COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

IN RE: SHELLEY M. RICHMOND JOSEPH

SUFFOLK, SS. SJC NO. OE-157

STIPULATION

The Commission on Judicial Conduct ("the Commission") and Judge Shelley M. Richmond Joseph ("Judge Joseph") stipulate that the following facts, with their accompanying appendices, are established for purposes of the public hearing in the above-numbered complaint, and that the attached appendices shall be admitted as exhibits, or if so indicated herein, marked for identification and available for use as indicated. In so stipulating, Judge Joseph denies that the existence of these facts constitutes evidence of misconduct on her part. Judge Joseph and the Commission each reserve the right to make any further argument concerning the matters so established.

1. Appendix A is a true copy of the resume that Judge Joseph included with her application for judicial appointment, and that the Office of the Governor submitted with her nomination.

2. Judge Joseph was sworn in as a Massachusetts District Court Judge on November 2, 2017, and she began her training and orientation as a judge on November 3, 2017. Judge Joseph's orientation included approximately four weeks of sitting with a series of other judges to watch different kinds of proceedings in different courthouses.

3. In response to the Supreme Judicial Court's decision in Lunn v. Commonwealth, 477 Mass. 517 (2017), on November 10, 2017, the Chief Justice of the Trial Court and the Court Administrator issued EOTC Transmittal 17-13, entitled "Policy and Procedures Regarding Interactions with the Department of Homeland Security" (the "Lunn policy"). (A copy of the Lunn policy is attached as Appendix B.

4. On January 16, 2018, the Chief Justice of the District Court, Chief Justice Paul Dawley ("Chief Justice Dawley") issued District Court Transmittal No. 1222, a copy of which is attached as Appendix C. Among the attachments to Transmittal No. 1222 was an updated "Immigration Benchcard," a copy of which is attached as Appendix D.

5. On April 2, 2018, Judge Joseph was assigned to sit as the only judge that day in the Newton Division of the District Court department ("Newton District Court"). The matters that Judge Joseph presided over included criminal charges

against a man using the name, Jose Medina-Perez ("Mr. Medina-Perez," or "the defendant").[1] At approximately 10:34 a.m., Mr. Medina-Perez came before Judge Joseph for arraignment on a charge of being a fugitive from justice based on a warrant issued in a case in Pennsylvania, and two misdemeanor counts of controlled substance violations. The Newton District Court docket sheet for Commonwealth v. Medina-Perez is attached as Appendix E.

6. Mr. Medina-Perez was also the subject of an Immigration and Customs Enforcement ("ICE") detainer and warrant of removal, a copy of which is attached as Appendix F.

7. A copy of a transcript of a series of hearings in the Commonwealth v. Medina-Perez matter on April 2, 2018, is attached as Appendix G. This transcript does not include a brief call or calls of the case that occurred before the lunch recess, and it does not include certain non-substantive comments that Judge Joseph recalls. The brief calls that are not in Appendix G are included in Appendix H attached. In all other respects, this transcript accurately reflects the content of the recorded hearings conducted in the case in the morning and afternoon. Audio recordings of the same series of hearings in the Commonwealth v. Medina-Perez matter on April 2, 2018, are attached as Appendices I and J. Appendix I is the audio recording in its original form, as produced by the recording system in the Newton District Court. Appendix J is an enhanced version of the original audio recording, prepared by a vendor engaged by the Office of the United States Attorney, using audio recording enhancement technology.

8. The court provided court-appointed counsel, Elizabeth Bostwick, as well as a Spanish-language interpreter, Eric Mendoza ("Interpreter Mendoza"), for Mr. Medina-Perez.

9. Before the afternoon "call" of the Commonwealth v. Medina-Perez matter and while it was recessed, Newton District Court First Assistant Clerk-Magistrate Lawrence Okstein ("Clerk Okstein"), who was serving as the session clerk, brought to Judge Joseph's attention that an ICE agent was present in the courtroom and that the Newton District Court had a policy that ICE agents be directed to wait outside the courtroom. After contacting the AODC, Judge Joseph asked Clerk Okstein to give direction to the ICE agent in accordance with the Newton District Court policy.

10. At some point prior to the afternoon call of the case, persons associated with the defendant in the Commonwealth v. Medina-Perez matter had retained private counsel for him, and that attorney, Attorney David Jellinek ("Attorney Jellinek"), entered an appearance.

[1] The Newton District Court docket for Commonwealth v. Medina-Perez (attached as Appendix E) identifies the defendant as Jose Oscar Manuel Medina-Perez. This document will refer to him as Mr. Medina-Perez or, in the context of the District Court proceeding, as "the defendant."

11. The final hearing before Judge Joseph in the Commonwealth v. Medina-Perez matter began at approximately 2:48 p.m. At some point before that hearing, Attorney Jellinek had formulated a plan with Court Officer Wesley MacGregor ("Court Officer MacGregor") that Attorney Jellinek intended would permit Mr. Medina-Perez to avoid the ICE agents. As part of that plan, Court Officer MacGregor indicated that he could release Mr. Medina-Perez through the sally-port door in the lockup.

12. When Mr. Medina-Perez's case was recalled that afternoon, Mr. Medina-Perez, Attorney Jellinek, and ADA Jurgens appeared before Judge Joseph in the courtroom. Attorney Jellinek asked for a sidebar. Judge Joseph granted that request and conducted a recorded sidebar conference with Attorney Jellinek and ADA Jurgens.

13. After some discussion, Attorney Jellinek asked if the sidebar was being recorded. Judge Joseph then said to Clerk Okstein, "can we go off the record for a moment." Clerk Okstein turned off the courtroom recording system."

14. District Court Special Rule 211(A)(1) requires that courtroom proceedings be recorded, as follows: "In all divisions of the District Court Department and in the Boston Municipal Court Department, all courtroom proceedings, including arraignments in criminal and juvenile delinquency cases, shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; (b) proceedings that are being recorded by a court reporter appointed by the court; and (c) proceedings conducted by a magistrate other than a judge." This rule has been in effect since November 1, 1989. A copy of District Court Special Rule 211 is attached as Appendix K. See also Rule 12(b)(2) of the Massachusetts Rules of Criminal Procedure, as amended effective May 11, 2015. A copy of Rule 12, with Reporter's Notes identifying the changes enacted with each amendment, is attached as Appendix L.

15. After the recorder was turned off, there was a 52-second off-the-record sidebar conference with Judge Joseph, Attorney Jellinek, and ADA Jurgens present.

16. When the courtroom recorder was turned on again at approximately 2:51 p.m., the hearing in the Commonwealth v. Medina-Perez matter continued in open court.

17. The proceeding in the Commonwealth v. Medina-Perez matter then concluded at approximately 2:54 p.m. Immediately following the above-described proceeding, Court Officer MacGregor escorted the defendant to the downstairs lockup area of the Newton District Court, accompanied by Attorney Jellinek and Interpreter Mendoza.

18. Once inside the lockup area, Court Officer MacGregor used his security access card to open the rear sally-port exit of the courthouse and released Mr. Medina-Perez out of the courthouse through the sally-port exit at approximately 3:01 p.m. on April 2, 2018.

19. The ICE officers learned about Mr. Medina-Perez's release after it happened. Mr. Medina-Perez was not taken into ICE custody on April 2, 2018.

20. After investigation, a federal grand jury returned indictments against Judge Joseph and Court Officer MacGregor based on the events of April 2, 2018. On September 22, 2022, Judge Joseph entered into an agreement with the United States Attorney, in which she stipulated to certain facts regarding the events of April 2, 2018, and agreed to refer herself to the Commission on Judicial Conduct. The United States Attorney moved to dismiss the charges against her, and the United States District Court so ordered on September 23, 2022. A copy of the motion to dismiss, with attached agreement between Judge Joseph and the United States Attorney and the statement of facts, is attached as Appendix M.

21. On April 4, 2018, the First Justice of the Newton District Court, Judge Mary Beth Heffernan ("Judge Heffernan"), had a conversation with Judge Joseph at the Newton District Court and asked Judge Joseph about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

22. On a date within a month of Judge Joseph's conversation with Judge Heffernan, Regional Administrative Justice Stacey Fortes ("Judge Fortes") met with Judge Joseph at the Lowell District Court and asked Judge Joseph about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

23. On May 8, 2018, Chief Justice Dawley and Judge Fortes met with Judge Joseph in Chief Justice Dawley's office. Chief Justice Dawley asked Judge Joseph about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

24. During the Commission's investigation of this matter on June 6, 2023, the Special Counsel for the Commission conducted an interview of Judge Joseph under oath, recorded by a court reporter, with Judge Joseph's counsel present. A copy of the transcript of this interview is attached as Appendix N.

25. Appendices O and P consist of the Memoranda of Investigation prepared by ICE Officers Richard Simmons and Domenico Federico, respectively, regarding events at the Newton District Court on April 2, 2018. Appendices Q and R consist of the grand jury testimony of Officers Simmons and Federico, respectively.

26. Appendix S consists of items 1 through 14, for identification. These documents are true copies of notes and reports of witness interviews, made by federal agents in the course of their duties. These documents are not admitted as exhibits by stipulation but may be used by either party for purposes of impeachment, refreshing recollection, or such other purposes as may be permitted by the applicable law of evidence.

27. Appendix T consists of items 1 through 24, for identification. These are true copies of documents received by counsel for Judge Joseph from the Civil Liberties Union of Massachusetts, which represented that it had obtained them as a result of requests it made under the Freedom of Information Act to ICE. These documents are not admitted as exhibits by stipulation but may be used by either party for purposes of impeachment, refreshing recollection, or such other purposes as may be permitted by the applicable law of evidence.

28. Appendix U consists of items 1 through 25, for identification. This is a set of photographs of locations in the Newton District Courthouse.

For the Commission on Judicial Conduct,

By. Judith Fabricant

Judith Fabricant
Special Counsel
Commission on Judicial Conduct

For Judge Shelley M. Richmond Joseph,

By: Michael Keating

Michael B. Keating, Esq.
Counsel for Judge Shelley M. Richmond Joseph

Elizabeth Mulvey, Esq.
Counsel for Judge Shelley M. Richmond Joseph

Thomas Hoopes, Esq.
Counsel for Judge Shelley M. Richmond Joseph

Dated: March 25, 2025

Table of Contents

Appendix A (Judge Joseph's resume) APP001

Appendix B (Lunn Policy) APP004

Appendix C (District Court Transmittal No. 1222) APP009

Appendix D (Updated Immigration Benchcard) APP014

Appendix E (Docket Sheet, Commonwealth v. Jose Medina-Perez) APP017

Appendix F (Civil Immigration Detainer and Warrant of Removal) APP022

Appendix G (Transcript of April 2, 2018 hearings in Commonwealth v. Medina-Perez) APP029

Appendix H (Full Day Transcript for April 2, 2018) APP044

Appendix I (Original Audio Recordings for April 2, 2018 hearings) APP119

Appendix J (Enhanced Audio Recordings for April 2, 2018 hearings) APP120

Appendix K (District Court Special Rule 211) APP121

Appendix L (Rule 12 of the Massachusetts Rules of Criminal Procedure) APP124

Appendix M (Federal Motion to Dismiss, with Agreement and Statement of Facts) APP155

Appendix N (Transcript of Judge Joseph's sworn interview, dated June 6, 2023) APP171

Appendix O (DHS ICE Memorandum of Investigation, Officer Richard Simmons, dated April 18, 2018) APP282

Appendix P (DHS ICE Memorandum of Investigation, Officer Domenico Federico, dated April 18, 2018) APP286

Appendix Q (Transcript of sworn Federal Grand Jury testimony of Officer Richard Simmons, dated December 20, 2018) APP288

Appendix R (Transcript of sworn Federal Grand Jury testimony of Officer Domenico Federico, dated December 20, 2018) APP334

Appendix S (Unredacted Federal Reports and Notes) APP352

Appendix T (Redacted Federal Reports and Notes) APP417

Appendix U (Photographs of the Newton District Court) APP505

APPENDIX A

SHELLEY M. RICHMOND JOSEPH, Esq.

LEGAL MEMBERSHIPS: Admitted to practice in Massachnsetts, United States Court of Appeals, First Circuit, United States District Court, Massachusetts District, United States Virgin Islands

EXPERIENCE:

LAW OFFICE OF JOSEPH & JOSEPH, Newton, Massachusetts
October 2000- present
Firm specializes in criminal defense, real estate, personal injury, business and trust and estate law. My practice specializes in criminal defense, hearings before the registry of motor vehicles, restraining orders.

SWARTZ & SWARTZ, P.C. Boston, MA
Associate: April 2000 – September 2000
Firm specializes in medical malpractice, products liability, catastrophic personal injury and wrongful death cases. Responsibilities included all aspects of civil litigation.

OFFICE OF THE ATTORNEY GENERAL, Boston, MA
Assistant Attorney General: July 1993 – April 2000

Criminal Bureau, February 1995 - October 1995, January 1996 – April, 2000
Assigned to Grove Hall Safe Neighborhood Initiative - a community crime fighting partnership between the Attorney General's Office, Suffolk County District Attorney's Office, Boston Police Department, Mayor's Office and community based organizations that combined targeted prosecution with neighborhood revitalization, violence prevention, intervention and treatment programs.

Business and Fair Labor Protection Bureau, October 1995- January 1996
Responsible for investigation, preparatiou, and prosecution of insurance fraud cases in superior and district courts.

Family and Community Crimes Bureau, July 1993 - February 1995
Responsible for the preparation, legal investigation, trial, and argument of cases filed under M.G.L. c. 258A, The Victim of Violent Crimes Statute. Drafted legislation and implemented regulations creating an administrative process pursuant to M.G.L. c. 258C. Drafted legislation concerning victim's privacy rights. Trained police officers at annual domestic violence training.

NEW ENGLAND SCHOOL OF LAW, Boston, Massachusetts
Adjunct Faculty Member:

Criminal Procednre II, September 2001 – December 2001

MASSACHUSETTS SCHOOL OF LAW, Andover, MA
Adjunct Faculty Member:

Civil Motion Practice, September 1996 - December 1996
Guided students through the pretrial process using hypothetical cases assigned as case studies. Students drafted documents and motions and argued motions for each class.

Research and Writing II, January 1995 - May 1995, January - May 1996
Lectured weekly class in legal writing and oral advocacy skills.

MASSACHUSETTS STATE SENATE - SENATOR MARC R. PACHECO
Legislative Counsel: March 1993 - July 1993
Researched, drafted and tracked legislation, prepared Senator for hearings, responded to press inquiries.

EDUCATION:

NEW ENGLAND SCHOOL OF LAW, Boston, MA
Juris Doctor, May 1992
Dean's List, Fall 1990, Fall 1991, Spring 1992
Activities: Mock Trial and Honors Moot Court Competitions, International Law Society, Partner in Law, Law Day Committee, Senior Week Committee.

BOSTON COLLEGE, Chestnut Hill, MA
Bachelor of Arts and Sciences, May 1989
Majors: Political Science, Romance Languages concentration in Spanish
Activities: Marching Band (section leader), Intramural Volleyball, Member of student government, Hillel board member, Young Alumni Club.
Awards: Recipient of one of three Ben Shapiro Scholarship Awards.

COMMUNITY/ PROFESSIONAL SERVICE:

Member of Massachusetts Bar Association, Boston Bar Association, Woman's Bar Association, Women's Law Network, USA500

Executive Board Member Natick Together for Youth (NTY), Former Member of Board of Directors of Temple Israel in Natick, MA

Lecturer in seminars entitled: Hanging Your Shingle (MCLE), Legal Developments in Search and Seizure (MCLE), How to Run a Successful Solo or Small Law Practice (MBA) Developing Your Criminal Defense Practice (BBA), Women in Litigation (WBA MATA) Innovative Jury Techniques (MATA), The Adolescent Brain and Teen Way of Thinking (NTY), Understanding Youth Parties (NTY), Knowledge is Parental Power: Social Host Liability (NTY), Refuse to Use (NTY), Hidden in Plain Sight (NTY), Opioid Prevention Training (NTY), Civil Commitments and Opioid Prevention Law (NTY), Created a public service cable commercial on social host liability (NTY).

Four year co-chair of auction to benefit local schools, five year co-chair of elementary and middle school talent show, middle school career day lecturer, sponsor of town sports recreational sports teams and Jingle Bell Run to benefit Natick Service Counsel Food Pantry

Former Appointed Member of Brookline Commission on the Status of Women, Former member of Democratic State Committee, Law Day Teacher Boston Public Schools. Volunteer judge for Boston University Moot Court Competition and New England School of Law Trial Competition, NESL mentor program, mock interview program, career day program, alumni volunteer for prospective students

APPENDIX B

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT
John Adams Courthouse
One Pemberton Square, Floor 1M
Boston, Massachusetts 02108
617-878-0203

Paula Carey
Chief Justice of the Trial Court

Jonathan S. Williams
Court Administrator

Executive Office Transmittal 17-13

To: Judges, Clerks, Registers, Chief Probation Officers and all staff

From: Chief Justice Paula M. Carey
Court Administrator Jonathan S. Williams

cc: Departmental Chief Justices, Probation Commissioner, Jury Commissioner, Deputy Court Administrators, OCM Directors

Date: November 10, 2017

Re: Policy and Procedures Regarding Interactions with the Department of Homeland Security

In Transmittal 17-10 we provided notice of the Supreme Judicial Court's decision in Lunn vs. Commonwealth & Another, addressing the authority of Massachusetts court officers to arrest pursuant to a civil immigrations retainer. As noted at the time, the Court specifically concluded that court officers did not have the authority to arrest and hold an individual solely on the basis of a Federal immigration detainer beyond the time that individual would otherwise be entitled to release from State custody.

At this time we are pleased to provide the document entitled Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security, to provide clear guidance to judges, clerks, probation, security and all court staff on responding to DHS requests and the presence in DHS officers in our courthouses.

Please be advised that we have provided the DHS Field Agent in Charge with a copy of this document. We will also be sharing it with CPCS and local bar associations.

Please contact your departmental administrative office with any questions or concerns.

Policy and Procedures Regarding Courthouse Interactions With the Department of Homeland Security

I. PURPOSE AND PRINCIPLES

The following policy governs the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers. It also governs how Trial Court staff shall respond when officials from the D H S enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer.

Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees. Trial Court employees play essential roles in ensuring the orderly administration of justice and providing a safe and secure environment inside the courthouse.

Nothing in this policy shall be construed to restrict compliance with 8 U. S. C. § 1373 (current edition) or to limit or abrogate: a court officer's authority to detain an individual pursuant to G.L. c. 221, § 70A; an order of a judge; a warrant issued by a judge or clerk authorizing the arrest of an individual for a criminal offense; or a criminal detainer.

II. RESPONSE TO DHS REQUESTS

Individuals subject to a civil immigration detainer often arrive in custody at a courthouse accompanied by a DHS "Notice of Action" immigration detainer form (currently DHS Form I-247A) that requests court employees to voluntarily: 1) detain the individual subject to the detainer for up to 48 hours in order for DHS officials to arrive and take custody of the individual even though the individual would otherwise be released from the trial court's custody; 2) transmit information to DHS regarding the individual subject to the detainer; 3) serve the individual with a copy of the detainer form; 4) relay the detainer to any other law enforcement agency to which the court employee transfers custody of the individual; and 5) notify DHS in the event of the individual's death, hospitalization or transfer to another institution. The DHS detainer form frequently is accompanied by a civil immigration warrant (ICE Form I-205 and/or Form I-200) that is signed not by a judge or clerk, but by a DHS official. In addition, there may be instances in which DHS officials directly ask court personnel for information regarding an individual or an individual's case.

Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant. Trial Court employees do not have authority to detain an individual based solely on a civil immigration detainer. Nor do Trial Court employees have the authority to comply with a civil warrant issued by a DHS official for the arrest of an individual based solely on a civil immigration violation. Trial Court employees shall not serve civil immigration detainers or civil immigration warrants. Individuals subject to civil immigration detainers or warrants shall be processed and handled in the same manner as all other individuals coming before the court. No person shall be held in custody for any shorter or longer period than the person would otherwise be held based solely on a civil immigration detainer or civil immigration warrant.

Requests by DHS officials for information regarding an individual or an individual's case, whether made in a civil immigration detainer or made directly to court personnel, shall be treated by court employees in the same manner as would a request for information from any other member of the public.

If a DHS official requests information from a court officer regarding the status of an individual's case, the court officer may direct the DHS official to the appropriate clerk's office.

If a DHS official requests information from the clerk's office regarding an individual's case, or any case file, the scope of the responding employee's response shall be guided by the same statutes, rules, and policies that govern public access to court records.

If a DHS official requests information from Probation, the Probation employee shall direct the request to the attention of the Probation Legal Unit to be processed in the normal course.

III. DHS OFFICIALS TAKING CUSTODY OF INDIVIDUALS AT A COURTHOUSE

Although DHS officials are permitted to act in the performance of their official duties in Massachusetts courthouses, it is essential to the fair administration of justice that members of the community are provided a safe and secure environment when they enter the courthouse. To that end, DHS officials may enter a courthouse and perform their official duties provided that their conduct in no way disrupts or delays court operations, or compromises court safety or decorum.

In accordance with existing policy, armed law enforcement officers may enter a courthouse while in the performance of official duties. As applicable to all law enforcement officers, when an armed DHS official enters a courthouse, courthouse security personnel shall ask the DHS official to state his or her official law enforcement purpose for entering the courthouse and the proposed enforcement action to be taken, if any. The DHS official's information shall immediately be transmitted to a security supervisor or designated court officer.

The security supervisor or designated officer shall inform the first justice, or regional administrative justice of the department with jurisdiction over the person if DHS officials are present in the courthouse with the intent of arresting or taking anyone into custody, i.e. a party or other participant in a case before a judge or magistrate, or a person attending to business in the courthouse.

A. Individuals over whom the Trial Court has custody

Consistent with Chapter 2, sections XIV and XV of the Court Officer Manual (current edition), when an individual who was brought into court in custody is subject to release after his or her court proceeding, court security personnel shall process that individual out of lock up in the normal course regardless of whether the individual is subject to a civil immigration detainer or warrant.

If, during the processing of an individual subject to release out of the courthouse, a DHS official is present in the courthouse and seeks admission into the courthouse's holding cell area in order to take custody of the individual pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel's custody,

if a security department supervisor determines that the DHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.

Before being granted entry into the holding cell area, DHS officials must present credentials and a copy of the detainer or civil immigration arrest warrant to court security personnel, sign in to the holding cell area, and surrender their weapons.

To the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse.

B. **Individuals coming to court who are not in the custody of the trial court**

In those instances where DHS officials seek to take custody in a courthouse of an individual who is not in custody of the courthouse security personnel, Trial Court employees shall neither impede DHS officials from doing so nor assist in the physical act of taking that individual into custody. In the event that court security personnel are present as DHS officials place an individual in custody in a courthouse, the role of such court personnel is to take those actions necessary to maintain the safety and decorum in the courthouse.

Nonpublic spaces in a courthouse, such as within clerks' offices or Probation offices, may not be used by DHS officials. No DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant in a courtroom, unless permission has been given in advance by the regional administrative judge or first justice sitting in the courthouse.

IV. RECORDING INTERACTIONS WITH DHS

Court security personnel shall keep a log of every individual over whom the court accepts custody and who is subject to a civil immigration detainer or warrant, if known. Court security staff shall likewise keep a log of every instance in which DHS was notified that a person subject to a detainer was released from court custody, as well as every time DHS takes an individual into custody in a courthouse.

In addition, court security personnel shall draft an incident report for every instance in which DHS takes an individual into custody in a courthouse.

APPENDIX C

APP010

Trial Court of the Commonwealth
District Court Department

Paul C. Dawley
Chief Justice

Administrative Office
Edward W. Brooke Courthouse
24 New Chardon Street, 1st Floor
Boston, MA 02114-4703

TRANSMITTAL NO.	1222
Last Transmittal No. to:	
First Justices	1221
Other Judges	1221
Clerk-Magistrates	1221
Assistant Clerk-Magistrates	1221
CPOs	1221

M E M O R A N D U M

TO: District Court Judges, Clerk-Magistrates, Assistant Clerk-Magistrates, and Chief Probation Officers

FROM: Hon. Paul C. Dawley, Chief Justice

DATE: January 16, 2018

SUBJECT:
1. First Justice Appointments
2. Acting First Justice Appointment
3. Acting Clerk Magistrate Appointments
4. March 2018 Regional Education Meeting Dates
5. District Court Conversion to Full Criminal Docketing
6. Updated Immigration Benchcard
7. 90 Day Guide Updates
8. Triple I's in 209A and 258E Cases
9. Judiciary Policy Regarding Display of Commemorative or Expressive Works in Massachusetts Courthouses
10. Courthouse Protocols for Fentanyl and Carfentanil

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1. <u>First Justice Appointments.</u> I am pleased to announce the appointment of Hon. Paul H. Smyth as First Justice of Pittsfield District Court, effective January 16, 2018. I am confident Judge Smyth will be an outstanding leader of the court and I thank him for taking on this extra responsibility. I would like to thank Hon. Jacklyn Connly for serving as Acting First Justice since June 2017.

Effective upon the retirement of Hon. Albert S. Conlon, I am pleased to appoint Hon. Matthew J. Nestor as First Justice of the Lynn District Court effective January 16, 2018. I thank Judge Conlon for his dedication to the Lynn District Court and for his tremendous contributions to the District Court for so many years. I am grateful to Judge Nestor for assuming these responsibilities and I am confident he will continue the excellent work of Judge Conlon.

2. <u>Acting First Justice Appointment.</u> Effective January 16, 2018, I have appointed Hon. Matthew J. Machera as Acting First Justice of the Chelsea District Court. I thank Judge Machera for taking on these additional responsibilities. I anticipate that within the next 4-6 weeks the announcement regarding the vacancy for the Chelsea District Court First Justice position will be posted.

3. Acting Clerk Magistrate Appointments. Hingham District Court Clerk Magistrate Joseph A. Ligotti retired effective January 1, 2018. I thank him for his many years of dedicated service to the Trial Court and wish him the best in retirement. Effective upon his retirement, I have appointed First Assistant Clerk Magistrate Andrew P. Quigley to temporarily serve as Acting Clerk Magistrate in Hingham. I thank First Assistant Clerk Magistrate Quigley for agreeing to assume these responsibilities.

In addition, Dudley District Court Clerk Magistrate Kenneth F. Candito has notified me of his intention to retire effective January 16, 2018. I thank him for his many years of dedicated and excellent service to the Trial Court and wish him the best in retirement.
As you are aware, Clerk Magistrate Candito currently serves as Acting Clerk Magistrate of Westborough District Court. Effective December 29, 2017, I appointed Fitchburg Clerk Magistrate Patrick J. Malone to temporarily serve as Acting Clerk Magistrate in the Westborough District Court. I thank Clerk Magistrate Malone for agreeing to accept this appointment.

