Just to  
17 make this even simpler, did the procedures and  
18 practices at the New York Field Office  
19 relating to initial custody determinations  
20 change after the preliminary injunction?

21 A. No. Just in that we were now  
22 doing the worksheets where we were actually  
23 documenting our reasoning behind our decision.

24 Q. Okay. So the only thing that  
25 changed is the creation of this worksheet

1 J. ALMODOVAR

2 Q. And so any change to the RCA made  
3 at headquarter level would also be reflected  
4 in the RCA used by the New York Field Office;  
5 is that correct?

6 A. Yes, it would.

7 Q. So the change identified here in  
8 this broadcast e-mail to the RCA would have  
9 affected the custody determination practice at  
10 the New York Field Office; is that right?

11 A. It did not change the way we  
12 conducted our custody reviews. Like I said,  
13 the RCA system is just a tool that we use. It  
14 can give whatever recommendation it gives.  
15 But at the end of our review that -- our  
16 decision is what counts. So we can overturn  
17 the RCA recommendation at any time.

18 Q. The New York Field Office does  
19 take the RCA's recommendation into account  
20 when deciding whether to detain or release  
21 someone; is that correct?

22 A. We use it as a tool and as part of  
23 all of the factors of the case.

24 Q. Sorry. Could you just answer what  
25 my actual specific question was, which was

1 J. ALMODOVAR

2 does the New York Field Office take into  
3 account the recommendation of the RCA when  
4 making the decision about somebody's  
5 custody -- whether to detain somebody?

6 A. Yes.

7 Q. So would you agree that if it is  
8 taken into account, then if the  
9 recommendations change, that obviously changes  
10 the determinations process; is that right?

11 MR. WATERMAN: I'm going to object  
12 to the extent you're speculating of a  
13 change and asking her to confirm whether  
14 that's correct or not.

15 Q. You can answer to the extent you  
16 know.

17 A. It did not change the way we  
18 conducted our custody determinations.

19 Q. So let's just take a look quickly  
20 at this e-mail.

21 It states that -- in the first  
22 line here that the -- on June 5th, 2017  
23 Enforcement and Removal Operation, ERO,  
24 deployed an update to the Risk Assessment  
25 Tool, RCA.

1 J. ALMODOVAR

2 A. Release on community service --  
3 supervision.

4 Q. So it's your testimony that the  
5 RCA currently issues recommendations of one of  
6 those three?

7 MR. WATERMAN: I'm going to  
8 object. I think the witness is confused  
9 based on her testimony of what others  
10 have told her that they encountered. I  
11 don't know what the timeline or time  
12 frame for that is. So it may need some  
13 clarification or further questions.

14 MS. BELSHER: Well, I was clear in  
15 my question that I'm asking about the  
16 current RCA version, which I imagine the  
17 witness is prepared to speak on given  
18 that it's one of our deposition topics.  
19 But we can clarify that if we need to.

20 BY MS. BELSHER:

21 Q. Ms. Almodovar, are you aware of  
22 what the RCA is able to recommend currently?

23 A. I have personally seen that the  
24 RCA recommends detain by Homeland -- by the  
25 Department of Homeland Security.



1 J. ALMODOVAR

2 Q. And, to your understanding, is it  
3 limited to issuing that recommendation?

4 A. I'm sorry. I didn't hear your  
5 question.

6 Q. Sorry. In your understanding, is  
7 it limited to that -- to issuing that  
8 recommendation only?

9 A. Yes.

10 Q. Okay. So just going back quickly  
11 to Exhibit 7, I wanted to draw your attention  
12 to the second sentence in that first paragraph  
13 after it states that it was deploying the  
14 update to the RCA it states, "All  
15 recommendations provided by RCA will now be  
16 compliant with the President's Enhancing  
17 Public Safety in the Interior of the United  
18 and Border Security and Immigration  
19 Enforcement Improvement Executive Orders  
20 issued on January 25th, 2017."

21 So what did the New York Field  
22 Office understand by that, if you are aware?

23 A. I don't know.

24 Q. What instructions did the New York  
25 Field Office receive with respect to this

1 J. ALMODOVAR

2 starting around April 1st there was  
3 discussions between the DFODs and our  
4 attorneys. And, you know, what information  
5 would be needed and what would be the best way  
6 to provide the information to comply with the  
7 injunction. And so they talked about, you  
8 know, the creation of this worksheet.