Effective December 29, 2017, I also appointed First Assistant Clerk Magistrate Brian M. D'Andrea to temporarily serve as Acting Clerk Magistrate in the Fitchburg District Court. I am grateful to First Assistant Clerk Magistrate D'Andrea for assuming these responsibilities.

Dudley District Court First Assistant Clerk Magistrate William F. George will continue to serve as Acting Clerk Magistrate of Dudley District Court.

4. March 2018 Regional Education Meeting Dates. The dates and locations for the March 2018 Regional Education Meetings have been established. On the respective dates listed below, the clerk magistrates' meeting is scheduled for the morning from 9:00 a.m. to 12:00 p.m. and judges are scheduled to meet in the afternoon from 1:30 p.m. to 4:30 p.m. The dates and locations are as follows:

Regions 1 and 2: Friday, March 2nd at the Plymouth Trial Court, Jury Pool Room
Regions 5 and 6: Tuesday, March 6th at the Worcester Law Library, 5th Floor
Regions 3 and 4: Wednesday, March 7th at the Peabody District Court, 3rd Session

5. District Court Conversion to Full Criminal Docketing. As of December 15, 2017, every district court began using MassCourts for full criminal docketing. Each district court now uses the electronic case management system to record and docket all court activity. The functionality includes document imaging of the most essential court orders and filings.

The project was begun with the outstanding efforts of Kathleen McKeon, Clerk Magistrate of the Woburn District Court and Special MassCourts Liaison for the District Court who lead the work of Clerk-Magistrates and others in the District and Boston Municipal Court in the creation of the necessary codes and templates which serve as the foundation for electronic criminal docketing. Thanks to the efforts and support of JISD, the enhancements to MassCourts to support full docketing were put in place shortly thereafter. The criminal conversion to each of the 62 district courts, which included implementation in each court and extensive training of

court users, could not have been accomplished without the diligent efforts of each of the District Court Performance Analysts. Their unwavering energy, willingness to travel to all areas of the Commonwealth and their strong work ethic made the quick and successful completion of this project a reality. Credit must also be given to the District Court users in all divisions, who willingly accepted the changed docketing process, despite the initial disruption created in their normal work assignments and who continually invest their time to improve their knowledge of the MassCourts Application for the benefit of all court users.

6. Updated Immigration Benchcard. At the December 13, 2017 conference, we distributed a revised Information in Immigration Matters benchcard, dated 12/17, to note the Supreme Judicial Court's holding in ***Lunn v. Commonwealth***, that Massachusetts court officers do not have the authority to hold an individual in custody solely on the basis of a Federal civil immigration detainer beyond the time that the individual would otherwise be entitled to be released from State custody. 477 Mass. 517, 537 (2017). Consistent with District Court Transmittal No. 1209, which was issued after the ***Lunn*** decision and rescinded prior District Court transmittals on this subject, this revised benchcard replaces the benchcard dated 10/16, which should be discarded. **Please contact Jackie Lawton,** (jacqueline.lawton1@jud.state.ma.us) **(617) 788-8810) if you did not receive the updated benchcard.** The electronic version of the new benchcard is also attached so that you can replace pp. 125-126 in your 90 Day Guide. Additional guidance on responding to requests from the Department of Homeland Security can be found in the Trial Court's Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security issued by Executive Office Transmittal 17-13, dated November 10, 2017.

7. 90 Day Guide Updates. In an effort to keep your 90 Day Guide current, please replace Transmittal No. 1095 at pp. 55-57, which describes the VALOR Act procedures, with the attached District Court Transmittal No. 1201. As noted in this more recent VALOR Act transmittal, the Supreme Judicial Court's holding in ***Commonwealth v. Morgan***, 476 Mass. 768 (2017), that a judge is permitted to exercise discretion to dismiss the prosecution of a veteran who successfully completes a diversion program over the objection of the Commonwealth, is contrary to the position set forth in Transmittal 1095 (Dec. 19, 2012). The attached Transmittal No. 1201 summarizes the holding of ***Morgan*** and sets forth the VALOR Act procedures.

8. Triple I's in 209A and 258E Cases. The Probation Service has confirmed that in restraining order and harassment prevention order cases, when the CARI is run on the defendant, the III record will also be run and provided to the court. If the court directs Probation to do so, Probation will also run the Triple I record on the plaintiff.

9. Judiciary Policy Regarding Display of Commemorative or Expressive Works in Massachusetts Courthouses. Effective December 1, 2017, The Supreme Judicial Court has adopted a new Judicial Policy regarding Display of Commemorative Expressive Works in Massachusetts Courthouses. A copy of this new policy is attached to this transmittal.

10. <u>Courthouse Protocols for Fentanyl and Carfentanil.</u> As referenced in Executive Office Transmittal 18-1, the Trial Court has developed Courthouse Protocols for Fentanyl and Carfentanil. Due to the increasing safety concern regarding these substances, the protocols have been created to ensure the safety of all courthouse employees and the public while still maintaining the interests of the parties in the admissions of these substances and the rights of the criminal defendants. The newly developed protocols are attached to this transmittal for your review.

APPENDIX D

INFORMATION ON IMMIGRATION MATTERS

Alien Warnings Under G. L. c. 278, § 29D and Mass R. Crim. P. 12(c)(3)(A)(iii) and 12(d)(3)(A)(iii)

The following warning must be given during every plea colloquy at which the defendant is proffering a plea of guilty or *nolo contendere*, or an admission to sufficient facts:

> "If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of *nolo contendere*, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States, and if the offense to which you are pleading guilty, *nolo contendere*, or admitting to sufficient facts is under federal law one that presumptively mandates removal from the United States and federal officials decide to seek removal, it is practically inevitable that this conviction would result in deportation, exclusion from admission, or denial of naturalization under the laws of the United States."

The defendant shall not be required at the time of the plea to disclose to the court his legal status in the United States. G.L. c. 278, § 29D.

Motions for a New Trial

G.L. c. 278, § 29D

If the § 29D warning is not given and the defendant later shows that the plea may have or has had one of the enumerated consequences, the court must vacate the conviction and allow the defendant to withdraw the plea even if he or she has already been deported from the United States. The defendant has burden of proving one or more consequences (deportation, exclusion, denial of naturalization) may occur. *Comm. v. Berthold*, 441 Mass. 183 (2004); see *Comm. v. Grannum*, 457 Mass. 128 (2010) (deportation consequence established by showing an ICE detainer, Notice to Appear, Order of Removal, "express written policy" of federal government, etc., not just a statutory cite.); *Comm. v. Valdez*, 475 Mass. 178 (2016) (exclusion consequence established by showing (1) a bona fide desire to leave the country and reenter, and (2) a substantial risk that conviction would trigger exclusion from admission.). The court should presume warning was not given if absent from the record. G.L. c. 278, § 29D.

Ineffective Assistance of Counsel

A defense attorney's failure to advise the defendant of the immigration consequences prior to pleading or proceeding to trial violates the 6th amendment and art. 12 rights to effective assistance of counsel. *Padilla v. Kentucky,* 559 U.S. 356 (2010); *Comm. v. Marinho,* 464 Mass. 115 (2013); *Comm. v. DeJesus,* 468 Mass. 174 (2014). **The defendant's motion must show both deficient performance and prejudice:**

Deficient Performance

The defendant must show deficient advice by counsel regarding the consequences of criminal dispositions

- Affirmative mis-advice
- Failure to give *specific,* accurate advice in a manner client can understand when consequences are clear based on statutes and case law (general warning insufficient). See *Comm. v. DeJesus,* 468 Mass. 174 (2014)

Shown by affidavits indicating that counsel failed to inquire about the defendant's immigration status, mis-advised the defendant regarding the immigration consequences faced by the defendant, or otherwise failed to advise the defendant appropriately.

Prejudice

The defendant must show that **but for** counsel's deficient performance, the proceedings would have been different.

- The defendant would have rejected plea and gone to trial, and
- It would have been rational to reject plea because:
  - o There was a substantial defense that would have been pursued at trial;
  - o There was a reasonable possibility that a different plea bargain could have been negotiated; or
  - o Special circumstances show that the defendant placed particular emphasis on immigration consequences.

Comm. v. Clarke, 460 Mass. 30 (2011)

Generally, where a substantial issue is raised and is supported by a substantial evidentiary showing, the judge should hold an evidentiary hearing; for instance, where the defendant and the Commonwealth present conflicting affidavits or where the affidavits are missing key elements.
Comm. v. Gordon, 82 Mass. App. Ct. 389, 394-95 (2012).

Habing Defendants in ICE Custody

Neither federal immigration nor state transportation officers are required by law to transport a state court defendant in federal immigration detention to state court but it is sometimes possible to do if the defendant is being held in an ICE facility in New England. **Two habes are necessary:**

Habe #1: Should be addressed to ICE-ERO, 1000 District Avenue, Burlington, MA 01803.* The clerk should call ICE at 781-359-7601* to verify the correct method of delivery. The habe should request that ICE notify the sheriff for the county in which the criminal case is being heard to arrange transportation to court. ICE will either transport the defendant to the Suffolk County House of Correction at South Bay or will make the detainee available for pick up from the nearest ICE facility (likely if the ICE facility and the court are in the same county). ICE may request confirmation from the clerk or DA's office. The sheriff then has the responsibility to transport the defendant to and from court.

Habe #2: Should be addressed to the sheriff of the county in which the case is being heard, asking that the sheriff transport the defendant from ICE custody at South Bay (or the ICE facility where the defendant is being held) to court and to coordinate with ICE by contacting ICE at 781-359-7601.*

* Contact information current as of 12/17.

Miscellaneous Notes

- Bail: It is permissible to inquire into a defendant's immigration status when making bail determinations if necessary to establish or confirm identity and/or to gather information related to other recognized bail factors.

- Detainers: It is not permissible to hold an individual in custody solely on the basis of a Federal civil immigration detainer beyond the time that the individual would otherwise be entitled to be released from State custody. *Lunn v. Commonwealth*, 477 Mass. 517, 537 (2017). Civil immigration detainers should be distinguished from criminal detainers and criminal arrest warrants, which may provide Massachusetts court officer with a basis to arrest and detain an individual. *Id*. at 13, 24 n. 22.

  For guidance on the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers, and how Trial Court staff should respond when officials from DHS enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer, see Executive Office Transmittal 17-13, dated November 10, 2017, which contains the Trial Court's *Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security*.

DISCLAIMER: Federal immigration law and its intersection with State law is extremely complex. The information on this card is by no means comprehensive. Users are advised not to rely on this card as a substitute for a thorough analysis of the law and the facts applicable to each individual case.

AODC Rev. 12/17

APPENDIX E

1812CR000149 Commonwealth vs. Peguero Peguero, Oscar Manuel OKA Medina-Perez, Jose

- Case Type:
- Criminal
- Case Status:
- Closed
- File Date
- 04/02/2018
- DCM Track:
-
- Initiating Action:
- FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A
- Status Date:
- 06/28/2022
- Case Judge:
-
- Next Event:
-

All Information | Party | Charge | Event | Docket | Disposition

Party Information

Peguero Peguero, Oscar Manuel
- Defendant

Alias
OKA Medina-Perez, Jose

Party Attorney
- Attorney
- Perullo, Esq., Joseph M
- Bar Code
- 670542
- Address
- Attorney at Law
  1 Green Island Blvd
  Unit 513
  Worcester, MA 01610
- Phone Number
- (978)500-5323

More Party Information

Party Charge Information

- **Peguero Peguero, Oscar Manuel**
- - Defendant
  Charge # 1:
  276/20A-0 - Misdemeanor - 100 days or less incarceration FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A

- Original Charge
  - 276/20A-0 FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A (Misdemeanor - 100 days or less incarceration)
  - Amended Charge
  -

Charge Disposition
Disposition Date
Disposition
04/02/2018
Dismissed - Request of Commonwealth

- **Peguero Peguero, Oscar Manuel**
- - Defendant
  Charge # 2:
  94C/34/C-0 - Misdemeanor - more than 100 days incarceration DRUG, POSSESS CLASS B c94C §34

- Original Charge
  - 94C/34/C-0 DRUG, POSSESS CLASS B c94C §34 (Misdemeanor - more than 100 days incarceration)
  - Amended Charge
  -

Charge Disposition
Disposition Date
Disposition
06/28/2022
Dismissed - After Pretrial Probation

- **Peguero Peguero, Oscar Manuel**
- - Defendant
  Charge # 3:
  94C/34/I-0 - Misdemeanor - 100 days or less incarceration DRUG, POSSESS CLASS E c94C §34

- Original Charge
- 94C/34/I-0 DRUG, POSSESS CLASS E c94C §34 (Misdemeanor - 100 days or less incarceration)
- Amended Charge
-

Charge Disposition
Disposition Date
Disposition
06/28/2022
Dismissed - After Pretrial Probation

Events

Date	Session	Location	Type	Result
04/02/2018 08:15 AM	Arraignment Session		Arraignment	Held - Personal Recog. Release
05/29/2018 09:00 AM	Pretrial Session		Pretrial Hearing	Defendant defaulted-FI to Appear
12/09/2021 02:00 PM	Arraignment Session		Default Removal Hearing	Held - Default Removed - CR
12/10/2021 09:00 AM	Arraignment Session		Hearing to Review Status	Review Completed
02/08/2022 09:00 AM	Pretrial Session		Pretrial Hearing	Held-PT
03/28/2022 10:00 AM	Pretrial Session		Motion to suppress	Not Held
06/28/2022 02:00 PM	Administrative Session		Pretrial Probation as Disposition Until	Held - No future event

Docket Information

Docket Date	*Docket Text*	*Image Avail.*
04/02/2018	Charges Disposed:: Charge # 1 FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A On: 04/02/2018 Judge: Henry H Shultz Probable Cause Found Charge # 2 DRUG, POSSESS CLASS B c94C §34 On: 04/02/2018 Judge: Henry H Shultz Probable Cause Found Charge # 3 DRUG, POSSESS CLASS E c94C §34 On: 04/02/2018 Judge: Henry H Shultz Probable Cause Found	
04/02/2018	Complaint issued upon new arrest.	
04/02/2018	Event Resulted Judge: Joseph, Hon. Shelley M The following event: Arraignment scheduled for 04/02/2018 08:15 AM has been resulted as follows: Result: Held - Personal Recog. Release	
04/02/2018	Defendant arraigned before Court, advised of right to counsel. Judge: Joseph, Hon. Shelley M	
04/02/2018	At arraignment, defendant reports that s/he will retain private counsel. Judge: Joseph, Hon. Shelley M	
04/02/2018	Plea of Not Guilty entered on all charges. Judge: Joseph, Hon. Shelley M	
04/02/2018	Bail revocation warning (276/58) given to the defendant Judge: Joseph, Hon. Shelley M	
04/02/2018	Released on Personal Recognizance Judge: Joseph, Hon. Shelley M	
04/02/2018	Appearance filed On this date David Jellinek, Esq. added as Private Counsel for Defendant Jose Medina-Perez	

Docket Date	Docket Text	Image Avail.
04/11/2018	Interpreter requested for next court date. Judge: Joseph, Hon. Shelley M	
05/29/2018	Event Resulted: Pretrial Hearing scheduled on: 05/29/2018 09:00 AM Has been: Defendant defaulted-FI to Appear Hon. Mary E Heffernan, Presiding Appeared: Staff:	
05/29/2018	Default Warrant ordered to issue. Judge: Heffernan, Hon. Mary E	
12/03/2018	Charges Disposed:: Charge # 1 FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A On: 04/02/2018 Judge: Hon. Shelley M Joseph Dismissed - Request of Commonwealth	
12/09/2021	Warrant recalled: Default Warrant cancelled on 12/09/2021 for Medina-Perez, Jose	
12/09/2021	Event Resulted: Default Removal Hearing scheduled on: 12/09/2021 02:00 PM Has been: Held - Default Removed - CR Hon. Jennifer D Queally, Presiding	
12/09/2021	Defendant before Court on Warrant, Warrant recalled as served. Judge: Queally, Hon. Jennifer D	
12/09/2021	Defendant is ordered committed without bail because OTHER REASON: to Middlesex Jail returnable for 12/10/2021 09:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: * DEFENDANT HELD WITHOUT BAIL DUE TO IDENTITY ISSUES * ** DEFENDANT TO BE BROUGHT TO COURT ON 12/10/21 ** Judge: Queally, Hon. Jennifer D	
12/10/2021	Commonwealth's motion to amend complaint (defendants name filed with the following, if any, supporting documents:	Image
12/10/2021	Appearance filed On this date David Jellinek, Esq. dismissed/withdrawn as Private Counsel for Defendant Jose Medina-Perez	Image
12/10/2021	Appearance filed On this date Joseph M Perullo, Esq. added as Private Counsel for Defendant Jose Medina-Perez	Image
12/10/2021	Event Resulted: Hearing to Review Status scheduled on: 12/10/2021 09:00 AM Has been: Review Completed Hon. Mary E Heffernan, Presiding	
12/10/2021	Motion to amend the complaint ALLOWED.	Image
12/10/2021	Released on Personal Recognizance Judge: Heffernan, Hon. Mary E	
12/10/2021	Interpreter requested for next court date.	
02/08/2022	Event Resulted: Pretrial Hearing scheduled on: 02/08/2022 09:00 AM Has been: Held-PT Hon. Michael Fabbri, Presiding	
02/08/2022	Pretrial conference report filed. Judge: Fabbri, Hon. Michael	Image
02/08/2022	Interpreter requested for next court date.	
02/14/2022	Defendant's motion to Suppress Evidence and Statements filed with the following, if any, supporting documents: affidavit in support of motion	Image
03/28/2022	Defendant's motion to Pre-Trial Probation filed with the following, if any, supporting documents:	Image
03/28/2022	Event Resulted: Motion to suppress scheduled on: 03/28/2022 10:00 AM Has been: Not Held Hon. Mary E Heffernan, Presiding	

Docket Date	Docket Text	Image Avail.
03/28/2022	Defendant placed on pre-trial probation conditions under C276§ 87 as follows:Other condition(s): No new offenses Judge: Heffernan, Hon. Mary E	
03/28/2022	Order of pretrial conditions of release under G.L. c.276 § 87 filed.	Image
03/28/2022	Judicial finding regarding assessment or waiver of monies in criminal case filed. Judge: Heffernan, Hon. Mary E	Image
06/28/2022	Event Resulted: Pretrial Probation as Disposition Until scheduled on: 06/28/2022 02:00 PM Has been: Held - No future event Hon. Mary E Heffernan, Presiding	
06/28/2022	Charges Disposed:: Charge # 2 DRUG, POSSESS CLASS B c94C §34 On: 06/28/2022 Judge: Hon. Mary E Heffernan Dismissed - After Pretrial Probation Charge # 3 DRUG, POSSESS CLASS E c94C §34 On: 06/28/2022 Judge: Hon. Mary E Heffernan Dismissed - After Pretrial Probation	
06/28/2022	All charges disposed - No future events - Defendant discharged. Judge: Heffernan, Hon. Mary E	
06/28/2022	Docket report of court proceedings to date Judge: Heffernan, Hon. Mary E	Image
07/07/2022	Docket report of court proceedings to date	Image

Case Disposition

Disposition	Date
Dismissed	06/28/2022

APPENDIX F

APP023

GRAND JURY EXHIBIT 8 8-2-18 KD

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: 360965235
Event #: WSM1003003685

CASE#TNET201800093
FBI#210952AC4

File No: 079 677 654
Date: March 30, 2018

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
Newton Police Department
1321 Washington St
Newton, MA 02465

FROM: (Department of Homeland Security Office Address)
ERO - Westminster, CA Sub Office
ICE
ERO PERC LAGUNA NIGUEL
24000 AVILA RD RM# 1552
LAGUNA NIGUEL, CA 92677

Name of Alien: PEGUERO, OSCAR MANUEL AKA: MEDINA-PEREZ, JOSE

Date of Birth: [redacted]1979 Citizenship: DOMINICAN REPUBLIC Sex: M

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1a or 1b)

- [X] A final order of removal against the alien;
- [ ] The pendency of ongoing removal proceedings against the alien;
- [X] Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- [ ] Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 2a or 2b)

- [ ] Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling [X] U.S. Immigration and Customs Enforcement (ICE) or [ ] U.S. Customs and Border Protection (CBP) at (781) 359-7709. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

[ ] If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

J 7198 TAMASI - DO
(Name and title of Immigration Officer)

Del T 7198
(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

[ ] In person [ ] by inmate mail delivery [ ] other (please specify): _____

_____
(Name and title of Officer)

_____
(Signature of Officer) (Sign in ink)

APP024

DEPARTMENT OF HOMELAND SECURITY

IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: 360965235
Event #: WSM1803003685

CASE#TNET201800093

FBI#210952AC4

File No: 079 677 654
Date: March 30, 2018

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
Newton Police Department
1321 Washington St
Newton, MA 02465

FROM: (Department of Homeland Security Office Address)
ERO - Westminster, CA Sub Office
ICE
ERO PERC LAGUNA NIGUEL
24000 AVILA RD RM# 1552
LAGUNA NIGUEL, CA 92677

Name of Alien: PEGUERO, OSCAR MANUEL AKA: MEDINA-PEREZ, JOSE

Date of Birth: [redacted]1979 Citizenship: DOMINICAN REPUBLIC Sex: M

APP025

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

Subject ID: 360965235
File No: 079 677 654
Event No: WSM1803003685
Date: March 30, 2018

To any immigration officer of the United States Department of Homeland Security:

OSCAR MANUEL PEGUERO AKA: MEDINA-PEREZ, JOSE
(Full name of alien)

who entered the United States at Unknown Place (Place of entry) on Unknown Date (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☒ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:
241(a)(5)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:
Salaries and Expenses, Department of Homeland Security 2018

CRONEN, C M
(Signature of immigration officer)

FIELD OFFICE DIRECTOR
(Title of immigration officer)

March 30, 2018, Boston, MA
(Date and office location)

Alien No: 079 677 654

To be completed by immigration officer executing the warrant: Name of alien being removed:

OSCAR MANUEL PEGUERO

Port, date, and manner of removal: _____

Photograph of alien removed	Right index fingerprint of alien removed

_____
(Signature of alien being fingerprinted)

_____
(Signature and title of immigration officer taking print)

Departure witnessed by: _____
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

_____

_____

_____

_____

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____
(Signature and title of immigration officer)

APP027

APPLICATION FOR CRIMINAL COMPLAINT

APPLICATION NO. (COURT USE ONLY): TNET201800093

PAGE 1 of 1

Trial Court of Massachusetts
NEWTON DISTRICT COURT

I, the undersigned complainant, request that a criminal complaint issue against the accused charging the offense(s) listed below. If the accused **HAS NOT BEEN ARRESTED** and the charges involve:

☐ ONLY MISDEMEANOR(S), I request a hearing ☐ **WITHOUT NOTICE**, because of an imminent threat of ☐ BODILY INJURY ☐ COMMISSION OF A CRIME ☐ FLIGHT ☐ **WITH NOTICE** to accused
☐ ONE OR MORE FELONIES, I request a hearing ☐ **WITHOUT NOTICE** ☐ **WITH NOTICE** to accused

☐ WARRANT is requested because prosecutor represents that accused may not appear unless arrested.

ARREST STATUS OF ACCUSED
☒ HAS ☐ HAS NOT been arrested

INFORMATION ABOUT ACCUSED

NAME (FIRST MI LAST) AND ADDRESS
MEDINA-PEREZ, JOSE
[redacted]
BROCKTON, MA 02301

BIRTH DATE	SOCIAL SECURITY NUMBER
[redacted]/1981	[redacted]7330
PCF NO.	MARITAL STATUS
DRIVERS LICENSE NO.	STATE
[redacted]0213	MA

GENDER	HEIGHT	WEIGHT	EYES
MALE	509	150	BROWN

HAIR	RACE	COMPLEXION	SCARS/MARKS/TATTOOS	BIRTH STATE OR COUNTRY	DAY PHONE
Black	UNKNOWN	LIGHT			[redacted]9573

EMPLOYER/SCHOOL	MOTHER'S MAIDEN NAME (FIRST MI LAST)	FATHER'S NAME (FIRST MI LAST)
	PEREZ	JOSE

CASE INFORMATION

COMPLAINANT NAME (FIRST MI LAST): SIEGAL, SCOTT

COMPLAINANT TYPE: ☒ POLICE ☐ CITIZEN ☐ OTHER — PD: NEWTON POLI

ADDRESS: 1321 WASHINGTON STREET, NEWTON, MA 02465

PLACE OF OFFENSE: NEWTON

INCIDENT REPORT NO.: 18014187

OBTN: TNET201800093

CITATION NO(S).: N/A, N/A, N/A

	OFFENSE CODE	DESCRIPTION	OFFENSE DATE
1	276/20A-0	FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A	03/30/2018
	VARIABLES (e.g. victim name, controlled substance, type and value of property, other variable information; see Complaint Language Manual)		
	03/30/2018 (DATE OF OFFENSE), OUI (OFFENSE IN OTHER STATE), PENNSYLVANIA (DEMANDING STATE) #MDJS2075929		
2	94C/34/C-0	DRUG, POSSESS CLASS B c94C §34	03/30/2018
	VARIABLES		
	03/30/2018 (DATE OF OFFENSE), COCAINE (TYPE OF CLASS B DRUG)		
3	94C/34/I-0	DRUG, POSSESS CLASS E c94C §34	03/30/2018
	VARIABLES		
	03/30/2018 (DATE OF OFFENSE), SILDENAFIL CITRATE (TYPE OF CLASS E DRUG)		

REMARKS

COMPLAINANT'S SIGNATURE: X Scott Siegal PMS

DATE FILED: 4/2/2018

COURT USE ONLY → A HEARING UPON THIS COMPLAINT APPLICATION WILL BE HELD AT THE ABOVE COURT ADDRESS ON ____ DATE OF HEARING ____ TIME OF HEARING ____ AT ____ ← COURT USE ONLY

PROCESSING OF NON-ARREST APPLICATION (COURT USE ONLY)

DATE | CLERK/JUDGE

NOTICE SENT OF CLERK'S HEARING SCHEDULED ON:

NOTICE SENT OF JUDGE'S HEARING SCHEDULED ON:

HEARING CONTINUED TO:

APPLICATION DECIDED WITHOUT NOTICE TO ACCUSED BECAUSE:
☐ IMMINENT THREAT OF ☐ BODILY INJURY ☐ CRIME ☐ FLIGHT BY ACCUSED
☐ FELONY CHARGED AND POLICE DO NOT REQUEST NOTICE
☐ FELONY CHARGED BY CIVILIAN; NO NOTICE AT CLERK'S DISCRETION

DATE	COMPLAINT TO ISSUE	COMPLAINT DENIED	CLERK/JUDGE
4/6/18	☒ PROBABLE CAUSE FOUND FOR ABOVE OFFENSE(S) NO(S). ☒ 1. ☐ 2. ☐ 3. BASED ON ☐ FACTS SET FORTH IN ATTACHED STATEMENT(S) ☐ TESTIMONY RECORDED: TAPE NO. ____ START NO. ____ END NO. ____ ☐ WARRANT ☐ SUMMONS TO ISSUE ARRAIGNMENT DATE: ____	☐ NO PROBABLE CAUSE FOUND ☐ REQUEST OF COMPLAINANT ☐ FAILURE TO PROSECUTE ☐ AGREEMENT OF BOTH PARTIES ☐ OTHER: COMMENT	Shultz

DCCR-2 (08/04)

POLICE DEPARTMENT

NEWTON, MASSACHUSETTS

RECORD OF BOOKING

[DPD ID#] [FBI# 210952AC4] [SID# MA21136445]

CELL NUMBER	ARREST NUMBER	DATE & TIME OF ARREST	INCIDENT NUMBER
CELL 1	TNET201800093	03/30/2018 17:56:03	18014187

LAST NAME	FIRST	MIDDLE NAME	D.O.B.	AGE	SSN
MEDINA-PEREZ	JOSE		[redacted]1981	36	[redacted]7330

TRUE NAME	MAIDEN NAME	HOME PHONE
JOSE & MEDINA-PEREZ		

STREET NO.	STREET NAME	APT #	CITY/TOWN	STATE	ZIP	PHONE
[redacted]		1	BROCTON	MA	02301	(WORK) (CELL) [redacted]9573

SEX	HEIGHT	WEIGHT	RACE
M	509	150	UNKNOWN

HAIR	EYES	BLD	SKIN
BLACK	BROWN	THIN	LIGHT BROWN

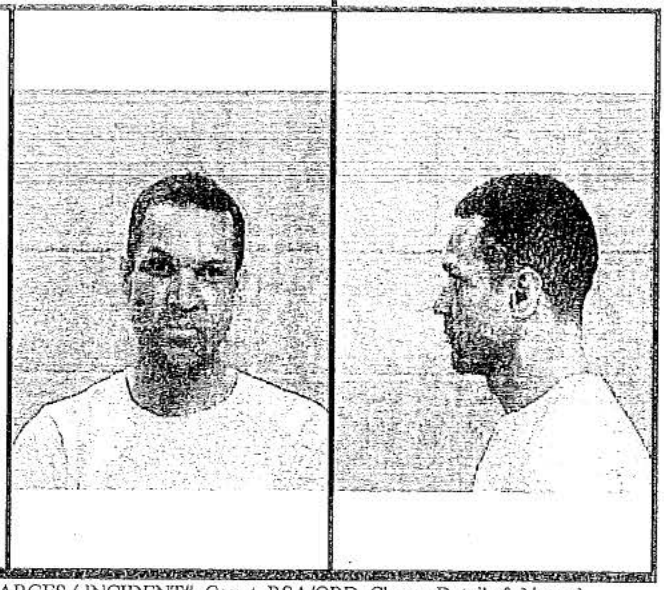
ETHNICITY	SCARS	LOCATION OF ARREST
HISPANIC ORIGIN		

PLACE OF BIRTH	CITIZEN	MARTIAL STATUS	DRIVER'S LICENSE
BAYAMON MA	Y	UNMARRIED	[redacted]0213 MA

FATHER'S NAME	MOTHER'S NAME	MOTHER'S MAIDEN
JOSE	IRAIDA	PEREZ

EMPLOYER	OCCUPATION

ADDRESS OF EMPLOYER



IF CUT VISIBLE ON PERSON, DESCRIBE KIND & LOCATION

CHARGES (INCIDENT#, Count, RSA/ORD, Charge Details & Notes)

1. 18014188 (1) 94C/34/C DRUG, POSSESS CLASS B c94C S34 CORNER BAG FIELD TESTED TO BE COCAINE
2. 18014188 (1) 94C/34/I DRUG, POSSESS CLASS E c94C S34 PRESCRIPTION BTB ERECTILE DISFUNCTION MED.
3. 18014187 (1) 276/20A FUGITIVE FROM JUSTICE ON COURT WARRANT c276 S20A BENCH WARRANT FROM PA.
4. ( )
5. ( )

TREATED WHERE	ATTENDING PHYSICIAN
UNK	UNK

PRISONER ADVISED OF MIRANDA RIGHTS	YES	BY WHOM
	X	LEE B

FINGERPRINTS TAKEN	YES	PHOTO TAKEN	YES
			X

IF PRISONER WAS ARRESTED FOR OPERATING UNDER THE INFLUENCE, FILL IN BELOW

IMPLIED CONSENT RIGHTS BY:	TEST TYPE:

BRAC RESULTS	TESTING OFFICER

ARREST ON WARRANT?	YES	WARRANT NUMBER 39201BW653/2010
	X	CITY/COURT CHAMBERSBURG PD

PRISONER SIGNATURE

CHARGES
OUI LIQUOR C90 S24

ARRESTING OFFICER	BOOKING OFFICER
SIEGAL S	LEE B

RECORDS BUREAU PROCESSING BY	REVIEWING OFFICER
	LEE B

IDENTIFICATION TYPE USED FOR ID: DRIVER'S LICENSE

IS ARRESTEE A JUVENILE	YES	NAME OF PROBATION OFFICER NOTIFIED	DATE/TIME NOTIFIED
	☐		

NAME OF PARENT OR GUARDIAN NOTIFIED	OFFICER MAKING PARENT/GUARDIAN NOTIFICATION	DATE/TIME

APPENDIX G

APP030



FT: 1/9/2019

4/2/2018 Newton District Court recording transcript excerpts

[10:34:06 am]

- Clerk Larry Okstein: "Calling the matter of Commonwealth versus Jose Medina Perez. Mr. Interpreter, this is the arrest that I believe requires an, an interpreter."
- Clerk Okstein: "Judge, this is an arrest [*inaudible*]. Does Mr. Perez qualify for a court-appointed …?"
- Probation Officer Ricky Hymon: "[*Inaudible*]. He, he's marginally indigent."
- Judge Shelley Joseph: "150?"
- PO Ricky Hymon: "150."
- Clerk Okstein: "So, Mr. Perez, it's alleged by the Newton Police Department that on March 30, 2018, you were a fugitive, fugitive from justice on a court warrant in violation of Mass General Law, chapter 276, section 20, and that, uh, you did possess Class B drug in violation of Mass General Law, chapter 94C. 94, C, section 34, and that you also possessed Class E substance, in violation of Mass General Law, chapter 94C, section 34."
- Judge Joseph: [*10:35:48]* "Sir, I'm going to enter a plea of 'not guilty' on your behalf."
- Clerk Okstein: "Attorney Bostwick, I believe, is our duty today. She --"
- Judge Joseph: "You have the right to an attorney in this matter."
- Clerk Okstein: "Attorney Bostwick."
- Judge Joseph: "You can hire an attorney. You can represent yourself. I'm also informed by the Probation Department that you do qualify for court-appointed counsel at the fee of $150. Would you like me to appoint an attorney to represent you?"
- Male interpreter: "See, I'm not allowed to represent you."
- Defendant: "Yes."
- Judge Joseph: "Um, I'm sorry, who's our duty attorney?"
- Clerk Okstein: "Judge, Att-, Attorney Bostwick. She's headed into the courtroom right this second, Judge."
- Judge Joseph: "OK. Commonwealth, do you have any information about the fugitive matter?"
- ADA Shannon Jurgens: "Yes, Your Honor. Um, the Newton Police reached out to Pennsylvania – "
- Judge Joseph: "Let's wait for counsel to come in." [*10:36:42*]
- Judge Joseph: "Good morning, counsel. Would you accept an appointment?"
- Atty Bostwick: "Sure."
- Judge Joseph: "This is a matter to which, um, Mr. Perez has, um, just been arraigned for possession of Class B, possession of Class E, and being a fugitive for justice out of Pennsylvania. And the Commonwealth was just going to indicate what information they have with respect to the fugitive matter."
- ADA Jurgens: "Yes, Your Honor. It is, um, for a, uh, what they call a DUI charge in Pennsylvania, and Pennsylvania is willing to extradite. So we are asking, um, that Mr. Medina-Perez be held without bail. Um, I'm asking for a three-week date, um, and we can nolle pros it or. I guess we'll have to work out the new charges here in Massachusetts, but."

- Judge Joseph: "I'm going to give counsel an opportunity to speak with him. Um, is there any question of identification?"
- ADA Jurgens: "I believe it was a fingerprint hit, Your Honor. So, no."
- Judge Joseph: "If you could just provide that information for counsel as well. And we'll just give this a further call."
- Atty Bostwick: "Thank you."
- Clerk Okstein: "So, further call."
- Judge Joseph: "Thank you."

[ends 10:37:47 a.m.]

[12:04:38 p.m.]

- Clerk Okstein: "Judge, calling the matter of Commonwealth versus Jose Me-, Medina Perez, Docket 1812CR149, Attorney Bostwick."
- Clerk Okstein: [*inaudible*], Judge?"
- Judge Joseph: "Thank you."
- Judge Joseph: [*12:05:04*] "Is there an issue of ID?"
- Attorney Bostwick: "Your Honor I think, I haven't, I've gone through a fair amount of the paperwork…"
- Judge Joseph: "Do you need a further call or...?"
- Attorney Bostwick: "Well, I'm happy to show the Court what I have in terms of, this is for the Pennsylvania warrant and I think it's…I don't think it's him."
- ADA Jurgens: "Your Honor that is the photo that is attached to the warrant from, the warrant is, um, eight years old, um, and it, it was the FB-, it is, uh … PCF number was a fingerprint hit for the warrant."
- Judge Joseph: "I can't tell by the photograph."
- Attorney Bostwick: "I, I guess Your Honor if I could have a further call because I am trying to get some information from his employer…"
- Judge Joseph: "Sure, of course."
- Attorney Bostwick: "…that they may have to verify certain things …"
- Judge Joseph: "Yeah."
- Attorney Bostwick: "and, um, I might need a few minutes to do that. But I would just say based on the photo on the Pennsylvania warrant, Your Honor, I don't think it's him."
- Judge Joseph: "I mean, th-, the photograph that you showed certainly shows an individual who is heavier. Um, it's hard to tell from the photograph about the, this is the new one? This is, this is the one that came… No, but this is the, this is the recent photograph, right?"
- Attorney Bostwick: "That's Newton, yeah"
- Judge Joseph: "That's the new one, yeah. Yep. Um, it's hard to tell the skin tone based on the photograph that you have. Um, it's not a very clear photograph. Um, it does show

similar facial hair, but, uh, I mean the…I don't, I don't know about height, weight, or anything in, in… I can't make a determination about the features. What I'll do is I'll give you additional time today to see if we can figure out if he's the same person that Pennsylvania seeks on that."

- Attorney Bostwick: "Okay."
- Judge Joseph: "Sir, there's a warrant out of Pennsylvania for somebody with your name. It's the Commonwealth's contention that you are the person that Pennsylvania has the warrant for based on a fingerprint. When any person is brought before the Court on what we call a fugitive complaint, you have a right to a hearing to determine if you are the proper person or not. If you are the correct person, my decision is whether to hold you for the warrant, and allow Pennsylvania to come, and bring you back to Pennsylvania or to release you and allow you to go to Pennsylvania on your own. But the first issue that I have to determine is whether or not you're the same person. So what I'm going to do is allow your attorney a little bit extra time today, to make that determination."
- Attorney Bostwick: "I'd, I'd also ask the Court, Your Honor, if I could move to get a copy of the Triple I ... to me."
- Judge Joseph: "Of course, yes. Um, I'm, I'm going to allow counsel to have a copy of the Triple I, if we have it." [*12:08:27*]
- P.O. Rhonda Smith: "We're not supposed to give out copies of the Triple I…"
- Judge Joseph: "We can make it available for her to see."
- P.O. Rhonda Smith: "…we can make it available to look at."
- Judge Joseph: "Yes. We-, we're here in the courthouse anyway, so you can certainly see it."
- Attorney Bostwick: "Okay."
- Judge Joseph: "Okay, thank you. And, could you give it to counsel too, if she needs to make a phone call, um, not make a copy of it but give it to counsel so she can take it wherever she needs to take it today to get whatever information she needs." [*12:08:55*]
- P.O. Rhonda Smith: "Yes, Your Honor."
- Judge Joseph: "Thank you."
- Attorney Bostwick:" Your Honor, I mean, I've gotten copies before in the past …"
- Judge Joseph: "For now, well, at least for now, you have access to it while we're here today and if we need to further make that provision, we can do that … Okay, thank you."
- Clerk Okstein: *[inaudible]* counsel ... "
- Judge Joseph: "Commonwealth, with respect to the new charges is there going to be a request?"
- ADA Jurgens: "No, Your Honor"
- Judge Joseph: "Okay."
- ADA Jurgens: [*12:09:29*] "Well, not the drug possession –
- Judge Joseph: "The possession that –

- ADA Jurgens: -- if they're treated separately, I am asking he is being held without…"
- Judge Joseph: "Right, on the fugitive"
- ADA Jurgens: "… but if he's not, I would have a bail request – "
- Judge Joseph: "- Okay."
- ADA Jurgens: " - for that part of it."
- Clerk Okstein: [*12:09:45*] "Okay, so further call?"
- Judge Joseph: "Further call."
- Clerk Okstein: "Further call."

[ends at 12:09:52 pm]

- Clerk Okstein: "Do you have one more person down there?"
- CO MacGregor: "I have two more people. Two more girls – "
- Clerk Okstein: "Who's the second?"
- CO MacGregor: "Pamela Hogdgon –
- Clerk Okstein: "And Kr-, Cosme"
- CO MacGregor: "Crystal Cosme …"

[2:48:13 pm]

- Clerk Okstein: "Mr. Court Officer, could you bring up the next, uh, Mr., uh, Perez?
- CO MacGregor: "Alright."
- Clerk Okstein: "Judge, the next case will be Commonwealth versus Jose Medina Perez. Attorney David Jellinek has filed an appearance on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon."
- Atty David Jellinek: "Good afternoon. David Jellinek on behalf of Mr. Perez. May we approach briefly?"
- Judge Joseph: "Yes. Please."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "Do you want to wait for your client? Or do it"
- Atty Jellinek: "No. Sidebar."
- Judge Joseph: "We're going to sidebar."

[recording ends at 2:48:47 p.m.]

[next recording starts at 2:48:48 p.m.]

- Judge Joseph: "[*Inaudible*] is dismissed, so it's my understanding that ICE is gonna …."
- Atty Jellinek: "[Inaudible] … so there's the fugitive –
- Judge Joseph: "but there's no warrant – yes."
- Atty Jellinek: … there is no … can tie this to him."
- ADA Jurgens: "eh-, I, I don't think it's him."

- Judge Joseph: "Okay."
- Atty Jellinek: "ICE is convinced that this guy. I went over to ICE, they say there's a biometric match. I went through it and did the research. There's 13 FBI numbers connected to this social. So something's bad [*inaudible*]. My client denies that it's him. ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal… … and hope that we can avoid ICE."
- ADA Jurgens: "I don't think arguing ICE is really my …"
- Atty Jellinek: "Right."
- ADA Jurgens: -- my, my …
- Judge Joseph: "[*Inaudible*] … the other alternative is if you need more time to figure this out - hold until tomorrow …"
- Atty Jellinek: "[*Inaudible*]"
- Judge Joseph: "Then it's a different …"
- ADA Jurgens: "There is a detainer attached to my paperwork. But I, I feel like that's separate and apart from what my role is."
- Atty Jellinek: "There is an ICE detainer. So if he's bailed out ... [*inaudible*] … ICE will pick him up - "
- Judge Joseph: " - ICE is gonna get him?"
- Atty Jellinek: "[*Inaudible*]"
- Judge Joseph: "What if we detain him –"
- Atty Jellinek: "Are we on the record?"
- Judge Joseph: "Larry, can we go off the record for a moment?" [*2:50:02*]
- Clerk Okstein: "What's that?"
- Judge Joseph: "Are we off the record?"
- Clerk Okstein: "No, we're on the record."
- Atty Jellinek: "Can we go off the record for a minute?"

[recording ends at 2:50:05 p.m.]

[next recording starts at 2:50:57 p.m.]

- Clerk Okstein: "Judge, we're back on the record on Mr., uh, Jose Medina Perez. Attorney Jellinek on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon, Mr. Jellinek."
- Atty Jellinek: "Good afternoon."
- Atty Jellinek: "After some extensive research into the various FBI numbers [*inaudible*] social security numbers, as well as obtaining a photo from Pennsylvania, we don't believe this gentleman is the same gentleman as on the fugitive-from-justice warrant."
- ADA Jurgens: "Your Honor, with the information that I have I don't think that there is enough tying him to the Pennsylvania warrant. The great deal of other out-of-state records – I do believe that some of them, uh, belong to this individual. But that is not what's at issue here."
- Judge Joseph: "OK."

- ADA Jurgens: "So at this point I would dismiss, um, the – "
- Judge Joseph: "The fugitive?"
- ADA Jurgens: "- count one, -"
- Judge Joseph: "OK."
- ADA Jurgens: " - um, and there's not a bail request for the counts 2 and 3. But I would ask that, for a pretrial conference date on those."
- Judge Joseph: "OK."
- Atty Jellinek: "Absolutely."
- Judge Joseph: "That's fine."
- Atty Jellinek: "I would ask that he, uh – I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may."
- Judge Joseph: "That's fine. Of course."
- Atty Jellinek: "Thank you. Uh-"
- Clerk Okstein: "I'm sorry. You said, Commonwealth, no bail request on counts.
- ADA Jurgens: "Yes."
- Clerk Okstein: "So, do you want me to arraign him?
- ADA Jurgens: "Yes, please."
- Judge Joseph: "- Yes."
- Atty Jellinek: "Please.
- Clerk Okstein: "So Mr. Perez, at the Commonwealth's request, Count One, Fugitive from Justice on a Court Warrant, has been dismissed. With respect to, uh, Counts 2 and 3, it's alleged by the Newton Police Department that on March 30, 2018, you did possess a Class B and E substance in violation of Mass General Law chapter 94C, section 34."
- Atty Jellinek: "Could we have, uh, May 29 for pretrial?"
- Clerk Okstein: "May 29th?"
- Atty Jellinek: "Please."
- Judge Joseph: "Sir, I'm going to enter a plea of 'not guilty' on your behalf. Attorney Jellinek has filed his appearance to represent you in this matter. Are you privately retained?"
- Atty Jellinek: "Yes."
- Judge Joseph: "OK. Sir, you are entitled to request an examination to determine whether you're a drug-dependent person who would benefit from treatment. If you choose to exercise this right you must do so in writing within five days, and your attorney can further explain that to you."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "All right, Judge."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "[*Inaudible*]"
- Atty Jellinek: "All set, Mr. Clerk?"
- Judge Joseph: "Wait just a second." [*2:53:22*]
- Clerk Okstein: "There was a representative from, uh, ICE here in the Court … due to visit [*inaudible*]" [*2:53:34*]
- Judge Joseph: "That's fine. I'm not going to allow them to come in here. But he's been released on this."

- P.O. Ricky Hymon: "Your Honor, are we still doing $150 attorney's fee?"
- Judge Joseph: "Um, no, his – he's privately, Mr. Jellinek is privately retained."
- Judge Joseph: "And, what date would you like?"
- Atty Jellinek: "May 29th, please."
- Clerk Okstein: "So, M-, Mr. Perez, your, your case has been continued to May 29, 2018 for pretrial conference. Please be advised that if you're charged with any new criminal offense while this case is pending, you could be held for up to 90 days without bail pending resolution of this matter. We will see you back on May 29th, 2018." [*2:54:31*]
- Court Officer MacGregor: "He's released, Mr. Clerk?"
- Clerk Okstein: "What's that?"
- Court Officer MacGregor: "He's released?"
- Clerk Okstein: "He is."
- Atty Jellinek: "Yep."
- Judge Joseph: "He is. Um, Mr. Jellinek asked if the interpreter can accompany him downstairs, um, to further interview him -
- Atty Jellinek: "Yes, please --"
- Judge Joseph: "- and I've allowed that to happen."
- Atty Jellinek: "Thank you." [*2:54:50*]
- Atty Jellinek: "Thank you, Your Honor."
- Judge Joseph: "You're welcome."
- Clerk Okstein: "Thank you. Judge, that's – uh, we're all done for now."

[recording ends at 2:55:00 p.m.]

APP037



DRAFT: 1/16/2019

4/2/2018 Newton District Court recording transcript excerpts

[10:34:06 am]

- Clerk Larry Okstein: "Calling the matter of Commonwealth versus Jose Medina Perez. Mr. Interpreter, this is the arrest that I believe requires an, an interpreter."
- Clerk Okstein: "Judge, this is an arrest [*inaudible*]. Does Mr. Perez qualify for a court-appointed …?"
- Probation Officer Ricky Hymon: "[*Inaudible*]. He, he's marginally indigent." [*10:34:38*]
- Judge Shelley Joseph: "150?"
- PO Ricky Hymon: "150."
- Clerk Okstein: "So, Mr. Perez, it's alleged by the Newton Police Department that on March 30, 2018, you were a fugitive, fugitive from justice on a court warrant in violation of Mass General Law, chapter 276, section 20, uh, and that, uh, you did possess Class B drug in violation of Mass General Law, chapter 94C. 94, C, section 34, and that you also possessed Class E substance, in violation of Mass General Law, chapter 94C, section 34."
- [*inaudible overlapping voices*]
- Judge Joseph: [*10:35:48*] "Sir, I'm going to enter a plea of 'not guilty' on your behalf."
- Clerk Okstein: "Attorney Bostwick, I believe, is our duty today. She --"
- Judge Joseph: "You have the right to an attorney in this matter."
- Clerk Okstein: "Attorney Bostwick."
- Judge Joseph: "You can hire an attorney. You can represent yourself. I'm also informed by the Probation Department that you do qualify for court-appointed counsel at the fee of $150. Would you like me to appoint an attorney to represent you?"
- Male interpreter: "See, I'm not allowed to represent you."
- Defendant: "Yes."
- Judge Joseph: "Um, I'm sorry, who's our duty attorney?"
- Clerk Okstein: "Judge, Att-, Attorney Bostwick. She's headed into the courtroom right this second, Judge."
- Judge Joseph: "OK. Commonwealth, do you have any information about the fugitive matter?"
- ADA Shannon Jurgens: "Yes, Your Honor. Um, the Newton Police reached out to Pennsylvania – "
- Judge Joseph: "Let's wait for counsel to come in." [*10:36:42*]
- Judge Joseph: "Good morning, counsel. Would you accept an appointment?"
- Atty Bostwick: "Sure."
- Judge Joseph: "This is a matter to which, um, Mr. Perez has, um, just been arraigned for possession of Class B, possession of Class E, and being a fugitive for justice out of Pennsylvania. And the Commonwealth was just going to indicate what information they have with respect to the fugitive matter."
- ADA Jurgens: "Yes, Your Honor. It is, um, for a, uh, what they call a DUI charge in Pennsylvania, and Pennsylvania is willing to extradite. So we are asking, um, that Mr. Medina-Perez be held without bail. Um, I'm asking for a three-week date, um, and we can nolle pros it or. I guess we'll have to work out the new charges here in Massachusetts, but."

- Judge Joseph: "I'm going to give counsel an opportunity to speak with him. Um, is there any question of identification?"
- ADA Jurgens: "I believe it was a fingerprint hit, Your Honor. So, no."
- Judge Joseph: "If you could just provide that information to counsel as well. And we'll just give this a further call."
- Atty Bostwick: "Thank you."
- Clerk Okstein: "So, further call."
- Judge Joseph: "Thank you."

[ends 10:37:47 a.m.]

[12:04:38 p.m.]

- Clerk Okstein: "Judge, calling the matter of Commonwealth versus Jose Me-, Medina Perez, Docket 1812CR149, Attorney Bostwick."
- Clerk Okstein: [*inaudible*], Judge?"
- Judge Joseph: "Thank you."
- Judge Joseph: [*12:05:04*] "Is there an issue of ID?"
- Attorney Bostwick: "Your Honor I think, I haven't, I've gone through a fair amount of the paperwork…"
- Judge Joseph: "Do you need a further call or...?"
- Attorney Bostwick: "Well, I'm happy to show the Court what I have in terms of, this is for the Pennsylvania warrant and I think it's…I don't think it's him."
- ADA Jurgens: "Your Honor that is the photo that is attached to the warrant from, the warrant is, um, eight years old, um, and it, it was the FB-, it is, uh … PCF number was a fingerprint hit for the warrant."
- Judge Joseph: "I can't tell by the photograph."
- Attorney Bostwick: "I, I guess Your Honor if I could have a further call because I am trying to get some information from his employer…"
- Judge Joseph: "Sure, of course."
- Attorney Bostwick: "…that they may have to verify certain things …"
- Judge Joseph: "Yeah."
- Attorney Bostwick: "um, and I might need a few minutes to do that. But I would just say based on the photo on the Pennsylvania warrant, Your Honor, I don't think it's him."
- Judge Joseph: "I mean, th-, the photograph that you showed certainly shows an individual who is heavier. Um, it's hard to tell from the photograph about the, this is the new one? This is, this is the one that came… No, but this is the, this is the recent photograph, right?"
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- Judge Joseph: "That's the new one, yeah. Yep. Um, it's hard to tell the skin tone based on the photograph that you have. Um, it's not a very clear photograph. Um, it does show

similar facial hair, but, uh, I mean the…I don't, I don't know about height, weight, or anything in, in… I can't make a determination about the features. What I'll do is I'll give you additional time today to see if we can figure out if he's the same person that Pennsylvania seeks on that."

- Attorney Bostwick: "Okay."
- Judge Joseph: "Sir, there's a warrant out of Pennsylvania for somebody with your name. It's the Commonwealth's contention that you are the person that Pennsylvania has the warrant for based on a fingerprint. When any person is brought before the Court on what we call a fugitive complaint, you have a right to a hearing to determine if you are the proper person or not. If you are the correct person, my decision is whether to hold you for the warrant, and allow Pennsylvania to come, and bring you back to Pennsylvania or to release you and allow you to go to Pennsylvania on your own. But the first issue that I have to determine is whether or not you're the same person. So what I'm going to do is allow your attorney a little bit extra time today, to make that determination." [*12:08:12*]
- Attorney Bostwick: "I'd, I'd also ask the Court, Your Honor, if I could move to get a copy of the Triple I .. -cause nobody will give this to me without-"
- Judge Joseph: "Of course, yes. Um, I'm, I'm going to allow counsel to have a copy of the Triple I, if we have it." [*12:08:27*]
- P.O. Rhonda Smith: "We're not supposed to give out copies of the Triple I…"
- Judge Joseph: "We can make it a-, available for her to see."
- P.O. Rhonda Smith: "…we can make it available to look at."
- Judge Joseph: "Yes. We-, we're here in the courthouse anyway, so you can certainly see it."
- Attorney Bostwick: "Okay."
- Judge Joseph: "Okay, thank you. And, could you give it to counsel too, if she needs to make a phone call, um, not make a copy of it but give it to counsel so she can take it wherever she needs to take it today to get whatever information she needs." [*12:08:55*]
- P.O. Rhonda Smith: "Yes, Your Honor."
- Judge Joseph: "Thank you."
- Attorney Bostwick: "I mean, I-, I've gotten copies in the past …"
- Judge Joseph: "For now, well, at least for now, you have access to it while we're here today and if we need to further make that provision, we can do that … Okay, thank you."
- Clerk Okstein: "… counsel *[inaudible]*... "
- Judge Joseph: "Commonwealth, with respect to the new charges is there going to be a request?"
- ADA Jurgens: "No, Your Honor"
- Judge Joseph: "Okay."
- ADA Jurgens: [*12:09:29*] "Well, not the drug possession –
- Judge Joseph: "The possession that –

- ADA Jurgens: -- if they're treated separately, I am asking he is being held without…"
- Judge Joseph: "Right, on the fugitive"
- ADA Jurgens: "… but if he's not, I would have a bail request – "
- Judge Joseph: "- Okay."
- ADA Jurgens: " - for that part of it."
- Clerk Okstein: [*12:09:45*] "Okay, so further call?"
- Judge Joseph: "Further call."
- Clerk Okstein: "Further call."