9 Q. Sorry. When did those discussions  
10 take place?

11 A. I have, in preparation for this,  
12 read e-mails. There was e-mail discussion  
13 back and forth, you know, April 1st. And then  
14 I saw e-mails, you know, from, like, April  
15 7th. And there was, you know, a first draft  
16 of the worksheet. And then April 15th was a  
17 first training regarding the worksheet. And  
18 so within that time period, you know, there  
19 was discussions back and forth until they  
20 finally created the worksheet.

21 Q. Okay. So were there any other  
22 steps taken aside from these meetings and the  
23 creation of the worksheet to comply with the  
24 Court's Order?

25 A. There was training on two

1 J. ALMODOVAR

2 occasions conducted by the attorneys.

3 Q. Anything else? Any other steps?

4 A. A guidance -- you know, a guidance  
5 e-mail sent to the field with the guidance on  
6 the injunction and the worksheet attached.

7 Q. Okay. Anything else you can  
8 remember?

9 A. No. Not at this time.

10 Q. Is there anything you would need  
11 to -- or want to consult to refresh your  
12 memory on that or do you think those were all  
13 the steps?

14 A. The worksheet, the training, the  
15 guidance.

16 Oh, there was also a review  
17 conducted of the detainees -- the subjects  
18 that were already detained. And those cases  
19 were reviewed as part of this injunction as  
20 well.

21 Q. Okay. Are you aware that a list  
22 of class members was compiled for -- in  
23 response to the Preliminary Injunction Order  
24 in this case?

25 A. In regards to those that were

1 J. ALMODOVAR

2 A. We didn't change any practices.  
3 We only added the worksheet.

4 Q. And did the New York Field  
5 Office -- I'm sorry. Let me state over.

6 The New York Field Office did not  
7 decide it needed to change any policy to  
8 comply with the Court's Preliminary Injunction  
9 Order; is that right?

10 A. Again, there are no policies in  
11 regard to custody determinations.

12 Q. So the answer to my question is  
13 that, in fact, it is correct that the New York  
14 Field Office did not change any policy to  
15 comply with the preliminary injunction.

16 MR. WATERMAN: I just want to  
17 object to the extent that you're  
18 mischaracterizing the witness's answer  
19 that there were no policies. So to the  
20 extent you're characterizing it as New  
21 York Field Office didn't change any  
22 policy suggests the existence of a  
23 policy. I think the witness has  
24 answered the question.

25 MS. BELSHER: Okay. We can move

1 J. ALMODOVAR

2 on.

3 BY MS. BELSHER:

4 Q. Were any other changes made beyond  
5 the creation of the worksheet?

6 A. In regard to custody  
7 determinations, no.

8 Q. So the only change that the New  
9 York Field Office implemented in response to  
10 the Preliminary Injunction Order in this case  
11 was a form which allowed employees to document  
12 custody determinations decisions; is that  
13 right?

14 A. I believe so, yes.

15 Q. And this was something that the  
16 New York Field Office was already doing just  
17 on the RCA instead of on the worksheet; is  
18 that right?

19 A. As far as documenting, we were  
20 using the RCA and any documentation in regards  
21 to any -- anything that was reviewed on the  
22 case would be found on the narrative of the  
23 report when the person is processed.

24 Q. So the -- okay. And just to  
25 clarify -- I think you've answered this -- but

1 J. ALMODOVAR

2 the New York Field Office did not make any  
3 changes to the actual -- the substance of how  
4 custody determinations are made at the New  
5 York Field Office in response to the Court's  
6 Preliminary Injunction Order; is that right?

7 A. No.

8 Q. I think you mentioned before some  
9 guidance that was issued to the New York Field  
10 Office about the preliminary injunction. I  
11 think you mentioned at least one e-mail. Can  
12 you list for me what guidance was issued and  
13 when?

14 A. It was an e-mail that was sent out  
15 to the field on June 11th where it explained  
16 what the injunction was. And it explained how  
17 we were going to comply with the injunction.  
18 And it explained that we would comply with the  
19 injunction by documenting our reviews on these  
20 worksheets.

21 Q. And was that the only guidance  
22 that was sent out to the New York Field Office  
23 about the preliminary injunction?