[ends at 12:09:52 pm]

- Clerk Okstein: "Do you have one more person down there?"
- CO MacGregor: "I have two more people. Two more girls – "
- Clerk Okstein: "Who's the second?"
- CO MacGregor: "Pamela Hogdgon –
- Clerk Okstein: "And Cr-, Cosme"
- CO MacGregor: "Crystal Cosme …"

[2:48:13 pm]

- Clerk Okstein: "Mr. Court Officer, could you bring up the next, uh, Mr., uh, Perez?
- CO MacGregor: "Alright."
- Clerk Okstein: "Judge, the next case will be Commonwealth versus Jose Medina Perez. Attorney David Jellinek has filed an appearance on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon."
- Atty David Jellinek: "Good afternoon. David Jellinek on behalf of Mr. Perez. May we approach briefly?"
- Judge Joseph: "Yes. Please."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "Do you want to wait for y- your client? Or do it"
- Atty Jellinek: "No. Sidebar."
- Judge Joseph: "We're just going to go sideb-."

[recording ends at 2:48:47 p.m.]

[next recording starts at 2:48:48 p.m.]

- Judge Joseph: "[*Inaudible*] is dismissed, so it's my understanding that ICE is here …."
- Atty Jellinek: "[*Inaudible*] … so there's the fugitive –
- Judge Joseph: "If there's no warrant – "
- ADA Jurgens: "-Yes."
- Atty Jellinek: … there isn't [*inaudible*] that we can tie this to him."

- ADA Jurgens: "eh-, I, I don't think it's him."
- Judge Joseph: "Okay."
- Atty Jellinek: "-ICE is convinced that this guy. I went over to ICE, they say they have a biometric match. I went through it and did the research. There's 13 FBI numbers connected to this social. So something's bad with the [*inaudible*]. My client denies that it's him. ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal… … and hope that he can avoid ICE."
- ADA Jurgens: "I don't think arguing ICE is really my …"
- Atty Jellinek: "Right."
- ADA Jurgens: -- my, my …
- Judge Joseph: "[*Inaudible*] … the other alternative is if you need more time to figure this out - hold until tomorrow …"
- Atty Jellinek: "[*Inaudible*]"
- Judge Joseph: "Then it's a different …"
- ADA Jurgens: "There is a detainer attached to my paperwork. But I, I feel like that's separate and apart from what my role is."
- Atty Jellinek: "There is an ICE detainer. So if he's bailed out from Billerica ... [*inaudible*] … ICE will pick him up - "
- Judge Joseph: " - ICE is gonna get him?"
- Atty Jellinek: "[*Inaudible*]"
- Judge Joseph: "What if we detain him –"
- Atty Jellinek: "Are we on the record?"
- Judge Joseph: "Larry, can we go off the record for a moment?" [*2:50:02*]
- Clerk Okstein: "What's that?"
- Judge Joseph: "Are we off the record?"
- Clerk Okstein: "No, we're on the record."
- Atty Jellinek: "Can we go off the record for a minute?"

[recording ends at 2:50:05 p.m.]

[next recording starts at 2:50:57 p.m.]

- Clerk Okstein: "Judge, we're back on the record on Mr., uh, Jose Medina Perez. Attorney Jellinek on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon, Mr. Jellinek."
- Atty Jellinek: "Good afternoon."
- Atty Jellinek: "After some extensive research into the various FBI numbers [*inaudible*] social security numbers, as well as obtaining a photo from Pennsylvania, we don't believe that this gentleman is the same gentleman as on the fugitive-from-justice warrant."
- ADA Jurgens: "Your Honor, with the information that I have I don't think that there is enough tying him to the Pennsylvania warrant. The great deal of other out-of-state

records – I do believe that some of them, uh, belong to this individual. But that is not what's at issue here."

- Judge Joseph: "OK."
- ADA Jurgens: "So at this point I would dismiss, um, the – "
- Judge Joseph: "The fugitive?"
- ADA Jurgens: "- count one, -"
- Judge Joseph: "OK."
- ADA Jurgens: " - um, and there's not a bail request for the counts 2 and 3. But I would ask that, for a pretrial conference date on those."
- Judge Joseph: "OK."
- Atty Jellinek: "Absolutely."
- Judge Joseph: "That's fine."
- Atty Jellinek: "I would ask that he, uh – I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may."
- Judge Joseph: "That's fine. Of course."
- Atty Jellinek: "Thank you. Uh-"
- Clerk Okstein: "I'm sorry. You said, Commonwealth, no bail request on counts."
- ADA Jurgens: "Yes."
- Clerk Okstein: "So, do you want me to arraign him?
- ADA Jurgens: "Yes, please."
- Judge Joseph: "- Yes."
- Atty Jellinek: "Please.
- Clerk Okstein: "So Mr. Perez, at the Co- Commonwealth's request, Count One, Fugitive from Justice on a Court Warrant, has been dismissed. With respect to, uh, Counts 2 and 3, it's alleged by the Newton Police Department that on March 30th, 2018, you did possess a Class B and E substance in violation of Mass General Law chapter 94C, section 34."
- Atty Jellinek: "Could we have, uh, May 29 for pretrial?"
- Clerk Okstein: "May 29th?"
- Atty Jellinek: "Please."
- Judge Joseph: "Sir, I'm going to enter a plea of 'not guilty' on your behalf. Attorney Jellinek has filed his appearance to represent you in this matter. Are you privately retained?"
- Atty Jellinek: "Yes."
- Judge Joseph: "OK. Sir, you are entitled to request an examination to determine whether you're a drug-dependent person who would benefit from treatment. If you choose to exercise this right you must do so in writing within five days, and your attorney can further explain that to you."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "All right, Judge."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "[*Inaudible*]"
- Atty Jellinek: "All set, Mr. Clerk?"
- Judge Joseph: "Wait just a second." [*2:53:22*]

- Clerk Okstein: "There was a representative from, uh, ICE here in the Court … [*inaudible*] to, to visit the lock-up." [*2:53:34*]
- Judge Joseph: "That's fine. I'm not gonna allow them to come in here. But he's been released on this."
- P.O. Ricky Hymon: "Your Honor, are we still doing $150 attorney's fee?"
- Judge Joseph: "Um, no, his – he's privately, Mr. Jellinek's privately retained."
- Judge Joseph: "And, what date would you like?"
- Atty Jellinek: "May 29th, please."
- Clerk Okstein: "So, M-, Mr. Perez, your, your case has been continued to May 29, 2018 for pretrial conference. Please be advised that if you're charged with any new criminal offense while this case is pending, you could be held for up to 90 days without bail pending resolution of this matter. We will see you back on May 29th, 2018." [*2:54:31*]
- Court Officer MacGregor: "He's released, Mr. Clerk?"
- Clerk Okstein: "What's that?"
- Court Officer MacGregor: "He's released?"
- Clerk Okstein: "He is."
- Atty Jellinek: "Yep."
- Judge Joseph: "He is. Um, Mr. Jellinek asked if the interpreter can accompany him downstairs, um, to further interview him -
- Atty Jellinek: "Yes, please --"
- Judge Joseph: "- and I've allowed that to happen."
- Atty Jellinek: "Thank you." [*2:54:50*]
- Atty Jellinek: "Thank you, Your Honor."
- Judge Joseph: "You're welcome."
- Clerk Okstein: "Thank you. Judge, that's – uh, we're all done for now."

[recording ends at 2:55:00 p.m.]

APPENDIX H

In the Matter of:

Newton District Court

Hearing

April 02, 2018

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Middlesex, ss. Newton District Court

Civil Action No. Various

****

*

TRANSCRIPT OF ENTIRE DAY IN *

COURTROOM SESSION *

*

****

APRIL 2, 2018

BEFORE THE HONORABLE JUDGE SHELLEY JOSEPH

APPEARANCES:

For the Plaintiff: Various

For the Defendant: Various

Transcription Service: Mary Indomenico, ACT, CET

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(Court called to order.)
(9:14 a.m.)
COURT OFFICER: Hear ye, hear ye, hear ye. All persons having anything to do before the Honorable Shelle Joseph, justice of the Newton District Court will join in, give your attendance, you shall be heard. God save the Commonwealth of Massachusetts and this Honorable Court. This Court is now in session. Please be seated.
THE COURT: Good morning.
THE COMMONWEALTH: Your Honor, good morning.
THE CLERK: Good morning, Judge.
COURT OFFICER: Cell phones are off and away. No talking.
THE CLERK: So, Judge, we have one restraining order on this morning. It's Maryjane Scheidemontel v. Ryan Griffin, docket 1812RO34. Judge, I believe that both parties are present. They're currently upstairs for a magistrate hearing —
THE COURT: Okay.
THE CLERK: -- according to —
THE COURT: That's a second call.
THE CLERK: So a second call?
MR. MARTINS: Thank you.
THE CLERK: Judge, just so you know. We have

scheduled prehearings so I'm going to call a bunch of (indiscernible at 9:14 a.m.).
THE COURT: Great.
THE CLERK: Calling the matter of Commonwealth v. Marvin Ortiz-Castillo, docket 1712CR727, Judge, and counsel — Attorney Caramanica has filed a notice of appearance and it's on for pretrial conference.
THE COURT: Okay. Good morning.
MR. CARAMANICA: Good morning, Your Honor. Mark Caramanica for the defendant.
THE COURT: Good morning, sir.
THE COMMONWEALTH: Good morning, Your Honor.
MR. CARAMANICA: I'm sorry. I did file the appearance today.
THE CLERK: Excuse me. Can I just swear in the interpreter, Judge?
MR. CARAMANICA: Oh, I'm sorry. I'm sorry. Yes.
THE CLERK: That's okay. Mr. Interpreter, do you hereby swear or otherwise affirm the translation you provide today will be true and accurate to the best of your ability, so help you God?
INTERPRETER: I do.
THE CLERK: Thank you. Do you want to just identify yourself for the record?

INTERPRETER: Eric Mendoza, the interpreter.
THE COURT: Good morning. Thank you, sir.
THE CLERK: Sorry, counsel. Go ahead.
MR. CARAMANICA: Your Honor, I would ask the Court, if I may, to have a further pretrial date, on Tuesday, May 1 —
THE COURT: Is that a good date, Mr. Muntz (phonetic)?
THE CLERK: Yes, Judge. That's a Tuesday.
THE COURT: That's fine.
MR. CARAMANICA: And could we have an interpreter for that date as well?
THE COURT: Of course.
MR. CARAMANICA: Thank you, Your Honor.
THE COURT: And have you received the police report and the complaint?
MR. CARAMANICA: I'm — was going to get a couple things by electronic mail. But I do have the police report.
THE COURT: Okay.
THE COMMONWEALTH: I think the attorney who set up that arraignment —
MR. CARAMANICA: Yes.
THE COMMONWEALTH: -- took the defense packet so I'm

Page 5

going to make a new packet for counsel.
THE COURT: All right. Thank you.
MR. CARAMANICA: Thank you very much, Your Honor.
THE CLERK: Thank you, Judge. So, Mr. Castillo, your matter has been continued till May 1, 2018 for further pretrial conference. All conditions of release, if any, remain in place until that date, and this will be noted as defense request. Thank you.
MR. CARAMANICA: Thank you.
THE CLERK: Calling the matter of Commonwealth v. Jaime F. Pineda.
THE COMMONWEALTH: There is a private counsel that came in on Friday and requested an 11:00 a.m. call because he just filed an appearance Friday and had to be in another court. I believe I do have the — the request.
THE COURT: Second call.
THE COMMONWEALTH: Okay. Do you have that?
THE CLERK: I — I don't have that.
DEFENDANT'S COUNSEL: I had originally been appointed to represent Mr. Pineda and I understand there's been a notice of appearance. May I withdraw?
THE COURT: Okay. You may.
DEFENDANT'S COUNSEL: Thank you.
THE COURT: Thank you.

Page 6

THE CLERK: I apologize. Yes, I do but thank you.
THE COMMONWEALTH: You're welcome.
THE CLERK: So second call for an 11:00 a.m. call. Did the interpreter walk out?
UNIDENTIFIED MALE: He's here.
THE CLERK: Oh, there he is. Thank you. Commonwealth v. Eddy Canastuj — Canastuj, docket 1812CR17.
DEFENDANT'S COUNSEL: Good morning, Your Honor.
THE COURT: Good morning.
THE CLERK: And, Judge, we have the Spanish interpreter again for — set for pretrial conference.
DEFENDANT'S COUNSEL: Your Honor, we — we have a disposition recommendation for this case.
THE COMMONWEALTH: Yes, Your Honor. The Commonwealth will dismiss this on $250 in court costs. We reached out to the other driver over a month ago and have not heard anything back regarding restitution or anything not covered by insurance.
THE COURT: Okay. Can he pay that today or does he need some time?
DEFENDANT'S COUNSEL: He can, Your Honor.
THE COURT: Great. The case will be dismissed upon payment.

Page 7

DEFENDANT'S COUNSEL: Thank you.
THE COURT: Thank you.
THE CLERK: And how much did you say?
COMMONWEALTH: $250.
DEFENDANT'S COUNSEL: $250.
THE CLERK: $250. So, sir, you're — at the request of the Commonwealth, this matter will be dismissed upon your payment of the amount of $250. You can pay that in the clerk's office. After you walk out of the courtroom, take a left into the clerk's office. I'll ask the interpreter to go and assist you in making your payment. You can pay by cash, credit card or check, and that's dismissed.
DEFENDANT'S COUNSEL: He had received a summons to appear here on April 13th, but it was on for today. I just want the docket to reflect he's not to appear on the 13th.
THE CLERK: Yes.
THE COURT: It will. Thank you.
THE CLERK: It was — I don't know why you received the summons but I'll mark that accordingly. Okay.
THE COURT: Is there an attorney fee?
THE CLERK: What's that, Judge?
THE COURT: Is there an attorney fee?

Page 8

THE CLERK: No, Judge. There is nothing owing. Calling the matter of Commonwealth v. James Dececca, docket 1812CR129.
THE COURT: Good morning.
MR. LEVINSON: Your Honor.
THE CLERK: Judge, this is on for arraignment. Sir, it's alleged by the Newton Police Department that on February 5, 2018 you did commit threats to — you did commit threats to commit a crime in violation of Mass. General Law, Chapter 275, Section 2.
THE COURT: He has another case on for pretrial today?
THE COMMONWEALTH: Two other case on for pretrial. Your Honor, may I have a second call on the arraignment?
THE COURT: You may. I'm going to enter a plea of not guilty on your behalf, sir. Mr. Levinson, are you appointed on this?
MR. LEVINSON: I am.
THE COURT: On the pending cases?
MR. LEVINSON: Yes.
THE COURT: Sir, I'll appoint Attorney Levinson to represent you with respect to this matter. I will not assess an additional attorney fee.
THE CLERK: I'm sorry, Judge. I'll have to get the

Page 9

other — the other two cases. I don't see them here.
THE COURT: Second call.
THE CLERK: Second call. On the matter of Commonwealth v. Jake R. Rosenthal, docket 1812CR126, Attorney Kelly on behalf of Mr. Rosenthal, Judge.
MR. KELLY: Your Honor, good morning. Arthur Kelly on behalf of Mr. Rosenthal.
THE COURT: Good morning.
THE CLERK: Mr. Rosenthal is present.
MR. KELLY: You might recall this case last Wednesday, the gentleman that's in California?
THE COURT: Yes.
MR. KELLY: And you said make sure that he has his tickets in place to return back here in short order.
THE COURT: Yes, so when will he be here?
MR. KELLY: April 27th.
THE COURT: Okay.
MR. KELLY: That will be for arraignment/di benedetto motion.
THE COMMONWEALTH: Yes, thank you.
THE COURT: Thank you. Will you file the motion a week before?
MR. KELLY: I will do so. Yes.
THE COURT: Thank you.

Page 10

THE CLERK: 4/27/18 for a motion and arraignment, and one week prior to file your motion, counsel, and you're going to let —
MR. KELLY: Yes.
THE CLERK: -- Mr. Rosenthal know the new date?
MR. KELLY: He already knows the date.
THE COURT: Thank you.
THE CLERK: Calling the matter of Commonwealth v. Guy Penta, and there's two cases, Judge, docket 1812CR25 that's scheduled for pretrial conference. And then we also have, Judge, 1812CR26. On 26, Judge, the counsel's filed a pretrial conference report and a request for a jury trial date, however the date is (indiscernible at 9:21 a.m.).
THE COURT: Okay.
MR. KELLY: Judge, I think both matters should perhaps be set down for — for jury trial. That's my intention. I think they both emanate out of the same set of circumstances.
THE COURT: Is there one that's a — that's more of a lead case? Are there the same witnesses?
MR. KELLY: It would — it would have been the first one. It would have been the first one, I think.
THE COMMONWEALTH: 2026 would be —

Page 11

THE COURT: So why don't we put 26 down for trial, and 25 on for a status, or do you need the witnesses for both?
MR. KELLY: I'm happy to have them both on for — I think they're — it's a different — it's the same witnesses, right?
THE COMMONWEALTH: It's the same complaining witness, Your Honor, but it is — oh, I'm sorry. No, it's different. They're different complaining witnesses. It shouldn't be on the same day, I don't think.
MR. KELLY: So the one that I put down for — for trial — I agree with that, and I guess we're into June and so my thought might be June 20th for trial for the pretrial, election compliance on the other matter.
MR. PENTA: It's my birthday, June 20th.
MR. KELLY: It's your birthday? You don't want to do it? It seems to be his birthday.
THE COURT: Then why don't we pick another day.
MR. KELLY: Since it could go bad, maybe we should go the week before, the 13th.
MR. PENTA: Thank you.
UNIDENTIFIED MALE: That's the judges' conference, June —
THE CLERK: Judge, these are the (indiscernible at

Page 12

9:23 a.m.).
THE COURT: Perfect.
THE CLERK: The 13th of June is —
MR. KELLY: June 27th, Judge.
THE COURT: Well, that's — but wait, doesn't that start on Thursday or does it start on Wednesday?
THE CLERK: It's Wednesday, Thursday, Friday.
THE COURT: It's Wednesday, Thursday, Friday? What about the week before, counsel? The 13th isn't a good day.
MR. KELLY: No, the 13th isn't good. The 27th, is that a — a Wednesday? Is that good?
THE COURT: It is.
MR. KELLY: June 27th.
THE CLERK: And that's for docket 1812-26?
THE COURT: Yes.
THE CLERK: And then did you file a pretrial conference report for 1812CR25?
MR. KELLY: We did not. That matter — I think we placed down for election compliance on that date.
THE COURT: And discovery's complete with respect to 26?
THE COMMONWEALTH: Yes, Your Honor. I did pass out the Commonwealth's notice of discovery today and I

Page 13

provided discovery to counsel.
THE COURT: And that goes there. And on 25, would you like a compliance date or a status date?
MR. KELLY: A compliance date, please.
THE COURT: So same day.
MR. KELLY: It might, depending on how the other case goes. Thank you.
THE CLERK: Okay, and, Judge, I'd point out — it looks like there's $300 owing on 1812CR26 —
THE COURT: Yes.
THE CLERK: -- which is the matter that's scheduled for trial, Judge.
THE COURT: Sir, you still owe your attorney fee on the matter that's scheduled for trial. Please pay that before the next date.
MR. PENTA: Okay. I didn't know that. I'm sorry.
THE CLERK: Okay. So, Mr. Penta, your matter, 1812CR26, is scheduled for a jury trial, and that jury trial will be on June 27, 2018 at 9:00 a.m. That will be on the second floor.
MR. PENTA: Yes, sir.
THE CLERK: All prior conditions of release remain in place until that date and you must pay the attorney's fee of $300 prior to that date. With respect to docket

Page 14

1812CR25, that is being marked for compliance and election on the same date and all terms and conditions of release remain in place on that case as well until June 27, 2018.
MR. PENTA: Okay. Thank you.
THE COURT: You're welcome.
MR. PENTA: Okay.
THE CLERK: Calling the matter of Commonwealth v. Peter Laboy, docket 1612CR638. Judge, Mr. Laboy called the Court and asked for a second call. He's running late, Judge.
THE COURT: Sure. Second call.
MR. LEVINSON: Thank you.
THE COURT: Larry, on the last case with Mr. Kelly, I think you — I may have switched the complaints. Just make sure they get into the right file.
UNIDENTIFIED MALE: I'll — I'll check.
THE COURT: Okay.
THE CLERK: Calling the matter of Commonwealth v. Tatiana Jones, docket 1412CR570. This is a probation matter, Judge.
PROBATION: Your Honor, I'm the probation officer. I've not seen Ms. Jones as of yet today.
THE COURT: Okay. She's right here.
PROBATION: Tatiana Jones?

Page 15

UNIDENTIFIED MALE: Sitting back there.
PROBATION: Oh, okay.
UNIDENTIFIED MALE: Could we get a second call, please?
THE COURT: You may.
THE CLERK: Second call. It will be called again.
THE COURT OFFICER: No — no talking in the courtroom, please.
THE CLERK: Calling the matter of Commonwealth v. Chad Larosee, docket 1712CR709, and there's a — is there a co-defendant?
MR. KELLY: Co-defendant as well.
UNIDENTIFIED MALE: Yes.
THE CLERK: Co-defendant on that is Commonwealth v. Cliff Jewett —
UNIDENTIFIED MALE: Yes.
THE CLERK: -- docket 1712-710.
MR. KELLY: Your Honor, perhaps this matter might benefit from the last call when all the other cases are called because it's going to involve a little testimony. We would expect to proceed by way of a pretrial probation but there's some interesting issues for the Court to listen to.
THE COURT: Sure.

Page 16

THE COMMONWEALTH: Restitution issues, Your Honor. Thank you.
THE COURT: Okay.
THE CLERK: Further call —
THE COURT: Are you ready to go forward on the restitution?
THE COMMONWEALTH: Yes, Your Honor.
THE COURT: Okay.
THE CLERK: Further call. Calling the matter of Commonwealth v. Kristen Lovett, docket 1712CR49. It looks like a probation matter.
MR. LEVINSON: Yes, I've not seen Ms. Lovett this morning. If we could just have a brief —
THE CLERK: Second call?
THE COURT: Have you been in touch with Ms. Lovett?
MR. LEVINSON: I have not, no. It does not — she —
THE COURT: Has she visited probation at all?
PROBATION: Your Honor, she's also my case, and I have not — I have not seen Ms. Lovett.
THE COURT: Default. Do you want a second call, probation?
PROBATION: You can give her a second call, Judge.
THE COURT: All right. Second call.
MR. LEVINSON: Thank you.

Page 17

PROBATION: She usually gets here about ten o'clock.
THE COURT: Okay. Then second call.
THE CLERK: Second call. Calling the matter of Commonwealth v. Caleb J. Bickford, docket 1812CR79, and, Judge, on the last date it looks like Mr. Bickford was in (indiscernible at 9:28 a.m.).
THE COURT: What's Mr. Bickford's status now?
MR. LEVINSON: I'm not sure.
THE COURT: You — did you —
MR. LEVINSON: I was just recently appointed.
THE COURT: So we have a letter just dated last week on March 27th indicating that he was admitted to Carney Hospital on March 23rd. This is dated March 27th. Do you — have you seen this letter?
MR. LEVINSON: No, I have not.
THE COURT: Why don't I give this to you and if you want to make a phone call —
MR. LEVINSON: I will. Yes, I believe I was just appointed back in February.
THE COURT: Okay. We'll give it a second call.
MR. LEVINSON: Okay. Thank you.
THE CLERK: Second call. Calling the matter of Commonwealth v. Crystal L. Cosme, docket 1812CR34.
MS. BOSTWICK: She's in custody. I don't know what

Page 18

her status is, if she's here yet or not.
THE CLERK: She's not here.
THE COURT: Not here. Is she on the list?
THE CLERK: I don't — she's not on our list, so I don't know if —
MS. BOSTWICK: I went to see her at MCI Framingham on Saturday, and they told me she was — she was being held in Middleton for the weekend because she was being Habe'd to court on Monday, so I assumed it was this Court.
THE CLERK: There was -- there was a Mittimus, Judge, for April 2nd.
THE COURT: Okay. Can we make a call and see if she's coming?
THE CLERK: Sure.
THE COURT: Thank you. Second call.
UNIDENTIFIED FEMALE: Yes.
MS. BOSTWICK: Thank you.
THE COURT: Thank you.
THE CLERK: Calling the matter of Commonwealth v. James Henderson, docket 1712CR722 and docket 1712CR723. Attorney Levinson.
THE COMMONWEALTH: Yes, so James Henderson is the same as James Dececca in that arraignment where you were going to look for the other files. He, for some reason,

Page 19

is —
UNIDENTIFIED MALE: Oh, he has different names?
THE COMMONWEALTH: Yes. So those should be all three of his cases. But it is Attorney Levinson who I believe is making that phone call.
THE COURT: Okay. So further call for Attorney Levinson. Do you have those files now?
MR. LEVINSON: Well, Judge, I do because he has two under the name of James Henderson and one under the name of James Dececca.
THE COURT: Okay. On the list, they're all coming out as Dececca.
THE CLERK: That's weird.
THE COURT: That's weird. Okay.
THE CLERK: I think he might have used two different names.
THE COURT: Okay. I have —
THE CLERK: -- (indiscernible at 9:30 a.m.).
THE COURT: -- because I have — okay.
THE CLERK: Because I have docket 1712-722, 723 —
THE COURT: Yes.
THE CLERK: -- and I have 812-129.
THE COURT: 129. So 722 and 723 on the list comes out as James — is it Dececca or Dececca?