24 A. Guidance -- it was the only  
25 guidance and filling out the worksheets in

1 J. ALMODOVAR

2 compliance with the injunction.

3 Q. Sorry. Are you referring to  
4 something outside of that e-mail or are you  
5 saying that that e-mail also included guidance  
6 about the worksheet?

7 A. It also included guidance about  
8 the worksheet.

9 Q. Okay. So there were no other  
10 e-mails that provided guidance to the New York  
11 Field Office about how to comply with the  
12 Court's Order in this case.

13 A. That was the e-mail.

14 Q. Okay. I'd like to pull up another  
15 document. It's been premarked as Exhibit 9  
16 and I know these exhibit numbers are now  
17 probably off. But that's how it should appear  
18 in your folder.

19 (Deposition Exhibit 9, e-mail  
20 dated April 13, 2020 with attachment,  
21 marked for identification as of this  
22 date.)

23 BY MS. BELSHER:

24 Q. Let me know when you have that up  
25 on your screen.

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2 referring to earlier as the guidance issued  
3 related to the preliminary injunction?

4 A. Yes, it is.

5 Q. Okay. And this was the most -- I  
6 believe you had said earlier this was the only  
7 guidance sent out in the New York Field Office  
8 with respect to the preliminary injunction; is  
9 that right?

10 A. Yes.

11 Q. I just want to draw your attention  
12 to the part that starts right after the  
13 redacted section here: "ICE understands this  
14 injunction to mean that officers are to  
15 conduct individualized custody determinations  
16 and more specifically ICE's New York Field  
17 Office cannot have a 'no release' policy or  
18 practice for aliens it apprehends."

19 Do you see that?

20 A. Yes.

21 Q. Is this the New York Field  
22 Office's understanding of the preliminary  
23 injunction?

24 A. Yes, it is.

25 Q. Okay. You mentioned earlier that



1 J. ALMODOVAR

2 there were two trainings. Let's take those  
3 one at a time. The first training was, I  
4 believe you said April 15th; is that right?

5 A. Yes.

6 Q. How long was that training?

7 A. About 30 to 45 minutes.

8 Q. Can you pin that down more exactly  
9 or are you unsure if it was 30 or 45 minutes?

10 A. Someplace thereabouts. About half  
11 an hour give or take.

12 Q. And who was required to attend  
13 that first training?

14 A. On that training were SDDOs and  
15 AFODs. Yeah, SDDOs and AFODs.

16 Q. Were deportation officers required  
17 to attend?

18 A. There were a few on there. But  
19 they were not required to attend.

20 Q. Why weren't they required to  
21 attend?

22 A. Because they -- the deportation  
23 officers are not the ones who would be  
24 involved in the actual approval of the -- of  
25 someone's custody determination. It's at the

1 J. ALMODOVAR

2 MR. WATERMAN: I'm just going to  
3 object to the extent you asked for her  
4 to give you at recitation word for word  
5 for a 30-minute training. I think  
6 obviously she can summarize but to ask a  
7 witness to provide word-for-word  
8 recitation of a training, I'd object.

9 BY MS. BELSHER:

10 Q. Just as close as you can get to  
11 that. Can you please provide a narrative of  
12 what was covered at that training.

13 A. I mean, pretty much it was  
14 explaining what the injunction was and what we  
15 needed to do to comply with it. And the  
16 creation of this worksheet. And basically how  
17 to fill it out and how to use it.

18 Q. So take those one at a time. How  
19 was the Court's injunction explained to the  
20 New York Field Office employees who attended  
21 that training and the event?

22 A. Basically the same way it was set  
23 forth in the guidance, that every immigration  
24 officer is obligated to conduct a custody -- a  
25 complete custody determination review. And to

1 J. ALMODOVAR

2 document their reasoning behind their decision  
3 onto the worksheet.

4 Q. Did the presenter, [REDACTED],  
5 explain what specifically -- what practice was  
6 specifically ordered to be stopped by the  
7 Court?

8 [REDACTED]  
9 [REDACTED]

10 [REDACTED] However, we don't have a no  
11 release policy.

12 Q. So was there any practice or  
13 policy specifically that you were instructed  
14 had to change as a result of the preliminary  
15 injunction?

16 A. Change, no. We haven't changed  
17 the way we do -- conduct our determinations.  
18 Just an addition to. We needed to fill out  
19 the worksheet.