Page 20

MR. DECECCA: Dececca.
THE COURT: Dececca. Thank you, sir.
THE CLERK: Well, I guess we can address, Judge, at the next call.
THE COURT: We can — right.
THE CLERK: -- what name.
THE COURT: Okay.
THE CLERK: Thank you, Commonwealth, for clarifying that.
THE COMMONWEALTH: Sure.
THE CLERK: Further call on all three. Calling the matter of Commonwealth v. Richard C. Dore, docket 1812CR83. That's Attorney Kelly. This matter, Judge, is on for pretrial conference.
MR. KELLY: Mr. Dore is approaching, Judge. I'm receiving a packet of information right now.
THE COMMONWEALTH: And a notice for the Court. Thank you.
MR. KELLY: Your Honor, I'm just — I'm asking for -- another pretrial date if I may.
THE COURT: For what? Why not compliance?
MR. KELLY: Well, I guess we could do that, if you wish. The date I was looking for, Judge, is May 14th, a Monday.

Page 21

THE COURT: Is that a good date?
THE CLERK: It is, Judge. Are the parties supposed to do a pretrial conference report today —
THE COURT: Can you do a pretrial conference report today?
MR. KELLY: I — I can do that.
THE COURT: Okay.
MR. KELLY: I just want to look and see what she gave me.
THE COURT: Okay.
MR. KELLY: I can do that while I'm here.
THE COURT: Okay. Thank you.
THE CLERK: Okay. So further call and —
MR. KELLY: I'd — I'd rather let him leave and pick that date without him.
THE COURT: Right. We'll give you the day — you can just file before you leave.
MR. KELLY: Right. May 14th is the date.
THE CLERK: Okay. May 14th, okay. So, sir, your matter is being continued until May 14, 2018 for compliance and election. All prior conditions of release remain in place until that date, if any. We'll see you back on May 14, 2018.
MR. KELLY: Thank you, Your Honor.

Page 22

THE COURT: Thank you.
THE CLERK: Calling the matter of Commonwealth v. Hector Hernandez, 1812CR32. Attorney Koury?
THE COMMONWEALTH: Defaulted and then removed it and put it on for a day —
MS. KOURY: Oh, I didn't realize.
THE COMMONWEALTH: -- we knew you were going to be here.
MS. KOURY: It was put on for today. Could I get a second call?
THE COURT: Yes.
MS. KOURY: Thank you.
THE CLERK: Second call. Calling the matter of Commonwealth v. Dmitry A. Hunt, docket 1712CR711. It's Attorney Koury, Judge, and that was on — it looks like it's on for disposition?
THE COMMONWEALTH: Yes.
MS. KOURY: Yes. Your Honor, we have an unagreed recommendation, and if you would —
THE CLERK: Have you shown it to the Probation Department?
PROBATION: We haven't had a chance to —
THE COMMONWEALTH: No, I still have it. I'm hoarding it. I'm sorry.

Page 23

MS. KOURY: Oh, the letters. Okay.
THE COURT: So we'll leave it further call.
MS. KOURY: Thank you.
THE COURT: Just let us know when you're ready.
THE CLERK: Thank you. Second call. Calling the matter of Commonwealth v. Crystal Kane, docket 1812CR57, and I believe, Judge, she contacted the Court and indicated she'd be a little late as well. They're still having problems.
THE COURT: Okay. Second call
MS. BOSTWICK: I think there's a co-defendant as well.
THE COMMONWEALTH: Yes, Bruce Demelo.
UNIDENTIFIED FEMALE: Okay.
THE CLERK: Okay. So that's the file I'm still — still searching for —
THE COURT: Okay. Sure.
THE CLERK: -- in the clerk's office, but I'll call it just so that we have it. Let me —
THE COURT: Is Mr. Demelo here?
THE COURT OFFICER: Mr. Demelo's in custody. He's on his way.
THE CLERK: He hasn't arrived yet, Judge. He's coming from the jail.

Page 24

THE COURT: Thank you.
THE CLERK: And the co-defendant is Bruce Demelo, 1812CR58 and we're in the process of (indiscernible at 9:34 a.m.).
UNIDENTIFIED FEMALE: The only thing I can (indiscernible at 9:34 a.m.) result of the bail review, so if someone pulled it to get the reports or something maybe.
THE CLERK: He was on for bail review?
UNIDENTIFIED FEMALE: Last week.
THE CLERK: Okay. So someone might have taken it from us.
UNIDENTIFIED FEMALE: Maybe.
THE CLERK: Okay. Thank you.
THE COURT: Thank you.
THE CLERK: Second call.
UNIDENTIFIED MALE: Could I just mention something while the case is still on? Since Ms. Shannon is here, Mr. Demelo wrote a letter to the Judge to probation about the advent of perhaps of drug court. He sent me a St. Patrick's Day card as well with that mentioned as well so —
THE COURT: Okay.
UNIDENTIFIED MALE: -- that's just something that we

Page 25

could maybe discuss.
THE COURT: Thank you.
UNIDENTIFIED MALE: I don't know what their evaluation is.
MS. SHEA: I can go interview him today.
THE COURT: Okay. Thanks.
MS. SHEA: When you get there.
UNIDENTIFIED MALE: All right. Thank you.
THE CLERK: And — and probation, you didn't pull the Demelo case for any reason last week or this week, right?
THE COURT: Ms. Shea, do you have that letter?
MS. SHEA: I do.
THE COURT: Okay.
THE CLERK: Okay. Commonwealth v. Danieliz Lugo, docket 1712CR420. That was on for a status meeting.
THE COMMONWEALTH: Your Honor, this — Ms. Lugo has two cases. One of them is on for bench trial originally today, and that case was moved out to a further bench trial by Attorney Purple. I don't know if perhaps just the second case that was tagging along didn't also get moved because I don't have that on for today.
THE COURT: Do you have it on today?
THE COMMONWEALTH: I don't.
THE CLERK: You don't have this on today? Because we

Page 26

have it on for today. Nobody seemingly continued it but —
THE COURT: Do you know the date that the other case is on for by chance?
THE COMMONWEALTH: I can't remember it but I can have someone back at the office look it up.
THE CLERK: Judge, put it on for second call and I'll have the clerk's office pull the other case.
THE COURT: Okay. Thank you.
THE CLERK: Thank you. Calling the matter of Commonwealth v. Gregory M. Lyons, docket 1812CR12. It looks like —
MR. LYONS: Good morning, Your Honor.
THE COURT: Good morning.
THE CLERK: -- Judge, he was going to hire a private counsel, counsel for bail last week.
THE COURT: Did you hire an attorney, sir?
MR. LYONS: No. I'm pleading no contest.
THE COURT: Who represented him at the arraignment?
THE CLERK: It looks like Attorney Blain (phonetic) for bail only, Judge. At this point, (indiscernible at 9:36 a.m.).
THE COURT: Did he qualify or —
MR. LYONS: For counsel? No. I don't qualify for

Page 27

counsel.
THE COURT: Who's on duty today?
THE CLERK: Attorney Bostwick, Judge, Elizabeth Bostwick.
THE COURT: Counsel, would you speak with Mr. Lyons just for a few moments?
MS. BOSTWICK: Sure.
THE COURT: He doesn't qualify for counsel. I will appoint you for today. If you could speak with him and determine whether or not he should hire counsel or if he's going to represent himself in this matter. Sir, I'm just going to give it a second call.
MR. LYONS: Okay.
THE CLERK: Second call. Sir, if you can speak with Attorney Bostwick.
THE COURT: Why don't we call it for further bail?
THE CLERK: What's that?
THE COURT: Can we call it for further bail so I can appoint her for today?
THE CLERK: Further bail? Sure.
THE COURT: Okay.
THE CLERK: Judge, if I could call the motor vehicle appeals?
THE COURT: Of course.

Page 28

THE CLERK: Calling the matter of Jesen H. Delossantos, 1712MV775. You know what, Judge, these are on for (indiscernible at 9:37 a.m.).
THE COURT: Okay.
THE CLERK: So, Judge, that's all we have. I just want to tell the Spanish interpreter we do have an arrest that we're working on, the paperwork, and there was another case in which the attorney had requested an 11:00 a.m. call. So those are the two matters we have left.
THE COURT: Can — can you stay till eleven? Okay. Thank you.
PROBATION: (Indiscernible at 9:38 a.m.) violation?
THE CLERK: I don't know what my violation is.
PROBATION: Tatiana Jones.
THE CLERK: Tatiana Jones, okay. Judge, recalling the matter of Commonwealth v. Tatiana Jones, docket 1412CR570.
PROBATION: Good morning, Your Honor. Shannon (indiscernible at 9:38 a.m.) with probation.
Your Honor, Ms. Jones is being supervised in Rhode Island where she lives. She's in compliance with the probation down there. However, she was arraigned in Attleboro last week for operating after a suspended license. Probation would just be asking to — I'm sorry

Page 29

— THE CLERK: Do you hereby swear or otherwise affirm the testimony you provide today will be true and accurate to the best of your knowledge so help you God? PROBATION: I do. THE CLERK: Thank you. PROBATION: Probation would just be asking to note the violation for the new offense which has been resolved with court costs, and continue to the same date, end date. THE COURT: Okay. So noted. THE CLERK: I'm sorry. So what were you — sorry, I missed that. PROBATION: So note the violation for the new offense and continue probation to the existing end date. THE CLERK: Okay. So the probation violation will be noted and it will be continued — the matter will be continued to the original end date which I have as 1/10/19. Okay? MS. JONES: Do I owe you all any money? THE COURT: No. PROBATION: No. MS. JONES: God bless you all. Thank you. Bye. PROBATION: Thank you. THE COURT: Thank you.

Page 30

THE CLERK: So, Judge, that's the end of the first call. THE COURT: I'm going to see if anybody's ready that we called — that we put on second call. If not, I'll take a recess. If you could just announce — THE CLERK: And so is the restraining order here, Maryjane Scheidemantel? UNIDENTIFIED MALE: May I address the Court with respect? I — I just sat on another complaint and I'm waiting to process that so the whole thing comes before the court — THE COURT: Okay. UNIDENTIFIED MALE: -- together, Judge. Both sides are here. THE COURT: Okay. Thank you. UNIDENTIFIED MALE: Thank you. THE COURT: All right, and before I take a recess, is anybody ready that we put on a second call? All right. Should we just stand in recess? THE CLERK: Sure. Okay. Recess. We'll be back in Court in a few minutes. THE COURT OFFICER: Rise, please. (Court recessed at 9:49 a.m.) (Court reconvened at 10:19 a.m.)

Page 31

THE COURT OFFICER: This Court is back in session. Please be seated. Make sure all phones are off and away and no talking. THE CLERK: Judge, calling the matter of Jesen H. Delossantos, docket 1712MV775. Sir, if you want to approach. COURT OFFICER: Is that you, sir? Come up. If you hear your name, please step up. Right over here. THE CLERK: Sir, anybody here from the state police? Judge, nobody's here from the state police. THE COURT: Sir, the officer's not present. You'll be held not responsible. THE CLERK: Sir, the officer not appearing, the Court has found you not responsible. Please keep this for your records, sir. MR. DELOSSANTOS: Thank you. THE COURT: You're welcome. THE CLERK: Have a good day. MR. DELOSSANTOS: You as well. COURT OFFICER: Watch your step, sir. MR. DELOSSANTOS: Thank you. THE CLERK: Did the Vietnamese interpreter come back? Not yet? Okay. We'll call it when she comes back. Judge, calling the matter of Commonwealth v. Marvin Ortiz-

Page 32

Castillo, docket 1712CR — oh, that was already called. I'm sorry, Judge. Calling the matter of Hector Hernandez, docket 1812CR0032. That's Attorney Koury. THE COURT: Further call. THE CLERK: Judge — okay. Judge, further call. Further call. We're just waiting for your attorney. Calling the matter of Minh T. Luu, docket 1712MV648. Come on up. Come on up. Madam interpreter, if I could swear you in. Do you hereby swear or otherwise affirm the translation you provide will be true and accurate to the best of your ability, so help you God? INTERPRETER: I'm sorry? THE CLERK: Do you — do you promise to translate to the best of your abilities, so help you God? INTERPRETER: Yes. THE CLERK: Could you identify yourself for the record? INTERPRETER: My name is Thuygen (phonetic) Chen. THE CLERK: Great. I'm going to ask both parties to raise their right hand. The parties. If you could translate this, madam interpreter. Do you hereby swear or otherwise affirm the testimony you provide will be true so help you God? PARTIES: I do.

Page 33

THE CLERK: Thank you.
THE COURT: Mr. Luu, I'm going to hear from the police officer who's going to tell me what happened. You'll then have an opportunity to ask the trooper questions or to make a statement on your own, okay?
MR. LUU THROUH INTERPRETER FROM THIS POINT FORWARD.
MR. LUU: Okay.
THE COURT: Okay. Trooper?
MR. BURKE: Good morning, Your Honor. My name is David Burke (phonetic). I'm a lieutenant with the Massachusetts State Police. I've been with the state police for approximately thirty years. On September 30th of 2017, I had the occasion to be on patrol, route 90, the Mass. Pike westbound, in the city of Newton at approximately the 124-mile marker. At approximately 7:45 a.m. that morning I observed white Chevy van traveling at a speed which I estimated to be well in excess of the 65-mile-an-hour speed limit. The vehicle was traveling in the left lane. I sighted the vehicle with a lidar speed measurement device. I got a reading of 83 miles per hour at a distance of 1592 feet. I pulled out behind the vehicle in an unmarked cruiser, stayed behind that vehicle, as we traveled in the left lane for approximately one mile at speeds of 80 to 85 miles per hour. The

Page 34

vehicle was stopped. The operator was identified through a license as Mr. Luu, and as a matter of discretion, he was cited for going 65 miles per hour in a 55-mile an hour zone, a fine of a hundred dollars.
THE COURT: Thank you, lieutenant. Mr. Luu, do you have any questions for the lieutenant? Madam translator, I need you to translate what he's saying as he's speaking, please.
INTERPRETER: Oh, yes.
MR. LUU THROUGH INTERPRETER FROM THIS POINT FORWARD.
MR. LUU: I have a question that on that date I didn't drive up to 85 miles per hour but I was already driving around from 62 or 63 miles per hour.
THE COURT: Okay.
UNIDENTIFIED MALE: Judge, I'm not sure she translated for the defendant at the beginning.
THE COURT: At the beginning?
UNIDENTIFIED MALE: At the testimony.
THE COURT: At the testimony? Madam translator, did you translate all of the testimony of the — of the lieutenant?
INTERPRETER: I'm sorry. I didn't.
THE COURT: Did — did you translate everything that the lieutenant said?

Page 35

INTERPRETER: No, I didn't translate it to him. So you want me to translate it to him?
THE COURT: Yes. So, let's — I apologize, lieutenant. We're going to start again. So what we're going to do is — if you could slow down, sentence by sentence. You need to translate absolutely everything that the lieutenant says. If you're unable to do that, let us know and we can always continue this hearing to another date, okay. But it's important that everything gets translated to Mr. Luu, but then whatever Mr. Luu says gets translated to the Court.
INTERPRETER: Yes.
THE COURT: Okay, and if — if you can't for any reason, just let us know and we'll just get another date to — to have this hearing.
INTERPRETER: Yes, I'm sorry. I'm trying my best.
THE COURT: No, not a problem at all. All right, Lieutenant, if we could start again, please, and if you could just tell Mr. Luu that we're going to start the hearing all over again.
INTERPRETER: Yes.
THE COURT: Okay, and so just sentence by sentence, lieutenant, if you could state again what happened.
MR. BURKE: Okay.

Page 36

THE COURT: Thank you.
MR. BURKE: On September — on September 30th of 2017 — at 7:45 a.m. in the morning — I was on patrol of route 90 westbound — the Mass Pike in Newton. At that time I saw a white van traveling more than 65 miles per hour in the left lane. The speed limit was 55 miles per hour. I used a speed measurement device. I sighted the white van in the speed measurement device — and got a reading of 83 miles per hour at a distance of 1592 feet. The vehicle drove by me. I pulled out behind the vehicle — and got behind it in an unmarked police car. We drove one mile — in which time we went between 80 and 85 miles per hour.
INTERPRETER: I'm sorry — you said 83?
MR. BURKE: 83 miles per hour with the speed measurement device, and then I got behind him, and we went between 80 and 85 miles per hour for a distance of approximately one mile. I stopped the car, identified the operator as Mr. Luu — and gave him the minimum fine of traveling in excess of 65 miles of hour in a 55-mile-an-hour zone.
THE COURT: Thank you.
MR. BURKE: Thank you, Your Honor.
THE COURT: Mr. Luu, is there anything that you would like me — to tell me based on what the — excuse me —

Page 37

what the lieutenant has told me?
MR. LUU: I have a question that the — was he driving and taking the speed or he was working with — for someone else?
MR. BURKE: I'm sorry. Can you repeat the question again?
MR. LUU: I would — I would like to ask that the — at that time, was you stopped and take the — my speeding or you were taking the other car?
THE COURT: The lieutenant's — sir, the lieutenant's testimony was that he was stopped and he used a lidar device and determined that your vehicle was speeding. He then started following your car.
MR. LUU: On that day I saw that he didn't take my speed but he was taking the speed of another vehicle.
MR. BURKE: You're asking me if I — if it was his car that I checked?
MR. LUU: His question that — was you taking his speeding or —
MR. BURKE: Yes.
MR. LUU: -- or of another car?
MR. BURKE: No, his — his car, the white car.
MR. LUU: When he stopped me, I saw that he was working on another vehicle and when he saw me driving on

Page 38

the left lane, he stopped my car and he said that I was speeding.
THE COURT: Is — do you have any other questions?
MR. LUU: I would remember clearly that at time I didn't see him using the — the speeding machine.
THE COURT: All right. Is there anything else that you would like to tell me, sir?
MR. LUU: I only want to say that I wasn't speeding at that time. I only drive on the left lane. If he would like to stop me, it would be better that he just give me a warning because I wasn't speeding.
THE COURT: Okay. Thank you. So after hearing, sir, I am going to find you responsible. As the trooper has suggested, I am going to give you the minimum fine which is $100. Thank you, lieutenant.
MR. BURKE: Thank you, Your Honor. Have a good day.
THE COURT: Thank you, Mr. Luu.
THE CLERK: Sir, after hearing, the Court has found you responsible. If you could —
INTERPRETER: Yes, he has a question. I'm just going to translate his question.
MR. LUU: I would like to ask is it possible for me to have another trial, a hearing?
THE COURT: No. He had a — he already had one

Page 39

hearing. This is the second hearing today.
MR. LUU: So does my — my score going to go up?
THE COURT: Does my — I'm sorry. I don't understand.
THE CLERK: Does — I'm sorry, does what?
MR. LUU: He asks that — does my score going to go up?
THE CLERK: His insurance? Is that what he's asking about?
INTERPRETER: Yes. The score for the insurance.
THE CLERK: He'll have to talk to his insurance agent.
THE COURT: He'll have to talk to his insurance agent about that.
THE CLERK: But any — any moving violation is — is (indiscernible at 10:33 a.m.). So if you could let him know, that he has twenty days to make his payment to the Registry of Motor Vehicles — and/or he can send — and/or he can send the payment at the address listed on that sheet — or he can pay online at RMV.com.
COURT OFFICER: You're all set.
THE CLERK: Thank you, madam interpreter.
THE COURT: Thank you. Thank you.
INTERPRETER: Thank you so much.

Page 40

THE CLERK: Thank you, trooper. All right. Calling the matter of Commonwealth v. Jose Medina Perez. Mr. Interpreter, this is the arrest that I believe requires an interpreter. Judge, this was an arrest — I don't know if he qualifies. Does — does Mr. Perez qualify?
UNIDENTIFIED MALE: (Indiscernible at 10:34 a.m.).
PROBATION: He's marginally indigent.
THE COURT: 150?
PROBATION: 150.
THE CLERK: So, Mr. Perez, it's alleged by the Newton Police Department that on March 30, 2018 you were a fugitive — a fugitive from justice on a court warrant in violation of Mass. General Law Chapter 276, Section 20 and that you did possess a Class B drug in violation of Mass. General Law Chapter 94(c) — 94(c), Section 34, and that you also possessed Class E substance in violation of Mass. General Law Chapter 94(c), Section 34.
MR. PEREZ THROUGH INTERPRETER FROM THIS POINT ON.
MR. PEREZ: I didn't have any of that.
THE COURT: Sir, I'm going to enter a plea of not guilty on your behalf.
THE CLERK: Attorney Bostwick, I believe, is on duty today. She —
THE COURT: You have the right to an attorney in this

Page 41

matter —
THE CLERK: Attorney Bostwick.
THE COURT: You can hire an attorney. You can represent yourself. I'm also informed by the probation department that you do qualify for court-appointed counsel at the fee of $150. Would you like me to appoint an attorney to represent you?
MR. PEREZ: Yes.
THE COURT: I'm sorry. Who's our duty attorney?
THE CLERK: Judge, Attorney Bostwick. She's headed into the courtroom right this second, Judge.
THE COURT: Okay. Commonwealth, do you have any information about the fugitive matter?
THE COMMONWEALTH: Yes, Your Honor. The Newton police reached out to Pennsylvania —
THE COURT: Well, let's wait for counsel to come in. Good morning, counsel. Would you accept an appointment?
MS. BOSTWICK: Sure.
THE COURT: This is a matter to which Mr. Perez has just been arraigned for possession of Class B, possession of Class E and being a fugitive from justice out of Pennsylvania, and the Commonwealth was just going to indicate what information they had with respect to the fugitive matter.

Page 42

THE COMMONWEALTH: Yes, Your Honor. It is for a — what they call a DUI charge in Pennsylvania, and Pennsylvania is willing to extradite so we are asking that Mr. Medina Perez be held without bail. I'm asking for a three-week date and we can nolle pros it or I guess we'll have to work out the — the charges here in Massachusetts but —
THE COURT: I'm going to give counsel an opportunity to speak with him.
MS. BOSTWICK: Thank you.
THE COURT: Is there any question of identification?
THE COMMONWEALTH: I believe it was a fingerprint hit, Your Honor, so no.
THE COURT: Okay. I think you just provide that information to counsel as well.
MS. BOSTWICK: Yes.
THE COURT: And we'll just give this a further call.
MS. BOSTWICK: Thank you.
THE CLERK: So further call.
THE COURT: Thank you.
MS. BOSTWICK: Okay.
THE CLERK: Calling the matter of Commonwealth v. Jaime F. Pineda, docket 1812CR124. Attorney Koury.
MS. KOURY: I believe he — this is the one where

Page 43

private counsel filed —
THE COMMONWEALTH: Yes, for the eleven o'clock call.
THE CLERK: Oh, is it? I'm sorry.
THE COURT: Eleven o'clock, yes.
THE CLERK: I'm sorry. I apologize. Further call. Sorry.
MS. KOURY: No problem.
THE CLERK: Calling the matter of Maryjane Scheidemantel v. Ryan Griffin, and that's 1812RO34, Judge. That's a restraining order and there's also a — an arraignment of Mr. Griffin in the first hearing.
THE COURT: Okay. Let's — let's do the arraignment and then before I hear from the Commonwealth, I'll do the restraining order.
THE CLERK: Okay, Judge. So, Mr. Griffin, it's alleged by the complainant, Ms. Scheidemantel, that on March 16, 2018 you did commit assault and battery in violation of Mass. General Law Chapter 265, Section 13(a).
THE COURT: So I'm going to enter a plea of not guilty on your behalf. Does he qualify?
UNIDENTIFIED MALE: He does, Your Honor. He does.
THE COURT: Okay. You do have the right to an attorney in this matter. You can represent yourself. You can hire an attorney. I am told that you qualify for

Page 44

court-appointed counsel. If you would like, I can appoint an attorney to represent you. There's be a fee of $150. Would you like me to do that?
MR. GRIFFIN: No. I'm going to seek further counsel.
THE COURT: Okay. I am going to hear information about the restraining order today. Would you like counsel for today only so that you can be advised with respect to the restraining order also?
MR. GRIFFIN: No.
THE COURT: And do you understand that because there's a criminal matter pending, you do have a fifth amendment right not to testify? Anything that you say in the restraining order matter, because you are under oath and because this matter is being recorded, could be used against you in the criminal offense. I'm assuming that the request for the restraining order is related to the criminal offense. I don't know anything about that but I would assume that there's — there may be some testimony with the restraining order that if it is recorded and under oath, may be used against you. Do you understand that?
MR. GRIFFIN: Yes, Your Honor.
THE COURT: I'm going to ask you again. Would you like me to appoint an attorney to represent you for today

Page 45

only?
MR. GRIFFIN: No. I'm all set. Thank you.
THE COURT: Okay. If you could sign the waiver, please, and that's just for the restraining order matter. Thank you.
THE CLERK: Judge, I'm assuming he has bail revocation rights on that?
THE COURT: I'm actually going to hold that for a moment. I'd like to hear the restraining order first and then I'll hear from the Commonwealth about bail.
THE COMMONWEALTH: Thank you.
THE CLERK: Okay. Judge, this is on the matter (indiscernible at 10:40 a.m.).
THE COURT: Thank you.
THE CLERK: Calling — okay. So we're now going to do the restraining order, Maryjane Scheidemantel v. Ryan Griffin, 1812RO34. If the parties could raise their right hand. Do you hereby swear or otherwise affirm the testimony you provide today will be the truth so help you God?
MS. SCHEIDEMANTEL: I do.
MR. GRIFFIN: I do.
THE CLERK: Thank you.
THE COURT: Thank you. Okay, Ms — is it

Page 46

Scheidemantel?
MS. SCHEIDEMANTEL: Scheidemantel.
THE COURT: Scheidemantel. I'm just going to read your affidavit that you filed in support of the restraining order.
MS. SCHEIDEMANTEL: Out loud?
THE CLERK: Reading it to herself.
MS. SCHEIDEMANTEL: Sorry?
THE CLERK: She's going to read it to herself.
MS. SCHEIDEMANTEL: Okay.
THE COURT: I'm going — and have you had an opportunity to read the affidavit?
MR. GRIFFIN: No, I have not, Your Honor.
THE COURT: Because the affidavit is three pages long, what I'm going to do is I'm going to give this just a brief second call to give you an opportunity to read that so I can call another case, and I'll call this —
MR. GRIFFIN: Absolutely.
THE COURT: -- matter right again.
THE CLERK: Okay. Further call.
THE COURT: I'm going to hold this one.
THE CLERK: Calling the matter of Commonwealth v. Gregory M. Lyons, docket 1812CR12. Attorney Bostwick, is this the case that you —

Page 47

MS. BOSTWICK: Yes.
THE CLERK: Okay. Judge, this is the case that you asked Attorney Bostwick to —
THE COURT: Oh, thank you. Thank you, counsel.
MS. BOSTWICK: I spoke — I spoke with Mr. Lyons about the various waiver of counsel and the green sheet, and he indicated to me that he wanted to waive his right to counsel and understood that —
MR. LYONS: That's correct.
MS. BOSTWICK: -- he wanted to address the Court.
THE COURT: Okay. Sir, before I accept your waiver of counsel, I have a couple of questions for you. If you could just state your name for the record, please?
MR. LYONS: Gregory Michael Lyons.
THE COURT: And how old are you, sir?
MR. LYONS: Sixty-one.
THE COURT: How far did you go in school?
MR. LYONS: College.
THE COURT: And have you signed this form? I have a form here that's called a Waiver of Counsel form.
MR. LYONS: Yes, Your Honor.
THE COURT: And have you read this form?
MR. LYONS: I have.
THE COURT: Did you have an opportunity to discuss

Page 48

this form with Attorney Bostwick who I asked — who the Court asked to assist in this matter?
MR. LYONS: I did.
THE COURT: Okay, and do you understand that you do have a right to an attorney as anybody who's been charged with a criminal offense does?
MR. LYONS: Of course.
THE COURT: And do you understand that an attorney has specialized knowledge and experience in being able to handle types of matters and to advise you and anybody who's been before the Court on matters?
MR. LYONS: Yes, I do.
THE COURT: And it is your intention to represent yourself in this matter and not to seek the advice of counsel?
MR. LYONS: It is.
THE COURT: I find that this is a knowingly, voluntary and intelligent waiver and I will accept his waiver.
THE CLERK: Sir, can you just raise your right hand? Do you hereby swear or otherwise affirm the testimony you provided to the Court just now is true and accurate to the best your knowledge and belief, so help you God?
MR. LYONS: I do.