20 Q. You said the next topic that was  
21 covered during the training was what New York  
22 Field Office needed to do the comply with the  
23 preliminary injunction. What were those  
24 instructions?

25 A. They needed to conduct their

1 J. ALMODOVAR  
2 complete custody redetermination review and  
3 fill out the worksheet to document such review  
4 and decision.

5 Q. Sorry. You just said  
6 redetermination.

7 A. I'm sorry. Custody determination  
8 review. That's what I meant to say.

9 Q. Okay. And just to clarify,  
10 redetermination of people already in New York  
11 Field Office's custody were not discussed at  
12 the training.

13 A. That I recall, not at the first  
14 training.

15 Q. Did anyone ask what they should do  
16 with respect to people who were already  
17 detained in light of the e-mail that we were  
18 just looking at saying that SDDOs who would  
19 need to make redeterminations should attend  
20 the training?

21 MR. WATERMAN: I'm just going to  
22 object. This was asked and answered.

23 Q. You can answer.

24 A. I don't recall any questions  
25 regarding custody redeterminations at the

1 J. ALMODOVAR

2 A. No. Just the two questions that I  
3 mentioned.

4 Q. Okay. I think you mentioned there  
5 was a second training. What was the date of  
6 that second training?

7 A. May 18th.

8 Q. Why did the New York Field Office  
9 hold a second training?

10 A. To give the opportunity to the  
11 people who were not on the first training.  
12 And at this point, also to address the  
13 modification to the injunction as far as  
14 reviewing the custody determinations of those  
15 that were currently detained.

16 Q. So you mentioned that the training  
17 was for people who missed the first training.  
18 Were all of the topics covered in the first  
19 training covered in the second training?

20 A. In my conversations of people who  
21 were on the second training, yes.

22 Q. And you yourself were not on that  
23 second training; is that right?

24 A. I was not. I was not.

25 Q. But you understand from those who

1 J. ALMODOVAR

2 did attend that the same topics were covered  
3 in both.

4 A. Yes.

5 Q. And in addition to those topics,  
6 the second training also addressed what you  
7 described as a modification to the injunction;  
8 is that right?

9 A. The determination of those  
10 currently in custody.

11 Q. So as I think you're aware, the  
12 Court issued a Decision on May 15th denying  
13 the Government's request to clarify the  
14 injunction. What steps were taken --  
15 actually, I can rephrase that.

16 How was this Decision described  
17 during that training?

18 A. During the second training?

19 Q. Yes.

20 A. I don't know because I was not in  
21 attendance.

22 Q. So the trainings were specifically  
23 a topic listed as topics covered by this  
24 30(b)(6). What did you do to prepare yourself  
25 to be able to talk about the second training?

1 J. ALMODOVAR

2 Q. Do you know if the Court's  
3 Decision on May 15th denying ICE's motion to  
4 amend or correct the preliminary injunction,  
5 if that was explained during the training?

6 A. I don't know. She did not mention  
7 that.

8 Q. Was any guidance issued to the New  
9 York Field Office beyond that training related  
10 to the decision I just mentioned?

11 A. Not that I recall.

12 Q. Prior to that training, was anyone  
13 provided with a redetermination if they had  
14 already been detained at the point of the --  
15 at the time the preliminary injunction was  
16 issued?

17 A. As part of this injunction, I  
18 don't think so. But there were cases that  
19 were redetermined based on the pandemic and  
20 the COVID factors.

21 Q. How long was the second training?

22 A. She reiterated to me that it was  
23 about a half an hour.

24 Q. And who was required to attend the  
25 second training?

1 J. ALMODOVAR

2 in the context of [REDACTED]?

3 A. Reviewed the worksheet itself.

4 Q. Reviewed to decide whether or not  
5 it was the correct decision, detention  
6 decision, or reviewed just for his own  
7 information? Or for some other purpose? I  
8 realize that's compound.

9 A. I mean, reviewed for his own  
10 information to see how the worksheets were  
11 being filled out. I mean, I don't know. We  
12 would have to ask him that, why he would  
13 review a worksheet.

14 Q. Is anyone tasked with reviewing  
15 the decision documented in the worksheet?

16 A. No. Not that I know of.

17 Q. Were there any worksheets that  
18 were -- or cases that were redetermined after  
19 [REDACTED] reviewed the worksheets?