Page 49

THE CLERK: Thank you.
THE COURT: Thank you. All right, sir. I'll hear from you. How would you like to proceed with this matter? Your matter is scheduled for a pretrial conference today?
MR. LYONS: Okay. Well, I very much appreciate to have an opportunity to speak with you to bring context to the circumstances for which I'm standing here today.
THE COURT: Well, this matter isn't scheduled for trial today. It's scheduled for pretrial. Have —
MR. LYONS: Yes.
THE COURT: -- you received information from the district attorney's office with respect to the allegations and what support they have for the allegations?
MR. LYONS: Yes, I have.
THE COURT: Okay, and have you had an opportunity to speak with the district attorney's office in this matter?
MR. LYONS: I have not.
THE COMMONWEALTH: We have not spoken, Your Honor.
THE COURT: Okay.
THE COMMONWEALTH: We did execute a green sheet.
THE COURT: Okay.
THE COMMONWEALTH: I believe he spoke with Attorney Bostwick just in regards to the implications of the green sheet.

Page 50

THE COURT: Okay.
THE COMMONWEALTH: I'm ready to proceed on that if that is what Mr. Lyons would like to do.
THE COURT: Okay. Have you — do you wish to change your plea in this matter?
MR. LYONS: No. I would like to plead no contest and I would like to discuss the circumstances with the prosecutor and with yourself to lay some context into why I'm here today.
THE COURT: Well, you — you have two choices.
MR. LYONS: Okay.
THE COURT: If this case were to proceed under the, you know, regular course to trial, you would be given information today, which we call discovery, which you would have an opportunity to review, and you would come back on another day, either for trial or if further action from the Court is necessary, for another status date.
MR. LYONS: Okay.
THE COURT: If you wish at any point of time to change your plea and to submit the green sheet, you certainly could do that.
MR. LYONS: Okay.
THE COURT: I can certainly entertain that today, but if you are contesting the allegations and the facts of the

Page 51

case as presented by the Commonwealth, the time to do that would be at trial.
MR. LYONS: Okay. I'm not contesting.
THE COURT: Okay. Do we have the green sheet?
MS. BOSTWICK: I think that Mr. Lyons has it.
MR. LYONS: Yes.
PROBATION: Your Honor, probation has --
THE COURT: Has probation had an opportunity to review that?
PROBATION: Yes.
THE COURT: So the way it works procedurally, sir, is before I can accept any type of change of plea or any type of agreement or disposition, whether it's agreed to or not, our probation department has to take a look at that.
MR. LYONS: Of course.
THE COURT: So I'm going to give probation an opportunity to see that. Do you want a second call or can you do that quickly?
PROBATION: A second call, Your Honor.
THE COURT: Okay.
THE CLERK: Okay. Further call. Calling the matter of Commonwealth v. Caleb J. Bickford, docket 1812CR79. Attorney Levinson on behalf of Mr. Bickford.
MR. BICKFORD: Your Honor, I did receive a call back

Page 52

from the hospital and Mr. Bickford is still there.
THE COURT: Okay.
MR. BICKFORD: So there's no time table that was given, but I would suggest putting it on for a further date.
THE COURT: That's fine. What date are you back here, counsel? And, Commonwealth, do you want a copy of that letter that was provided to the clerk's office?
THE COMMONWEALTH: That's okay. Thank you.
MR. BICKFORD: Where are we currently scheduling right now for pretrials?
THE CLERK: What — what month are you looking for?
MR. BICKFORD: May.
THE CLERK: May?
MR. BICKFORD: Yes.
THE CLERK: Maybe the third week of May.
MR. BICKFORD: I could do May 22nd.
THE CLERK: That's a Tuesday, is that okay?
THE COURT: That's fine.
THE CLERK: Okay. So this matter will stand — continue to May 22, 2018 for pretrial hearing. Counsel, you'll — you'll let your client know of the new date.
MR. BICKFORD: I will. Thank you.
THE CLERK: Are the parties ready on the — has Mr.

Page 53

Griffin had an opportunity to review everything? Okay. Judge, I'll recall the —
THE COURT: Great. Thank you.
THE CLERK: -- restraining order, Maryjane Scheidemantel v. Ryan Griffin.
THE COURT: Thank you. Can I see the police report also? Thanks. All right. I'm just going to read through the affidavit right now. Okay. So I've had an opportunity to read the affidavit. Sir, before I hear any further information, I want to ask — do you oppose the issuance of this restraining order?
MR. GRIFFIN: Yes.
THE COURT: And, Commonwealth, is there any request for bail in the new matter?
THE COMMONWEALTH: Just conditions, Your Honor.
THE COURT: Okay, and can I see the police report on the new matter? Thank you. Thank you. So, ma'am, I've had an opportunity to read the affidavit. Is there anything else that you would like to tell me in support of the issuance of the restraining order?
MS. SCHEIDEMANTEL: Just that I'd really like it to be issued.
THE COURT: Okay. Are you in fear of Mr. Griffin? I need you to answer, not just shake your head.

Page 54

MS. SCHEIDEMANTEL: Yes.
THE COURT: Okay, and, Mr. Griffin, do you have any questions or would you like to tell me anything, understanding that, you know, you do have the criminal matter pending as well and it's the same affidavit that was filed in support of the new charges that is also being used in support of the application for the restraining order?
MR. GRIFFIN: I'd just like to put it on the record that the — when I read over the affidavit, they had past arguments, altercations between us saying that I did certain things to her. I acted in complete self-defense. I have scars. I have witnesses backing me and, you know, my story, my side of story. You know, it's just a lot of accusations that just come out of nowhere. I acted in self-defense in any matter that she wrote down.
THE COURT: So the matter that you describes in your affidavit occurred on March 16th, and I see on March 17th there was an incident where you were at the police department?
MR. GRIFFIN: I went and put in a police report for domestic assault and battery and assault with a — with a weapon.
THE COURT: And is that based on the same incident?

Page 55

MR. GRIFFIN: It's the same incident, yes. I went in and filed a report before her. I — I have medical records. I have photographs of injuries that had happened to me, and yes, I filed a police report, and based off of what I had, you know, my side of story, and the sergeants at the time and two other police officers on active duty, they — they went and they acted upon what they thought (indiscernible at 10:52 a.m.).
THE COURT: Okay. Based on the information contained in the affidavit and the testimony that I heard, I am going to extend this restraining order. What's the year date?
THE CLERK: Judge, a year date would be April 1, 2019, and that is a Monday.
THE COURT: Okay. Sir, I am extending this restraining order — or issuing this restraining order for one year. You are being ordered not to abuse the plaintiff here. You're ordered not to contact her directly, indirectly. That means not on phone, not on the internet, not through text messages, not through another person and not directly. You're to stay away and leave from her residence at 37 Stratford Road in West Newton. You're ordered to stay away from her school and you're ordered to stay away from her workplace wherever that may

Page 56

be.
MR. GRIFFIN: Yes, Your Honor.
THE COURT: This is a civil order. A violation of this order is a criminal offense. If you have any firearms, I'm ordering that you surrender those to the Newton Police Department. Now with respect to the new matter, Commonwealth, I'll hear from you if there's any request.
THE COMMONWEALTH: Thank you, Your Honor. I'm asking for a stay away, no contact and to abide by the restraining order that Your Honor just issued.
THE COURT: I will order with respect to the new offense that you will be released on your own recognizance. I will order as the Commonwealth has indicated that you stay away and have no contact with her. In addition, you are to abide by the restraining order. So what that means is if for some reason the restraining order gets vacated, there's still a condition while the criminal case is pending, that you must stay away and have no contact. What date for pretrial? Although, Commonwealth, I see that a related matter is scheduled for the 14th of May?
THE COMMONWEALTH: That's correct.
THE COURT: It probably makes sense to put them on

Page 57

the same day.
THE COMMONWEALTH: I agree.
THE CLERK: So, Mr. Griffin, with respect to your matter, docket 1812CR150, that matter is continued till May 14, 2018 for pretrial conference. You are released on your personal recognizance with the following conditions that you stay away and have no contact with the alleged victim in this matter, and that you will abide by the terms of the restraining order.
THE COURT: And then lastly, Commonwealth, I do find that there's a factual basis for the allegation of abuse.
THE COMMONWEALTH: Thank you.
UNIDENTIFIED MALE: 5/14.
THE CLERK: And, Mr. Griffin, you should be notified that should you be charged with any new criminal offense while this case is pending, you could be held for up to ninety days without bail, pending resolution of this case.
MR. GRIFFIN: Yes, sir.
THE COURT: Thank you.
PROBATION: So then Mr. Griffin, stay away, have no contact with the victim and what was the other?
THE CLERK: And abide by the terms of the restraining order.
THE COURT: Yes. I think I separated everything

Page 58

properly.
COURT OFFICER: Mr. Griffin, you need to report downstairs to probation.
THE CLERK: Calling the matter of Commonwealth v. Kristen Lovett, docket 1712CR49.
MR. LEVINSON: Your Honor, I did speak with probation and checked Ms. Lovett's potential status at MCI Framingham. She is not there.
THE COURT: Okay.
MR. LEVINSON: But I understand she did pick up new charges at Dedham District Court a couple weeks ago.
THE COURT: So default.
MR. LEVINSON: Thank you.
THE COURT: Warrant issue. Counsel, have you — how — if she does appear, do you want me to reappoint you? Have you not done —
MR. LEVINSON: Yes, please.
THE COURT: Okay.
THE CLERK: Okay. Default. Warrant to issue. Time will be noted as 11:00 a.m.
MR. LEVINSON: Thank you.
THE CLERK: Calling the matter, Judge, of Commonwealth v. James Henderson, also known as James Dececca, docket 1712CR722, 1712CR723 and 1812CR129.

Page 59

THE COURT: Thank you. Yes. Counsel, it appears as if all three matters were supposed to be on the list today but there is a difference of names.
MR. LEVINSON: Yes.
THE COURT: If you could just let us know what Mr. Dececca or Mr. Henderson's true name is so we can make sure that the record is reflected properly.
MR. DECECCA: Dececca. Dececca.
MR. LEVINSON: Dececca. Dececca is his real name.
THE COURT: Okay. Commonwealth, is there a motion to amend?
THE COMMONWEALTH: Yes, Your Honor. You — I would move to amend the complaints on 723 of 2017 and 722 of 2017 to reflect the name of James Dececca.
THE COURT: Any objection, counsel?
MR. LEVINSON: No, Your Honor.
THE CLERK: So, Judge, one of these matters is on for arraignment, and that is docket 1812CR129.
THE COURT: Yes.
THE CLERK: And that is —
THE COURT: And we already arraigned him on that one. But then we stepped it back to —
THE COMMONWEALTH: At my request, Your Honor.
THE COURT: -- to find the other matters, yes.

Page 60

THE COMMONWEALTH: Yes. There was just a mix up with the police report.
THE COURT: All right, Commonwealth, is there any request for bail with respect to the new matter?
THE COMMONWEALTH: Not for bail, Your Honor. On the 129 matter, that complaint issued after a clerk's hearing. I am requesting a stay away, no contact from Caleb Butler who is the complaining witness, as well as a stay away from the Newton North High School. There is already a trespass order to stay away from that location so I would ask for the stay away from both — the individual and Newton North High School.
THE COURT: Is there any objection to that, counsel?
MR. LEVINSON: No objection.
THE COURT: Okay. So that will be ordered, and with respect to the two pending matters, what's the status?
THE COMMONWEALTH: Your Honor, we received — we got a further pretrial date for today because we knew that there was the clerk's hearing pending and it did concern the same victim in one of the two matters. I do have some photographs for one of them that unfortunately my color copier isn't functioning but that I will be sending to counsel over email.
THE COURT: Okay. So would you like a compliance

Page 61

date or —
MR. LEVINSON: Yes, please.
THE COURT: Okay.
MR. LEVINSON: If we could have May 22nd?
THE COURT: Of course.
UNIDENTIFIED MALE: (Indiscernible at 11:00 a.m.) date?
MR. LEVINSON: May 22nd.
UNIDENTIFIED MALE: May 22nd.
THE CLERK: Okay. So, sir, with respect to docket 1712CR723 and docket 1712CR722, those matters are continued until, you say May 22nd, counsel?
MR. LEVINSON: Yes, please.
THE CLERK: Continued until May 22, 2018 and that will be for compliance and election?
MR. LEVINSON: Yes.
THE CLERK: And with respect to dockets 1812CR129, that matter will be continued to the same date for pretrial conference.
MR. LEVINSON: Thank you.
THE CLERK: Have you filed pretrial conference reports, counsel?
MR. LEVINSON: If I can have until the next court date, just to see what other discovery is outstanding.

Page 62

THE CLERK: All prior conditions of release remain in place and, Mr. Dececca, you should be advised on the new offense on docket 129 that if you're charged with any new criminal offense while this case is pending, you could be held for up to ninety days without bail pending resolution of this matter.
MR. DECECCA: Okay.
THE CLERK: Calling the matter of Commonwealth v. Crystal A. Kane, docket 1812CR57.
MS. BOSTWICK: And we also have the —
UNIDENTIFIED MALE: Co-defendant.
MS. BOSTWICK: -- co-defendant. I don't know if he's here.
THE CLERK: I'm sorry, who's the co-defendant?
MS. BOSTWICK: Demelo.
MR. KELLY: Mr. Demelo's on the dock; Arthur Kelly on behalf of Mr. Demelo.
THE CLERK: Oh, I'm sorry. So, Judge, (indiscernible at 11:02 a.m.) Mr. Demelo's file. He was on for a bail review on Friday.
THE COURT: Okay.
THE CLERK: Judge has it in her lobby.
MR. KELLY: Your Honor —
THE COURT: Do you want me to go take a quick look?

Page 63

THE CLERK: He wrote a letter to the judge directly so I don't know if she pulled — asked that the case be brought in to (indiscernible at 11:20 a.m.).
THE COURT: Oh. Do you want me to go take a quick look or —
THE CLERK: If you could, Judge.
THE COURT: Yes.
THE CLERK: If you want me to step it back, I can.
THE COURT: Just step it back — or do you want me to just pop out and see if it's on the desk? I'll just pop out for one second. Nobody get up. I'm just going to —
THE CLERK: Court's just going to take a brief recess.
(Court recessed at 11:03 a.m.)
(Court reconvened at 11:07 a.m.)
THE CLERK: Court's in session. Please be seated.
COURT OFFICER: Cell phones off and no talking.
THE CLERK: So, Judge, we had just called the Crystal A. Kane matter, 1812CR57 and Bruce Demelo, 1812CR58, Judge.
THE COURT: All right. What's the status?
MR. KELLY: Your Honor, at the first call indicated to you that he was was going to be evaluated relative to drug court possibilities.

Page 64

THE COURT: Okay.
MR. KELLY: That still seems to be possible but it's not going to be today.
THE COURT: Okay.
MR. KELLY: And so what I need for my purposes from Mr. Demelo, a date, on a Tuesday, and a date that seems appropriate is June 5th, please.
THE COURT: Is that too far out or is that —
MR. KELLY: Well, he's got two other matters to answer to in other Courts.
THE COURT: Okay.
MR. KELLY: And so that's part of it. He tells me, Mr. Clerk, that in the computer at Billerica they have him coming back here on the 5th of — what day?
MR. DEMELO: Thursday, I believe, right.
MR. KELLY: This week?
MR. DEMELO: Yes.
MR. KELLY: It shouldn't — shouldn't be because there's no need for him to be at this. I don't know why that is.
THE CLERK: And Thursday we don't have a judge on.
MR. KELLY: All right. All right.
THE CLERK: I don't know why that would be but I will check that.

Page 65

THE COURT: And, probation, has there been any — I know that Mr. Demelo wrote a letter to probation with respect to drug court, at least that was the representation made earlier this morning.
MR. KELLY: I think he was interviewed by probation.
THE COURT: Okay.
MR. KELLY: By Shannon this morning.
THE COURT: Okay.
MS. BOSTWICK: I see a letter in there.
MR. KELLY: She wants to do some further —
THE COURT: She wanted to — okay. So, probation would be in agreement with that?
MS. BOSTWICK: Sure.
THE COURT: Okay.
MR. KELLY: They absolutely are. Because I spoke with — June 5th.
THE COURT: June 5th. Thank you. And with respect to Ms. Kane?
THE COMMONWEALTH: Your Honor, I did request a discovery for both of the co-defendants in this case from the location where the alleged meeting took place. I have not received anything back. Given the long date, I'm happy to — to send over anything I receive prior to the June 5th date to both counsel.

Page 66

THE COURT: And do you want a date prior to that, Ms. Kane — oh, Ms. Kane — for Ms. Kane. Excuse me — Ms. Bostwick.
MS. BOSTWICK: No, I don't believe so. I think that's fine, Your Honor.
THE COURT: Okay.
THE CLERK: Okay. So, Ms. Kane and Mr. Demelo, cases have been continued to June 5, 2018, and that will be on for compliance and election.
MS. BOSTWICK: Yes.
THE COURT: Yes.
THE CLERK: For compliance and election. All prior conditions of release, if any, remain in place and a habe will issue for Mr. Demelo for June 5th, and we will also check this Thursday, counsel.
MR. KELLY: Thank you.
THE CLERK: And find out why that computer —
MR. KELLY: Just to be sure.
THE CLERK: Yes. We don't have a typical judge —
MR. KELLY: We don't want him — we don't them.
THE CLERK: No.
THE COURT: Thank you.
THE CLERK: Thank you.
MS. BOSTWICK: Thank you.

Page 67

MR. DEMELO: Thank you.
THE CLERK: Calling the matter of Commonwealth v. Emily A. Szeto, 1712CR303.
MS. KOURY: Your Honor, I asked — I filed a motion for funds for an expert witness. I asked that the matter be brought to this Court, and if you allow it, would you be so kind as to sign my copy as well —
THE COURT: Of course.
MS. KOURY: -- so I have a signed copy.
THE COURT: What kind of case is this matter?
MS. KOURY: It's an OUI-drugs.
THE COURT: Oh, I have it. Yes. Thank you.
MS. KOURY: Thank you so much.
THE COURT: You're welcome.
THE CLERK: Calling the matter of Commonwealth v. Murrata Kapiga, docket 1712CR685. It's a default removal. Probation, what do you want to do about that?
PROBATION: Is the person here?
THE COURT: Is that this individual?
MR. KAPIGA: (Indiscernible at 11:11 a.m.).
COURT OFFICER: Just step up to the microphone, sir.
THE CLERK: Commonwealth v. Murrata Kapiga.
MR. KAPIGA: Yes.
THE CLERK: Judge, this is a default removal.

Page 68

THE COURT: Good morning, sir. Commonwealth, do you have your file?
THE COMMONWEALTH: I don't. I don't know what this is on.
THE CLERK: (Indiscernible at 11:11 a.m.).
THE COURT: It looks like it might be a — probation matter.
PROBATION: I — no, I believe, Your Honor, it was just — it was dismissed on $100 jail — court costs and $150 I believe still remains outstanding.
THE COURT: Yes, you owe the Court $150. Do you have that today, sir?
MR. KAPIGA: No, I do not because I have been — I have been injured in my work three weeks ago and I believe that was — it was a month ago when I — when I was stipulated with $150 fee restitution. But I got injured and I've been out of work and I haven't been able to seek employment because I'm in school right now. It's hard for me to find part-time work so I — if — if possible I would like to ask for an extension, perhaps for like two more weeks and I'll be able to provide this $150.
THE COURT: That's fine. The Commonwealth — just so that you know, Commonwealth, the docket sheet indicates that this matter was — was offered to be dismissed prior

Page 69

to arraignment upon the payment of $150 in court costs. So, sir, if you do need additional time, I'll give it to you, but you must pay that money otherwise this case is not going to be dismissed and you'll be arraigned on it. Okay.

MR. KAPIGA: Okay. I would — I would appreciate it and I'll make sure I make that payment then.

THE COURT: Okay. We'll give you a month. How's that?

MR. KAPIGA: Great. Thank you. I can — just need a date.

THE COURT: Yes, we'll give that to you.

THE CLERK: Judge, you want to give him a month to make the payment?

THE COURT: Yes.

THE CLERK: So, that would be Thursday, May 3rd?

MR. KAPIGA: Okay.

THE COURT: Sir, if you make the payment prior to that day, you do not need to be here on May 3rd.

MR. KAPIGA: Okay.

THE COURT: If you don't make payment, then you do need to be here.

MR. KAPIGA: Oh, great. I'll make it before then. Thank you, and — and so the warrant is —

Page 70

THE COURT: Yes.

MR. KAPIGA: -- okay. Thank you very much.

THE COURT: You're very welcome.

THE CLERK: Commonwealth v. Gregory Lyons, docket 1812CR12, tender of plea.

THE COURT: Mr. Lyons, thank you for your patience. Probation, have you had an opportunity to take a look at the green sheet — for this matter?

PROBATION: I have, Your Honor.

THE COURT: Thank you.

PROBATION: I did that.

THE CLERK: Thank you. All right. So I'm going to give you the complaint. Sir, can I ask you to raise your right hand? Do you hereby swear or otherwise affirm the testimony you provide will be the truth, the whole truth, so help you God?

MR. LYONS: I do.

THE CLERK: Thank you.

THE COURT: Okay, sir, I have before me a tender of plea form which we refer to as a green sheet because of the color of the form. Have you had an opportunity to review this, including the rights that are on the back of this form?

MR. LYONS: I have.

Page 71

THE COURT: And I see that there's a signature on the back that's dated April 2nd. Is that your signature, Mr. Lyons?

MR. LYONS: It is.

THE COURT: And I also see that the Commonwealth has made a recommendation which is the statutory recommendation that after — if I do find you guilty on this matter, that I place you on probation for two years, with a six-month suspended sentence, and that I order you participate in the fourteen-day in-patient program. You would have a two-year loss of license that is mandated by the Registry. I don't see that you have asked me to consider anything different than that. Are you in agreement with the Commonwealth's recommendation?

MR. LYONS: Well, if I — if I may, a friend of mine who has been through this, he's been clean and sober for fifteen years — recommends —

THE COURT: Okay, I'm not asking about any friends of yours. I'm asking you if you're in agreement with the Commonwealth's recommendation before I hear from the Commonwealth as to the — what the facts are in this case.

MR. LYONS: If I could have the probation period attenuated to one year?

THE COURT: Under the statute it's — it's a two-year

Page 72

— it's a six-month suspended sentence for two years.

MR. LYONS: Okay.

THE COURT: Okay. So what I'm going to do is I'm going to hear what the allegations are from the Commonwealth, and then I'm going to have some more questions for you, okay?

MR. LYONS: Okay.

THE COURT: Commonwealth?

THE COMMONWEALTH: Thank you, Your Honor. Sharon Jurgens for the Commonwealth. At trial, the Commonwealth would have presented the following facts. On January 11, 2018 about 12:30 a.m. officers with the Newton police responded to the area of Cabot Street and Eastside Parkway, both public ways in Newton, for the report of an erratic operator driving a beige Kia Soul. The reporting party indicated the vehicle was now driving on the sidewalk and the operator was slurring his words. When the officers arrived, they located and identified the operator of the Kia Soul as Gregory Lyons who is the defendant before you. The — Mr. Lyons was trying to drive back on the road but the wheels of the vehicle were stuck due to snow. The officers approached the vehicle and ordered Mr. Lyons to get out of the vehicle. They immediately smelled a very strong odor of alcohol coming

Page 73

from Mr. Lyons. They asked where he was coming from. He said Princeton Street. They asked where he was going. He said Princeton. They asked if he had anything to drink and he said no. They noted that he had difficulty stepping out and used the door of his vehicle to balance himself. The officer noted bloodshot — bloodshot eyes and slurred speech, also a very strong odor of alcohol from his person. They also discovered an open bottle of rum in the center console. After locating that, they asked Mr. Lyons again if he had anything to drink and he said yes, not much. At this point Mr. Lyons agreed to perform field sobriety tests. The officers asked Mr. Lyons to do both the nine-step walk and turn as well as the one-leg stand. The results of both of those field sobriety tests indicated impairment to the officers, and at that point he was placed under arrest.

THE COURT: Sir, are the facts recited by the Commonwealth true?

MR. LYONS: Yes.

THE COURT: Okay. Can I see the docket?

THE COMMONWEALTH: Your Honor, I apologize. In addition, had this proceeded to trial for the subsequent offense, the Commonwealth would have also submitted the prior certified conviction out of the Brookline District

Page 74

Court, docket 1509CR61, indicated that Mr. Lyons received a continuation without a finding in March of 2015 for OUI-liquor.

THE COURT: Okay, and, sir, with respect to the facts the Commonwealth has just recited regarding the matter pending in the Brookline District Court, do you agree that those facts are true as well?

MR. LYONS: I do.

THE COURT: Okay, and for the record, can you please tell me your name?

MR. LYONS: Gregory Michael Lyons.

THE COURT: How old are you?

MR. LYONS: Sixty-one.

THE COURT: How far did you go in school?

MR. LYONS: College.

THE COURT: Are you suffering from any mental health issues?

MR. LYONS: I'm sorry?

THE COURT: Are you suffering from any mental health issues?

MR. LYONS: I am not.

THE COURT: Okay. Over the past twenty-four hours, have you had any drugs, alcohol or medication that would affect your ability to understand the proceedings today?

Page 75

MR. LYONS: I have not.

THE COURT: Okay. Do you understand that by admitting to these facts today you are giving up certain rights?

MR. LYONS: I do.

THE COURT: Okay. First of all, you would have the right to have a trial before a judge or a jury. A jury would be made up of six members of the community who would listen to the evidence presented by the Commonwealth and make a determination whether you were guilty or not guilty. Their verdict would have to be unanimous. Do you understand that?

MR. LYONS: I do.

THE COURT: And if you were — if you were to waive your right to a jury trial, you could have a bench trial, which means you'd have a trial before a judge who would make that decision. Do you understand that?

MR. LYONS: I do.

THE COURT: And do you wish to waive your right to have a trial before a judge or a jury?

MR. LYONS: I do.

THE COURT: You're also giving up your right to be presumed innocent. At a trial it's the Commonwealth's burden to prove you guilty beyond a reasonable doubt. You

Page 76

would not have to do anything in your defense, but you could. You would have the opportunity to cross examine their witnesses, to contest the evidence they presented, if there are any motions that you would want the Court to consider, you could bring those to the Court's attention. Do you understand that?

MR. LYONS: I do.

THE COURT: And do you wish to give up your right with regards to that?

MR. LYONS: I do.

THE COURT: You are also — you also have the right not to testify against yourself and your right to remain silent. When you admit to these facts today, you are indicating that you committed the offenses to which the Commonwealth has alleged. At a trial you could not be forced to testify against yourself. Do you understand that?

MR. LYONS: I do.

THE COURT: And do you wish to give up your right to remain silent?

MR. LYONS: Yes.

THE COURT: Okay. Has anybody forced you, threatened you or promised you anything in exchange for your plea of guilt today?

Page 77

MR. LYONS: No, Your Honor.
THE COURT: Okay. I do have to inform you that if you are not a citizen of the United States, this admission may result in deportation, exclusion from admission to the United States or denial of naturalization as a citizen, and it's practically inevitable that one or more of those things will happen if this offense is under federal law, one that presentively mandates removal from the United States and federal officials decide to seek removal. Do you understand that?
MR. LYONS: I do.
THE COURT: And understanding that, do you still wish to plead guilty in this matter?
MR. LYONS: Yes, ma'am.
THE COURT: Okay. Commonwealth, I do find that the plea is voluntarily, intelligently, and knowingly made and I will accept the tender. Commonwealth, I'll hear from you on disposition.
THE COMMONWEALTH: Your Honor, I did recommend the — the statutory prescribed disposition for an OUI second, the only thing I added was the condition of no alcohol and random screens to go along with the two-year probationary period and the reason for that is the closeness in time from the first offense. You'll see that that was just in

Page 78

2015, and now in 2018 there — there is another one indicating the same behavior so I do think given that, the closeness in time, this isn't, you know, something separated by twenty — twenty-five years. It was just a couple years ago so I do think that those conditions are appropriate.
THE COURT: Okay, and, Mr. Lyons, I'll hear from you as to — with respect to the Commonwealth's recommendation, if you would like me not to impose a no alcohol and testing requirements or whether you agree with that.
MR. LYONS: I don't object to that.
THE COURT: I'm sorry.
MR. LYONS: I do not object to that.
THE COURT: Okay. Sir, I'm just going to need you to sign at the bottom here on the — underneath the first column.
MR. LYONS: Where, sir?
THE CLERK: Wes, can you help him? Point out where he has to sign.
MR. LYONS: Where?
COURT OFFICER: Where does it say —
THE CLERK: Underneath the first column. Do you see it?

Page 79

COURT OFFICER: Right there.
MR. LYONS: Oh, right here.
COURT OFFICER: Yes.
MR. LYONS: Okay.
COURT OFFICER: Okay. I think that's the right —
THE COURT: Okay. It's all set. I'll adopt the recommendation. Did he — I don't think he signed there. Wait a minute.
COURT OFFICER: Put a big X where he needs to sign.
THE CLERK: There is a big X there.
COURT OFFICER: There is a big X?
THE COURT: Yes.
THE CLERK: Do you see where it says Defendant Pro Se? There's an X.
COURT OFFICER: His name is — okay. Right there.
MR. LYONS: Oh, I see.
COURT OFFICER: I was looking right there —
MR. LYONS: Okay.
COURT OFFICER: -- on the top. It's on the bottom.
THE COURT: Sir, your signature there is just acknowledging what the Commonwealth's recommendation is and that you did not contest that recommendation.
MR. LYONS: Yes.
THE CLERK: So, Mr. Lyons, after hearing the — after

Page 80

submitting your plea of guilty, the Court has accepted your plea of guilty. You are sentenced to six months in the house of correction, suspended for two years. You must serve fourteen days in that in-patient program. There's a two-year loss of license. You're going to have no alcohol and submit to random testing. That's with respect to count one, operating under the influence of alcohol. There's a $50 victim/witness fee, and there is a $65 per month probation supervision fee for the twenty-four months, and with respect to count two, you have — that is your responsible file. So before you leave the courthouse, you need to go down to probation and sign these conditions.
MR. LYONS: Okay.
THE CLERK: Okay. Did I leave anything out?
THE COURT: I think that's it.
THE CLERK: Commonwealth?
THE COURT: Thank you, sir.
MR. LYONS: Okay?
THE COURT: Yes, just see the probation department.
MR. LYONS: Okay.
THE CLERK: Right downstairs. Commonwealth v. Peter Laboy, docket 1612CR638.
MR. LEVINSON: Defendant.

Page 81

MS. LAWLER: Probation.
THE CLERK: Probation officer Lawler, do you need to be sworn in?
MS. LAWLER: Please.
THE CLERK: Do you hereby swear or otherwise affirm the testimony you provide to the Court today will be the truth, the whole truth so help you God?
MS. LAWLER: I do. Julie Lawler (phonetic) for the probation department.
THE COURT: Good morning.
MS. LAWLER: Your Honor, I believe we have an agreed upon stipulation and agreed upon recommendation to present to the Court for consideration.
MR. LEVINSON: That is correct, Your Honor.
THE COURT: Okay, okay. Let me ask your client a couple questions. Sir, if you could just for the record tell me your name?
MR. LABOY: Peter Laboy.
THE COURT: How old are you, sir?
MR. LABOY: Twenty-four.
THE COURT: How far did you go in school?
MR. LABOY: I have a bachelors.
THE COURT: Are you suffering from any mental health issues today?

Page 82

MR. LABOY: No, Your Honor.
THE COURT: Over the past twenty-four hours have you had any drugs, alcohol or medication that would affect your ability to understand these proceedings today?
MR. LABOY: No.
THE COURT: And have you received notice of your probation violation?
MR. LABOY: Yes, Your Honor.
THE COURT: And do you understand that by agreeing that you violated the terms of your probation, you do have the right to a hearing on this matter?
MR. LABOY: Yes, Your Honor.
THE COURT: Okay, and it's your intention to stipulate to your violation today?
MR. LABOY: Yes, Your Honor.
THE COURT: Okay. Has anybody forced you, threatened you or promised you anything in exchange for your agreeing that you violated the terms of your probation?
MR. LABOY: No.
THE COURT: Okay, and do you understand that just because this is an agreement with respect to disposition, I am not bound by that, and you have no right to withdraw your recommendation if I decide to exceed that, unlike a guilty plea prior to trial? Do you understand that?

Page 83

MR. LABOY: Yes, Your Honor.
THE COURT: Okay. I'll hear from you with respect to the nature of the violation.
MS. LAWLER: Your Honor, the violation was predicated on the fact that Mr. Laboy was terminated from the intimate partner abuse program at the Jeanne Geiger Crisis Center. He was arraigned on a first step surrender on 2/27/2018. It was continued today to — it was continued to today, Your Honor, to see whether or not he was engaged.
THE COURT: And did he?
MS. LAWLER: He did, Your Honor.
THE COURT: Okay.
MS. LAWLER: He just re-engaged though on March 26th. I have spoken to the program. He is — in order to successfully complete the program, he has to complete thirty-six weeks, so they are asking — and I am agreeing with their request — that this — this case on a finding, if the Court is so inclined to find him in violation, I'm asking that he remain on a continuance without a finding, be extended until the end of January for him to complete this, Your Honor.
THE COURT: Okay, and do you agree that that's the term of the probation that you violated?

Page 84

MR. LABOY: Yes, Your Honor.
THE COURT: Okay, and are you in agreement that your probation will be extended until January so that you can complete the program?
MR. LABOY: Yes, Your Honor.
THE COURT: Other than completing the program, was he in — was he in compliance with probation?
MS. LAWLER: Yes, he was, Your Honor. The other condition that was originally imposed was substance abuse evaluation. This gentleman is being supervised up in Lawrence Court, Your Honor. They indicated that that evaluation has been completed. The other condition was to stay away with no contact with Nicole Diaz (phonetic). I have not — I had spoken to her on 2/27 to inform her that his probation got extended to today. She's denying any contact. I would ask that remain in effect as well.
THE COURT: Okay.
MS. LAWLER: Have no contact, stay away from Ms. Diaz, and I would also ask the Court if the Court would kindly consider not incurring any more fees for Mr. Laboy until he completes this in January?
THE COURT: Yes. I will — I will remit any additional fees since you've already paid the fees up till now. So, I do find that there's a factual basis for the

Page 85

violation and that the Probation understands the nature of the violation and that the stipulation is made freely, voluntarily and with full knowledge of the consequences. Is there anything else, counsel, that you would like me to consider? If not, I will adopt the joint recommendation.
MR. LEVINSON: Nothing further, Your Honor.
THE CLERK: So, Mr. Laboy, having stipulated to the violation of probation, your CWOF, your continuance without a finding, shall remain in place and your probation will be extended to January 31, 2019; is that correct?
MR. LABOY: Yes, sir.
THE CLERK: January 31, 2019. All outstanding fees from this point on have been remitted.
THE COURT: What's the date? Until January?
THE CLERK: January 31st, I believe, it's at the end of January.
THE COURT: Yes.
THE CLERK: It's a Thursday, I believe.
THE COURT: Probation, if he is able to complete the program prior to January 31st, would there be any objection to him coming back before the Court to request an early termination?
MS. LAWLER: No, Your Honor.

Page 86

THE CLERK: Your Honor, I said the 31st, it's actually January 30th.
THE COURT: 30th.
THE CLERK: I apologize. Wait a minute. I'm sorry. Wait, Judge. It is the 31st. I'm sorry.
THE COURT: So what I just asked probation, sir, is if you do complete the batterer's program early, since you are in compliance with all the other conditions, you can come back before this Court and request that your probation be terminated before January 30th, okay?
MR. LABOY: Thank you.
THE COURT: I think I wrote 2018 — instead of 2019.
MS. LAWLER: May the clerk note that on the docket as well, Your Honor, that it could be terminated early.
THE COURT: Yes, terminated early as soon as you complete the program.
MS. LAWLER: Right.
THE COURT: And I will remit the additional probation fees. Okay. Good luck, sir.
MS. LAWLER: He needs to meet me downstairs, please, to sign those conditions.
THE CLERK: Here you go, counsel.
MS. LAWLER: Thank you, Your Honor.
THE CLERK: Counsel.

Page 87

MR. LEVINSON: Yes, thank you.
THE CLERK: Calling the matter of — is it —
UNIDENTIFIED MALE: Crystal Cosme.
THE CLERK: Calling the matter of Commonwealth v. Crystal Cosme, docket number 1812CR34.
MS. KOURY: Good morning —
THE COURT: Good morning.
MS. KOURY: -- Your Honor. This case has been continued a number of times. Ms. Cosme was intending to seek private counsel, however it still hasn't happened. It's logistically difficult given — given her being held. However, at this time, Ms. Cosme and I would both — both ask this Court to appoint substitute counsel. There's been a breakdown of our relationship.
THE COURT: I will allow you to withdraw and we can appoint Attorney Bostwick.
MS. KOURY: Thank you.
THE COURT: Do you have the discovery that you can turn over to counsel today?
MS. KOURY: I — yes, I do.
THE COURT: Okay.
MS. KOURY: Yes.
THE COURT: Thank you.
THE CLERK: Is Attorney Bostwick here? Is she — oh,

Page 88

downstairs. Okay. Do you want to put it on for further call for Attorney Bostwick to address?
THE COURT: Why don't we put it on for further call but I am going to release Attorney Koury.
MS. KOURY: Thank you.
THE CLERK: Okay. So, Attorney Koury, your motion to withdraw has been allowed, and we'll put it on for further call for Attorney Bostwick to address. Calling the matter of Commonwealth v. Hector Hernandez, docket 1812CR32. That looks like a tender of plea, Judge.
THE COURT: Thank you.
THE CLERK: Mr. Hernandez, can you raise your right hand? Do you hereby swear or otherwise affirm the testimony you provide will be the truth, the whole truth, so help you God?
MR. HERNANDEZ: I do.
THE CLERK: Thank you.
THE COURT: Good morning, Mr. Hernandez. I have before me a tender of plea form indicating that you are admitting to sufficient facts in this matter. Is this your signature on this form?
MR. HERNANDEZ: Yes.
THE COURT: And have you had an opportunity to speak with your attorney, Attorney Koury, with respect to your

Page 89

options within this matter?
MR. HERNANDEZ: Yes.
THE COURT: And do you understand that the Commonwealth is asking that I find you guilty and place you on probation?
MR. HERNANDEZ: Yes.
THE COURT: Okay. If I exceed the recommendation that you have asked me to consider, you will have the right to withdraw this tender of plea or you may accept whatever disposition that I think is appropriate.
MR. HERNANDEZ: Yes.
THE COURT: What I'm going to do is I'm going to hear the facts from the Commonwealth and I'll have some more questions for you, okay?
MR. HERNANDEZ: All right.
THE COURT: Commonwealth?
THE COMMONWEALTH: Thank you, Your Honor. Sharon Jurgens for the Commonwealth. At trial the Commonwealth would have presented the following facts. During the time of mid-January in 2018, detectives with the Newton police received information from a confidential informant about an individual selling what was referred to as hot brown, meaning powerful heroin, and that confidential informant did give a specific phone number to detectives and a text

Page 90

thread. The contact person being a someone by the name of Geoxxx which is G-E-O-X-X-X, and who was selling what is referred to as hot brown.
On January 24, 2017, the detectives with Newton police used that contact information for that individual Geoxxx with that same phone number provided from the informant to order $250 worth of quote "new briz" (phonetic) which is jargon for the heroin that was referred to. The individual Geoxxx texted back that he would be by after 9:00 p.m. on that date, January 24th, with that material. At about 9:40 p.m. on January 24th, Geoxxx texted the detective that he was going to be on Elliot Street. About three minutes later, the officers observed a white Ford Fusion arrive at the meet location near Elliot Street and observed a Hispanic — Hispanic male, who had been operating, exit the vehicle and approach a rear residence. They could see that subject manipulating his cell phone and at the same time the detectives received a text from that Geoxxx phone number that he was, quote, "downstairs". Several task force members approached the motor vehicle, and one officer entered the rear common door of that location and observed an individual who was identified as the defendant before you, Hector Hernandez, standing on the interior stair —

Page 91

stairs, with a cell phone, making a call. It was clear from the phone call being made from that number that Mr. Hernandez was, quote, "Geoxxx" or Geoxxx. As he abruptly hung up the phone, and the detective's phone stopped ringing, found on Mr. Hernandez's possession in his right hand was a plastic knotted corner bag containing a brown powder that the officers at first believed to be heroin. That was — that material was tested with a TruNarc spectrometer and tested positive for a Class B substance, fentanyl. The amount was the same as ordered by the detective that was located on Mr. Hernandez and at trial, the Commonwealth would have also provided the drug certificate showing that that material would have been fentanyl, a Class B substance, and those are the facts, Your Honor.
THE COURT: Sir, are the facts cited by the Commonwealth true?
MR. HERNANDEZ: Yes.
THE COURT: Okay. Can you tell me your name for the record, please?
MR. HERNANDEZ: Hector Hernandez.
THE COURT: How old are you?
MR. HERNANDEZ: I'm twenty.
THE COURT: How far did you go in school?

Page 92

MR. HERNANDEZ: High school
THE COURT: Are you suffering from any mental health issues?
MR. HERNANDEZ: No.
THE COURT: Over the past twenty-four hours, have you had any drugs, alcohol or medication that would affect your ability to understand the proceedings today?
MR. HERNANDEZ: No.
THE COURT: Have you had enough time to speak with your attorney about the case?
MR. HERNANDEZ: Yes.
THE COURT: And are you satisfied with the advice that she's given you?
MR. HERNANDEZ: Yes.
THE COURT: Counsel, have you reviewed the elements of the charge with Mr. Hernandez, the maximum penalties, possible defenses and any other choices other than admitted to sufficient facts today?
MS. KOURY: Yes.
THE COURT: Sir, do you understand that by admitting to these facts today you are giving up several rights?
MR. HERNANDEZ: Yes.
THE COURT: Number one, you're giving up your right to have a trial before a judge or a jury. A jury would be

Page 93

made up of six members of the community who would listen to the evidence presented by the Commonwealth and make the determination whether you're guilty or not guilty. Their verdict would have to be unanimous. Do you understand that?

MR. HERNANDEZ: Yes.

THE COURT: If you were to elect a bench trial, it would be a judge's decision to make that determination. Do you understand that?

MR. HERNANDEZ: Yes.

THE COURT: And are you giving up your right to have a trial before a judge or a jury?

MR. HERNANDEZ: What was the question again?

THE COURT: Do you give up your right to have this case tried before a judge or a jury?

MR. HERNANDEZ: Yes.

THE COURT: You are also giving up right to be presumed innocent. When you are charged with a crime, you are presumed innocent meaning that the Commonwealth's burden to prove that you are guilty beyond a reasonable doubt. The Commonwealth would do that by calling witnesses and introducing evidence against you. By admitting to sufficient facts today, you are giving up your right to have your lawyer cross examine witnesses, to

Page 94

present evidence on your own behalf, and to contest the evidence that the Commonwealth have. Do you understand that by admitting to these facts today you are giving up — this right?

MR. HERNANDEZ: Yes.

THE COURT: And do you wish to do so?

MR. HERNANDEZ: Yes.

THE COURT: Okay. You are also giving up your right to remain silent and your right not to say anything that can be used against you. When you admit to these facts today you are saying that you committed the act for which the Commonwealth has charged you. At a trial you could not be forced to testify against yourself because you have the right not to do that. You could testify if you wanted to but you can't be forced to. Do you understand that and do you wish to give up that right today?

MR. HERNANDEZ: Yes.

THE COURT: Has anybody forced you, threatened you or promised you anything in exchange for your admission for sufficient facts?

MR. HERNANDEZ: No.

THE COURT: I am required to advise you that if you are not a citizen of the United States, this admission may result in deportation, exclusion from admission to the

Page 95

United States or denial of naturalization as a citizen, and it's practically inevitable that one or more of those things will happen if this offense is, under federal law, one that presentively mandates removal from the United States and federal officials decide to seek removal. Do you understand that?

MR. HERNANDEZ: Yes.

THE COURT: Understanding all these rights that I have just gone over with you, do you need any more time to speak with your attorney?

MR. HERNANDEZ: No.

THE COURT: Okay. I do find that there's a factual basis for the plea and that it's made freely, voluntarily, with full knowledge of the consequences. I will accept your tender and I'll hear from you, Commonwealth, on the disposition.

THE COMMONWEALTH: Thank you, Your Honor. I did ask Your Honor to enter a guilty finding on this. I do recognize this is the only entry on Mr. Hernandez's adult record as well as the fact that he is choosing to take responsibility early on in the case. But not withstanding that, this is the charge of possession with intent to distribute Class B fentanyl. Fentanyl is, I think uncontrovertedly, a dangerous deadly weapon and the fact

Page 96

that, you know, this is a very strong case from the Commonwealth and it's an individual selling — selling fentanyl and for that reason, pretty much alone, I do believe that a guilty finding in this case is appropriate based on the severity of this particular charge.

THE COURT: All right. Counsel, tell me a little bit about your client.

MS. KOURY: Your Honor, as the Commonwealth indicated this is his first adult record on his record. In many ways, Mr. Hernandez, who's twenty years old, he's looking at the bright lining — the bright, very bright lining in that this was his first foray into this — this conduct, and he looks at the bright side because he was stopped before he had — it got more serious, before he got entrenched. So he is not going down that road. He is not. He lives with his mother who is fifty-three years old and disabled. He lives with her and takes care of a lot of the household tasks for her. He's trying to find work, and in — in part it was his attempt to get money for the household that led him to, you know, stick his toe into those waters. But it's good it's over and that's why I'm asking for him to be able to say, forever, no, I have not been convicted of a crime. I think that will be important for him to getting employment and staying on the

Page 97

right track.
THE COURT: All right. So, sir, I don't think that the Commonwealth's recommendation is unreasonable. Usually, as I'm sure your attorney has told you, a continue without a finding is saved for people who have had no prior criminal experience, and that would be you. I mean I do see that you had — had a juvenile matter that was dismissed as well, but fentanyl is an incredibly potent substance that, you know, is — is very dangerous. I'm going to give you the benefit on this one. I'm not going to accept your disposition, however, I'm going to cut it in between. I will continue the case without a finding that will protect your criminal record, assuming that you comply with the conditions of probation. I don't feel that nine months is enough so I'm going to suggest that the Commonwealth's recommendation of one year is more appropriate. Because you're trying to find work, I will waive the probation supervision fee to give you an opportunity to, you know, find work and not look for these ways to — to make money. I am going to order that you undergo a substance evaluation and follow any recommendations, if any, that are made. If after your evaluation there are no follow-up recommendations, there's nothing else that you have to do. If there are follow-up

Page 98

recommendations, I'm going to order that you sign releases to the probation department and that you follow those recommendations. Is that understood?
MR. HERNANDEZ: Yes.
THE COURT: If you accept that, you just need to sign this, and counsel, if you could just date your signature as well.
MS. KOURY: Thank you so much.
THE COURT: There was a $150 attorney fee. Was that paid?
MR. HERNANDEZ: Yes, so I didn't — I paid a hundred and then there was a warrant out so I came in and cleared that up.
THE COURT: Okay.
MR. HERNANDEZ: I owed fifty so I think I owe like a hundred dollars more. I just paid. I got the receipt this morning.
THE CLERK: So, Mr. Hernandez, the Court having accepted your tender of plea has continued your matter for a period of one year without a finding of guilt. That one-year end date is March 28, 2019. The Court has ordered that you submit to a substance evaluation and — complete any follow up recommendations for treatment deemed necessary and if there are further recommendations

Page 99

to sign releases for the probation department. There is a $90 victim/witness fee assessed. The probation fee of $65 per month has been waived for you, and I'm sorry. I didn't were the attorney's fees paid? Did you pay all extenuating costs?
MR. HERNANDEZ: I haven't paid it all.
THE CLERK: Okay.
MR. HERNANDEZ: I — I paid a hundred dollars which was out of two hundred. If it's possible, I can pay the next in about a week or so. I mean I could come back tomorrow if I need to but I just don't have it on me.
THE COURT: Give — give him a month to pay —
MR. HERNANDEZ: Yes, that's fine.
THE COURT: -- that and the victim/witness fee. All right.
THE CLERK: Okay.
THE COURT: Or the drug assessment fee, whatever was imposed.
MR. HERNANDEZ: All right. Thank you.
THE CLERK: Okay. So, sir, that one-month date would be May 3, 2018 to pay the outstanding attorney's fees and the victim/witness fee of ninety dollars.
THE COURT: And, sir, if you need more time to pay that, talk to the probation department. Don't just ignore

Page 100

it.
MR. HERNANDEZ: All right. Thank you.
THE COURT: Okay.
THE CLERK: So before you leave, please go down to probation and sign the conditions of your release.
MR. HERNANDEZ: All right. Thank you.
THE COURT: You're welcome.
THE CLERK: Calling the matter of — Commonwealth v. Dmitry Hunt, docket 1712CR711. Attorney Koury as well. Mr. Hunt, would you raise your right hand? Do you hereby swear or otherwise affirm the testimony you provide will be the truth, the whole truth, so help you God?
MR. HUNT: Yes.
THE CLERK: Thank you.
THE COURT: Sir, I have before me a tender of plea form to which you are pleading guilty. Is this your signature on the back of the form?
MR. HUNT: Yes, Your Honor.
THE COURT: And have you had an opportunity to discuss all the rights on the back of this form with your attorney?
MR. HUNT: Yes, Your Honor.
THE COURT: Okay. Do you understand that the Commonwealth has asked that I find you guilty and sentence

Page 101

you to nine months in the house of correction? Your attorney has asked me that I find you guilty and sentence you to nine months in the house of correction, but suspend that sentence for a year, meaning put you on probation for a year.

MR. HUNT: Yes, Your Honor.

THE COURT: Okay. I'm going to hear the facts from the Commonwealth and then I'll have some more questions for you.

THE COMMONWEALTH: Thank you, Your Honor. Sharon Jurgens for the Commonwealth. At trial, the Commonwealth would have presented the following facts. On Friday, August 25, 2017, just before 10:00 p.m., officers with the Newton police responded to Brush Hill Road for the report of a larceny. They spoke with Shervin and Carolyn Hawley who both appeared very upset and reported that they had just returned home from a vacation. When they got home they noted their bedroom was in disarray, drawers had been looked through and that a large amount of jewelry was missing from the bedroom and the office. They were able to discover that a few days prior on August 21st, their daughter who remained home during their vacation had had friends over. One of those friends being the defendant before you, Dmitry Hunt, and she reported that she thought

Page 102

that Mr. Hunt may have been the person who took jewelry from their home because the next day after that party on August 22nd, the daughter, Arianna (phonetic), had bailed Mr. Hunt out of jail in Natick and he had a large amount of jewelry on him. At that time he said it belonged to his mother. At this point, the Newton police reached out to the Natick police in regards to the jewelry that was on him during his arrest, and they also supplied a list of the missing jewelry and some photographs of the missing jewelry, and Natick police officers were able to identify at least two of the items that were on Mr. Hunt as matching the items reported missing by Mr. and Mrs. Hawley, in particular a watch and a necklace, both of which were over $250. So in regards to the receiving stolen property, Your Honor, those are the facts.

THE COURT: Thank you. Sir, are the facts just cited by the Commonwealth true?

MR. HUNT: Yes, Your Honor.

THE COURT: Okay. For the record, can you please tell me your name?

MR. HUNT: Dmitry Hunt.

THE COURT: How old are you, sir?

MR. HUNT: Twenty-six.

THE COURT: How far did you go in school?

Page 103

MR. HUNT: I graduated high school.

THE COURT: Are you suffering from any mental health issues?

MR. HUNT: No, Your Honor.

THE COURT: Over the past twenty-four hours, have you had any drugs, alcohol or medication that would affect your ability to understand the proceedings today?

MR. HUNT: No, Your Honor.

THE COURT: Have you had enough time to speak with your attorney about this case?

MR. HUNT: Yes, Your Honor.

THE COURT: And are you satisfied with the advice that she's given you?

MR. HUNT: Yes, Your Honor.

THE COURT: Counsel, you reviewed the elements of the charges, the maximum penalties, the possible defenses and any other choices other than pleading guilty to this matter?

MS. KOURY: Yes, Your Honor.

THE COURT: Okay. Sir, do you understand that by pleading guilty you are giving up several rights?

MR. HUNT: Yes, Your Honor.

THE COURT: Number one, you're giving up your right to be tried by a judge or a jury. A jury would be made up of

Page 104

six members of the community who you would help to select who would listen to the evidence presented by the Commonwealth. They would render a verdict of either guilty or not guilty. Their verdict would have to be unanimous. Do you understand that?

MR. HUNT: Yes, Your Honor.