20 A. I'm sorry. Can you clarify what  
21 you're asking?

22 Q. Sure. Was anyone required to redo  
23 a custody determination after the worksheet  
24 was -- the worksheet in that case was  
25 reviewed?



1 J. ALMODOVAR

2 think. I think the document here speaks  
3 for itself. I don't think the witness  
4 is in a position to guess about what  
5 other officers think is sufficient or  
6 not sufficient.

7 BY MS. BELSHER:

8 Q. Is it the practice at the New York  
9 Field Office for officers to find someone is a  
10 danger to the community based on a single  
11 pending DWI charge?

12 A. As I stated earlier, each one of  
13 these cases is reviewed by a SDDO and it's  
14 their discretion and how they see how all the  
15 factors play into a case.

16 Q. And if that's the exclusive factor  
17 that the SDDO is considering, as appears to be  
18 the case here, under the New York Field  
19 Office's practice for custody determinations,  
20 that could be sufficient.

21 A. Well, just because he only wrote  
22 this one factor, that doesn't mean that he  
23 didn't take other factors into consideration  
24 as well. It's just he -- all those other  
25 factors he didn't document here.

1 J. ALMODOVAR

2 Q. I'd like to draw your attention  
3 further down to the flight risk where the  
4 person -- the SDDO Dawson wrote the person  
5 assessed has a pending DWI from February 7th,  
6 2020. This is identical to the language  
7 that's in the danger section. The second  
8 sentence reads: "As such, subject is a flight  
9 risk."

10 Is -- sorry. Hold on just one  
11 moment.

12 Is a pending criminal charge a  
13 basis for a finding that somebody is a flight  
14 risk at the New York Field Office?

15 A. Again, it's at the discretion of  
16 the SDDO reviewing the case. And, again, just  
17 because he only stated this one factor here  
18 does not mean that he did not take other  
19 factors into consideration.

20 Q. Okay. And I'll just note the  
21 decision at the bottom here says detain.  
22 Let's move on to Exhibit 16.

23 (Deposition Exhibit 16, worksheet,  
24 marked for identification as of this  
25 date.)

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2 Office with respect to these decisions.

3 You can answer that question.

4 A. Like I said, without knowing the  
5 factors of the case, I would not be able to  
6 answer that.

7 Q. Based on the factors that you have  
8 here, which are noted in this decision,  
9 what -- based on what the New York Field  
10 Office's practice is, why wouldn't this person  
11 be released on community supervision?

12 A. Again, just because these factors  
13 are the only ones stated on this worksheet so  
14 that means that there were other factors that  
15 contributed to the decision.

16 Q. Okay. Was the worksheet changed  
17 at any point?

18 I'm sorry. Not this specific  
19 worksheet but the worksheet in the New York  
20 Field Office.

21 A. I believe there were two versions  
22 of it. This is the final version. There was  
23 another version dated 4/15 but the only change  
24 that I could see is just on the top part as  
25 far as the title of the worksheet. Now it

1 J. ALMODOVAR

2 Q. Do you have any idea why this  
3 footnote was changed?

4 A. No. I do not.

5 Q. How was the new worksheet  
6 explained to staff when it was distributed?

7 A. It was attached to the June 11th  
8 guidance. And that is the worksheet that we  
9 have been using.

10 Q. And was there any explanation in  
11 the New York Field Office as to why it had  
12 been changed?

13 A. No.

14 Q. Okay. How long are custody  
15 determinations generally -- how long do they  
16 take?

17 A. However long it takes -- the  
18 processing of an individual takes. There's  
19 many factors that play into that. You know,  
20 each officer that processes processes at a  
21 different pace. So it takes longer for one  
22 than for the other. I can't really put a time  
23 frame on how long it takes to review a case.  
24 Every individual is different. Every case is  
25 different. A case has different factors to

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, FRANCIS X. FREDERICK, a  
Notary Public within and for the State  
of New York, do hereby certify:

That JUDITH ALMODOVAR, the  
witness whose deposition is  
hereinbefore set forth, was duly sworn  
by me and that such deposition is a  
true record of the testimony given by  
the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that  
I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 2nd day of  
December, 2020.



FRANCIS X. FREDERICK