THE COURT: And do you understand that if you waived your right to a trial by a jury, you could have a trial before just a judge who would make that decision?

MR. HUNT: Yes, Your Honor.

THE COURT: And the verdict would have to be returned beyond a reasonable doubt. Do you understand that and do you wish to give up your right to be tried by a judge or a jury?

MR. HUNT: Yes, Your Honor.

THE COURT: Okay. Do you also understand that you're giving up your right to be presumed innocent?

MR. HUNT: Yes, Your Honor.

THE COURT: Okay. When you are charged with a crime, you are presumed innocent meaning that it's the Commonwealth's burden to prove you guilty beyond a reasonable doubt. They would do that by presenting evidence through testimony of their witnesses and through physical evidence that they may have in this case. You

Page 105

would have the right to cross examine their witnesses and to contest the evidence that they would admit. By admitting to these facts today, you are giving up your right to a trial, and you are giving up your right to have the Commonwealth prove you guilty beyond a reasonable doubt. Do you understand that?
MR. HUNT: Yes, Your Honor.
THE COURT: You are also giving up your right to remain silent and your right not to say anything that can be used against you. At a trial you could not be forced to testify against yourself. By pleading guilty you are accepting the facts as presented by the Commonwealth and you are testifying against yourself. Do you understand that and do you wish to give up that right?
MR. HUNT: Yes, Your Honor.
THE COURT: Has anybody forced you, threatened you or promised you anything in return for your plea of guilty in this matter?
MR. HUNT: No, Your Honor.
THE COURT: Okay. I am required to advise you that if you are not a citizen of the United States, this admission may result in deportation, exclusion from admission to the United States or denial of naturalization as a citizen and it is practically inevitable that one or

Page 106

more of those things will happen if this offense is under federal law one that presentively mandates removal from the United States and federal officials decide to seek removal. Do you understand that?
MR. HUNT: Yes, Your Honor.
THE COURT: Understanding all these rights that I've just gone over with you, do you need any more time to speak with your attorney?
MR. HUNT: No, Your Honor.
THE COURT: Okay. I do find that there's a factual basis for the plea and that it's made freely, voluntarily and with full knowledge of the consequences. I will accept the plea of guilty and I'll hear from the Commonwealth with respect to disposition.
THE COMMONWEALTH: Thank you, Your Honor. I do recommend nine months committed. I understand counsel's recommended the suspended sentence. In looking at Mr. Hunt's board of probation record, he has many prior incidences of the same conduct, larcenies, breaking and enterings, property related offenses that I think are clearly, along with the possession charges, indicative of a drug issue. I do recognize that Mr. Hunt will probably show some documentation that he's engaged in drug treatment at this time, but frankly, he's been on — been

Page 107

given the opportunity to succeed on probation a number of times in the past in District Courts throughout Middlesex County as well as Middlesex Superior Court, and in almost every single incident he's violated, and I just think all the chances to succeed on probation have run out. He is not a probation candidate. He has shown over and over that he cannot complete probation and often resulted in violations with just the committed time imposed.
So at this point, I wouldn't recommend probation. I do think nine months committed is appropriate given his history. The victims in this case have been in close contact with the detectives with the Newton police. All they want is their property back and that's not something that can happen because it's gone.
So at this point, there is really no issue of restitution that is realistic. They're not going to get their property back, and based on the history, I'm asking Your Honor to impose the nine-month sentence.
THE COURT: Okay. Counsel?
MS. KOURY: Your Honor, if you could take a look at some of these records. I've shared them with the Commonwealth and with probation, and then I have a few comments.
THE COURT: So this offense just happened in January?

Page 108

MS. KOURY: Yes. It was arraigned in January. The date of offense is August.
(Whispering: Clerk: Who's down there?)
THE COURT: So a couple of these letters — good work, by the way. But a couple of these letters indicate that you're currently in treatment and have been since January. Is that when — and a couple of the letters don't indicate when counseling and treatment started. Is —
MS. KOURY: It — it did start in January when his mother — after he was arraigned, drove him from court --
THE CLERK: (Whispering: -- the Spanish interpreter guy (indiscernible) --
MS. KOURY: -- to treatment in Brockton.
THE CLERK: (Whispering: He's still got her --
MS. KOURY: -- he's here with his mother.
THE CLERK: (Whispering: -- and I'll bring him up now.)
MS. KOURY: She's come every time, and she drove him from here to treatment where he has remained since.
THE COURT: What else can you tell me about Mr. Hunt?
MS. KOURY: Well, I — I recognize that there are a number of entries on his record, twenty — from 2017, four entries by my count. Your Honor, those were while he was

Page 109

still using. They're part and parcel of — even of somebody who's addicted to drugs. The difference between then and now is that he is in treatment and he's committed to treatment. You — you saw he's — he's in Brockton Neighborhood Health, Steps to Solutions, Stairway to Recovery, meetings, therapy, treatment. He's working at this full time, Your Honor, and I would just remind the Court that, you know, sentencing is not meant only to punish. It's also meant to deter future conduct and it's meant to also provide a person with rehabilitative services. I suggest that by imposing a committed sentence at this time, the purposes of sentencing will not be served. He will be taken out of treatment where he is performing remarkably well. One of the letters indicate — one says he is excelling. He attends all scheduled appointments with a hopeful mindset. He's their favorite client. So he's really doing well, and by having a suspended sentence hanging over his head, he will continue to do well, and if he doesn't, there's no question, he will serve a term of incarceration. But at this time, the purpose of sentencing just would not be served by imposing a committed sentence right now.

THE COURT: Sir, and looking at your record, Mr. Hunt, I mean the Commonwealth is right. I mean you've got

Page 110

a very long history and particularly more recently that really points to drug use, and I value the work that you've done and all the letters that your attorney has provided on your behalf. What I'm — what I'm suggesting is a sentence of nine months, suspended for eighteen months. I do feel with the new treatment that a one-year probationary sentence just isn't enough. If you're committed to living a sober life, this — this probation should be, you know, it shouldn't matter whether it's twelve months or eighteen months. So I would impose a suspended sentence for eighteen months. I'll order that you continue with your own substance treatment and not have any illegal drugs. I do see from reading the letter, particularly with the Brockton Neighborhood Health Center, that you're being tested there weekly?

MR. HUNT: Yes — yes, Your Honor.

THE COURT: So I'm not going to order any additional testing. I also see that one of the other programs is testing you as well. So if you're willing to accept that?

MR. HUNT: I am, Your Honor.

THE COURT: Okay. I'll just need you to sign and both counsel and the Commonwealth need to date the green sheet. And if you could sign releases for probation just to verify that you're still in treatment.

Page 111

THE COMMONWEALTH: I didn't do my signature either. Can I fill in the date for you?

MS. KOURY: Thank you.

THE COURT: Good luck. Hopefully this will give you some additional motivation to stay sober.

MR. HUNT: Thank you, Your Honor.

UNIDENTIFIED FEMALE: Thank you so much.

THE CLERK: So, Mr. Hunt, the Court having accepted your plea of guilty, the Court has sentenced you to nine months in the house of correction, suspended for a period of eighteen months. That eighteen-month end date will be September 26, 2019. There is a $50 victim/witness fee, and a $65 per month probation supervision fee and if you, sir, the Court has not ordered further testing, however, if you could sign a release for the Newton District Court probation department so they can verify that the testing is being continued. You must also continue with your substance treatment during that period, and not use illegal drugs.

MS. KOURY: One request on the probation supervision fee, if it is possible, could that be waived because he is in treatment full time and not working?

THE COURT: Any objection, probation?

PROBATION: No objection, Your Honor.

Page 112

THE COURT: Yes, I'll waive the probation supervision fee.

MR. HUNT: Thank you, Your Honor.

THE COURT: You're welcome.

THE CLERK: So, sir, before you leave, please see probation downstairs on the first floor to sign the conditions of your probation.

MR. HUNT: Thank you.

THE COURT: Good luck.

THE CLERK: Calling the matter of Commonwealth v. Jaime Francisco Pineda, docket 1812CR124. Do we have the interpreter?

UNIDENTIFIED MALE: I was — I was told there was — there is an interpreter here today.

MS. KOURY: Oh, he's — he's out here.

THE CLERK: This is a tender of plea, Judge.

THE COURT: Thank you.

THE CLERK: That's all right. Sir, could I ask you to raise your right hand, please? Do you hereby — oh, he doesn't — never mind. I'll wait for the interpreter. Sorry.

UNIDENTIFIED MALE: I'm sorry, Mr. Clerk. What was that name?

THE CLERK: It is Jaime F. Pineda, docket 1812CR124.

Page 113

Thank you, Mr. Interpreter. Sir, if I could ask you to raise your right hand? Do you hereby swear or otherwise affirm the testimony you provide will be the truth, the whole truth, so help you God?
MR. PINEDA THROUGH INTERPRETER: Yes.
THE CLERK: Thank you.
THE COURT: Good afternoon, Mr. Pineda. I have a tender of plea form here to which both you and the district attorney's office has asked me to consider a joint recommendation. Is this your signature on the back of the form?
MR. PINEDA THROUGH INTERPRETER FROM THIS POINT FORWARD.
MR. PINEDA: Yes.
THE COURT: And have you had enough time to discuss the form as well as the disposition with your attorney?
MR. PINEDA: Yes.
THE COURT: Okay. I'm going to hear the facts from the Commonwealth and I'll have some more questions for you. Commonwealth?
THE COMMONWEALTH: Thank you, Your Honor. Sharon Jurgens for the Commonwealth. At trial the Commonwealth would have presented the following facts. On March 14, 2018, the Newton police responded to a motor vehicle crash. Three witnesses reported that the defendant, Jaime

Page 114

Pineda, had been driving and struck two vehicles. The officers then spoke to Mr. Pineda. They immediately noted his eyes were glassy and bloodshot. They asked him what he had — what had happened and did detect a moderate odor of alcohol coming from him. He reported that he was coming from a restaurant and stated that he had about three beers over the period of one hour. The officers noted his speech was slurred and difficult to understand. He also identified a backpack at the scene as his backpack. He did participate in the field sobriety tests. The officers conducted the nine-step walk and turn and the one-leg stand. The results of both of those tests indicated impairment to the officers. He was placed under arrest at that point for OUI-liquor and the officers did inventory the backpack that he identified as his and inside that backpack they found an empty twenty-five ounce can of beer, seven empty Muscato wine coolers, one full wine cooler and two full additional cans of beer, and those were placed into evidence. Those are the facts, Your Honor.
THE COURT: Thank you. Mr. Pineda, are the facts recited by the Commonwealth true?
MR. PINEDA: Yes.
THE COURT: For the record, could you please tell me

Page 115

your name?
MR. PINEDA: Jaime.
THE COURT: And what's your last name?
MR. PINEDA: Jaime Francisco Pineda.
THE COURT: Okay. And how old are you, sir?
MR. PINEDA: Twenty-seven.
THE COURT: How far have you gone in school?
MR. PINEDA: I studied two — two years here and I continue to study for my GED.
THE COURT: Are you suffering from any mental health issues?
MR. PINEDA: No.
THE COURT: Over the past twenty-four hours have you had any drugs, alcohol or medication?
MR. PINEDA: No.
THE COURT: Have you had enough time to speak with your attorney about this case?
MR. PINEDA: Yes.
THE COURT: And are you satisfied with the advice he's given you?
MR. PINEDA: Yes.
THE COURT: And, counsel, have you reviewed the elements of the charges with your client, the maximum penalties, the possible defenses and other choices other

Page 116

than admitting to sufficient facts and potential immigration consequences with your client?
MR. PINEDA: Yes.
THE COURT: Okay. Sir, do you understand that by admitting to these facts today you are giving up several rights?
MR. PINEDA: Yes.
THE COURT: Number one, you're giving up your right to have a trial before a judge or a jury. A jury will be made up of six members of the community you would help to select who would listen to the evidence presented by the Commonwealth and make a determination whether you're guilty or not guilty. Their verdict would be unanimous, meaning all six members of the jury would have to have the same decision. If you were to elect a bench trial, a judge exclusively would make that decision. Do you understand that and do you wish to give up your right to have this case tried before a judge or a jury?
MR. PINEDA: Yes.
THE COURT: You're also giving up your right to be presumed innocent. When you are charged with a crime, you are presumed innocent until and unless the Commonwealth proves you guilty beyond a reasonable doubt. By admitting to these facts today, you are giving up your right to have

Page 117

your attorney contest the evidence presented by the Commonwealth and to raise defenses in your behalf. Do you understand that?
MR. PINEDA: Yes.
THE COURT: Okay. You are also giving up your right to remain silent, and your right not to say anything that can be used against you. When you admit to sufficient facts, you are saying that you committed the crime for which the Commonwealth has alleged. At a trial, you cannot be forced to testify against yourself. By admitting to these facts today, you are giving up that right. Do you understand that? I need —
UNIDENTIFIED MALE: Your Honor, if I could have a moment.
THE COURT: Sure.
UNIDENTIFIED MALE: Your Honor, if — if we could have a brief second call on this.
THE COURT: Of course.
THE CLERK: Further call. They just took — I think he took the interpreter, Judge, for the next case.
THE COURT: Okay.
THE CLERK: I'll just swear the interpreter?
UNIDENTIFIED MALE: (Indiscernible at 12:04 p.m.).
THE CLERK: Okay. Judge, calling the matter of

Page 118

Commonwealth v. Jose Medina Perez, docket 1812CR149. Attorney Bostwick.
THE COURT: Is there an issue of ID?
MS. BOSTWICK: I — Your Honor, I think — I haven't — I've gone through a fair amount of the paperwork.
THE COURT: Do you need further call or —
MS. BOSTWICK: Well, I'm happy to show the Court what I have in terms of — this is for the Pennsylvania warrants, and I just — I think it's — I don't think it's him.
THE COMMONWEALTH: Your Honor, that is the photo that is attached to the warrant from — the warrant is eight years old and it — it — the — his PCF number was a fingerprint hit for the warrant.
THE COURT: I can't tell by the photograph.
MS. BOSTWICK: I guess, Your Honor, if I could have a further call because I am trying to get some information from the lawyer.
THE COURT: Sure. Of course.
MS. BOSTWICK: That they may have verified certain things.
THE COURT: Yes.
MS. BOSTWICK: And I may need a few minutes to do that. But I would just say based on the photo on the

Page 119

Pennsylvania warrant, Your Honor, I don't think it's him.
THE COURT: I mean the — the photograph that you showed certainly shows an individual who is heavier. It's hard to tell from the photograph about the — this is the new one? This is the one that came — no, but this is — this is the recent photograph, right?
MS. BOSTWICK: That's Newton, right?
THE COURT: That's Newton, yes. It's hard to tell the skin tone based on the photograph that you have. It's not a very clear photograph. It does show similar facial hair but I mean the — I — I don't know about height, weight or anything and — and I can't make a determination about the features. What I'll do is I'll give you additional time today to see if we can figure out if he's the same person that Pennsylvania seeks or not.
MS. BOSTWICK: Okay.
THE COURT: Sir, there's a warrant out of Pennsylvania for somebody with your name. It's the Commonwealth's contention that you are the person that Pennsylvania has the warrant for based on a fingerprint. When any person is brought before the Court on what we call a fugitive complaint, you have a right to a hearing to determine if you are the proper person or not. If you are the correct person, my decision is whether to hold you

Page 120

for the warrant and allow Pennsylvania to come and bring you back to Pennsylvania or to release you and allow you to go to Pennsylvania on your own. But the first issue that I have to determine is whether or not you're the same person. So what I'm going to do is allow your attorney a little bit extra time today to make that determination.
MS. BOSTWICK: Okay. I'd also ask the Court, Your Honor, if I could move to get a copy of the triple-I because —
THE COURT: Of course.
MS. BOSTWICK: -- of the triple-I, 'cause it --
THE COURT: Of course, yes. I'm — I'm going to allow counsel to have a copy of the triple-I if we have it.
UNIDENTIFIED FEMALE: We're not supposed to give out copies of the triple-I.
THE COURT: We can make it available for her to see.
UNIDENTIFIED FEMALE: Available to look at.
THE COURT: Yes. I mean we're here in the courthouse anyway so you can certainly see it.
MS. BOSTWICK: Okay.
THE COURT: Okay. Thank you, and could you give it to counsel too if she needs to make a phone call? Not make a copy of it but give it to counsel so she can take

Page 121

it wherever she needs to take it today to get whatever information she needs.
THE CLERK: Yes, Your Honor.
THE COURT: Thank you.
MS. BOSTWICK: -- I mean I've got copies in the past (indiscernible at 12:08 p.m.). I just —
THE COURT: For now — at least for now, you have access to it while we're here today.
MS. BOSTWICK: Okay.
THE COURT: And if we need to — further make that provision, we can do that.
MS. BOSTWICK: I'm (indiscernible at 12:09 p.m.) are not that good.
THE COURT: Okay, thank you. Commonwealth, with respect to the new charge, is there going to be a request?
THE COMMONWEALTH: No.
THE COURT: Okay.
THE COMMONWEALTH: Well, not the drug possession —
THE COURT: The possession —
THE COMMONWEALTH: -- if they are treated separately. I am asking — he's being held without, and if he's not, then I would have a bail request for that part of it.
THE COURT: Okay.
THE CLERK: Okay. So further call?

Page 122

THE COURT: Further call.
THE CLERK: Further call. Do you have one more person down there?
COURT OFFICER: Yes. We've got two more people, two more girls.
THE CLERK: Who's the second one?
COURT OFFICER: Pamela Hodgdon
THE CLERK: And — Cosme.
COURT OFFICER: Crystal Cosme.
THE CLERK: Just Hodgdon is — so, Judge, we have — counsel —
THE COURT: And counsel's ready to proceed with the other matter also.
UNIDENTIFIED MALE: The interpreter — I believe the interpreter just went downstairs.
THE COURT: Okay.
UNIDENTIFIED MALE: No, he's right here.
THE CLERK: Okay. Recalling the matter of Jaime Francisco Pineda, Judge, a tender of plea.
THE COURT: Thank you. So, sir, we recessed this matter for you to have an opportunity to speak with your attorney. Do you wish to proceed with the plea in this matter? You do have the right to withdraw it if you would like.

Page 123

MR. PINEDA THROUGH INTERPRETER FROM THIS POINT FORWARD.
MR. PINEDA: I wish to continue.
THE COURT: Okay. And I think we stopped where I had asked you if you are giving up your right to testify against yourself, and your right to remain silent. Are you giving up your right to remain silent, sir?
MR. PINEDA: Yes.
THE COURT: And before I proceed, do you have any questions for the Court with respect to the rights that you're giving up?
MR. PINEDA: No.
THE COURT: Has anybody forced you, threatened you or promised you anything in return for your admitting to sufficient facts today?
MR. PINEDA: No.
THE COURT: Okay. I am required to advise you that if you're not a citizen of the United States this admission to sufficient facts may result in deportation, exclusion from admission to the United States or denial of naturalization as a citizen, and it's practically inevitable that one or more of those things will happen if this offense is under federal law one that presentively mandates removal from the United States and federal officials decide to seek removal. Do you understand that?

Page 124

MR. PINEDA: Yes.
THE COURT: And do you understand that an admission to sufficient facts by immigration officials will be considered the same as a guilty plea?
MR. PINEDA: Yes.
THE COURT: Okay. Understanding all of the rights that we just went over, do you have — do you need any more time to speak with your attorney?
MR. PINEDA: No.
THE COURT: I do find that there's a factual basis for the plea and that it's made freely, voluntarily and with full knowledge of the consequences. I will accept the tender. I do see that this is a joint recommendation to place you on probation — to continue the matter without a finding for one year. To place you on probation, you would participate in and attend the 24-D program. There'd be a forty-five day loss of license.
INTERPRETER: I'm sorry. What was the date? How many?
UNIDENTIFIED MALE: Forty-five.
THE COURT: Forty-five day loss of license, and the Court would order that you take the half-day Brains at Risk program. With respect to count 2, the agreement is that you'd be found responsible but that matter be placed

Page 125

on file, meaning there'd be no additional fine assessed with the finding of responsibility. I will accept the joint recommendation.
THE CLERK: So, Mr. Pineda, the Court has accepted your admission to sufficient facts with respect to Count 1, operating under the influence of liquor. The Court has continued your matter without a finding of guilt for a period of one year. That one-year end date is March 28, 2019. You must attend and complete the 24-D alcohol education program. There is a forty-five day loss of license. There's a $250 head injury fee, a $250 state OUI fee, a $50 OUI victim assessment, and a $50 victim/witness assessment. There is — there is also a $65 per month probation supervision fee and you must attend and complete the one half day Brains at Risk program, and I'm required to ask you, sir, did you have your last drink at a public establishment or a private residence?
MR. PINEDA: Public.
THE CLERK: And the name of the public establishment?
MR. PINEDA: Gwanachapi's.
THE CLERK: I'm sorry?
MR. PINEDA: Gwanachapi's.
THE CLERK: Gwanachapi's, and where is that located?
MR. PINEDA: In Waltham.

Page 126

THE CLERK: Thank you.
PROBATION: Judge, do you want me to take his license?
THE CLERK: What's that?
PROBATION: His license.
THE CLERK: Oh, do you have your driver's license on you, sir? Oh, the Commonwealth has it. Okay. So, sir, before you leave the courthouse, please go down to probation and sign the conditions of your probation.
THE COURT: Can the interpreter go with him?
THE CLERK: Counsel, will you need the interpreter to follow or no?
INTERPRETER: I'll assist him with that.
THE CLERK: Okay.
THE COURT: Thank you.
THE CLERK: Thank you. Thank you, counsel.
COURT OFFICER: Please shut that off, sir.
THE CLERK: Calling the matter of Pamela L. Hodgdon, 1712CR366. The probation officer, Julie Lawler for probation department, Judge.
MR. HARRINGTON: Good morning, Your Honor.
THE COURT: Good morning.
MR. HARRINGTON: My name is Peter Harrington. I'm here to represent the defendant and —

Page 127

THE COURT: Thank you.
MR. HARRINGTON: -- I apologize for not — for my attire. I was not planning to come to Court this morning.
THE COURT: It's just good to have you here.
MS. LAWLER: I will be moving forward, Your Honor, on a potential request and serving her a surrender and detention notice. I don't know if Counsel's had the opportunity to speak with her yet. I'm ready; I don't know if Counsel is.
THE COURT: Counsel, are you ready to proceed or do you need some time?
MR. HARRINGTON: I would like some time, Your Honor. I haven't had the chance to talk with her.
THE COURT: Okay. Second call.
MR. HARRINGTON: Also, her father is here, and I would like him to join me in a conversation with her if that would be permissible.
UNIDENTIFIED MALE: That's not going to happen.
THE COURT: I don't know that --
MR. HARRINGTON: Why not?
UNIDENTIFIED MALE: Because I'm not allowed to talk to people, just the lawyers.
MR. HARRINGTON: Then Your Honor, I --
THE COURT: I'll give you an opportunity to speak

Page 128

with your client. If there's information from the father that can be relayed to you so that you can relay it to your client, Ms. Hodgdon, you know, that can certainly happen, but we can't allow visits here.
MR. HARRINGTON: I'll reserve my rights on objecting to that, Your Honor.
THE COURT: That's fine.
THE CLERK: Okay? Further call.
THE COURT: Mr. Harrington, just let us know when you're ready.
MR. HARRINGTON: Okay, thank you.
THE CLERK: Calling the matter of Commonwealth v. Cliff Jewett, docket 1712CR710 and Commonwealth v. Chad Larosee, docket 1712CR709, Judge. That is scheduled for a restitution hearing.
THE COURT: Thank you for your patience everybody. I know that you've been here since nine o'clock this morning.
MR. FERRARO: Good afternoon, Judge.
THE COURT: Good afternoon.
MR. FERRARO: James Ferraro for Mr. Jewett.
MR. KELLY: Arthur Kelly on behalf of Mr. Larosee.
THE COURT: Good afternoon. I know, Counsel -- Mr. Kelly, you indicated that there was a legal question with

Page 129

respect to the restitution before having the hearing. Is there something that the Court should consider, or do we need to go through the hearing?

MR. KELLY: Well, I think we need to look over the documents that the Commonwealth has received from the alleged victim -- and I do mean "alleged victim," for the Court to look at that.

I also have some documents that I shared with the Commonwealth which are interesting with regard to the gentleman in question.

But saying all that, I've shared all --

THE COURT: So, was this -- was this -- did this result from a guilty finding after trial or (indiscernible at 12:19 p.m.)?

THE COMMONWEALTH: No, Your Honor.

THE COURT: Okay.

MR. KELLY: It hasn't even been in arraignment yet.

THE COURT: Oh, okay.

MR. KELLY: This was going to proceed by way of pretrial probation. The matter was before Judge Cremmins -- oh, I don't know a week or two ago. Commonwealth moved to amend the felony down to malicious destruction, less if I remember correctly. And I believe the docket reflects the same on both cases, both defendants.

Page 130

THE COMMONWEALTH: Your Honor, it was arraigned on the last date and he -- we were going to -- that was my impression. If it wasn't, I thought it had been, 'cause we amended it.

MR. KELLY: Yeah, I thought it was too, but the Court called me --

THE COURT: I believe that it was -- I mean it indicates on the record that it was arraigned and that it was --

MR. KELLY: Then it's arraigned. That's fine.

THE COURT: -- and it was continued to today for restitution.

MR. KELLY: I know the Court had some issues, as well as arraigned, but I'm happy -- that was our anticipation that it was arraigned. And the agreed upon disposition was going to be pretrial probation for a six-month period. And the Commonwealth reserved its right to proceed today by way of a restitution hearing. Documents of which I provided on behalf of both the defendants here. I know the Commonwealth's had to look at that. And also they had received a packet through their victim witness advocate as to what the -- again, the alleged victim is claiming. And so, that's where we are.

THE COMMONWEALTH: So --

Page 131

THE COURT: So, I'm looking at the police report now, and this is damage to a motor vehicle by means of punching it. Is that -- okay?

THE COMMONWEALTH: So, Your Honor, the -- Mr. Ben Bourassa (phonetic) -- am I saying that right -- is present. He is the complaining witness in this case. He's not the owner of the vehicle, but he's the operator of the vehicle that he rents and was driving pursuant to his work as an Uber driver. And he has provided -- the amount of restitution is disagreed upon. He has previously provided information from the rental place, as well as the -- the -- so the rent that he pays for the car, as well as the damage and the repairs. And my reading, it's about $870 worth of repairs right here, and then an additional $1,000, which I believe was the rental costs. Mr. Ben Bourassa can more clearly separate, but also he has calculated for the Court, and I have shown Counsel, also lost wages due to his profession as an Uber driver as a result of this incident.

THE COURT: Okay. So, what is the amount that's contested? Just so that, you know, let's assuming -- Counsel, I'm just trying to narrow the issue, and maybe there is no agreement here. But is it contested that there -- do you contest the $870 worth of repairs?

Page 132

MR. KELLY: I don't contest the repairs of that amount. The question is whether or not the alleged victim was out any monies whatsoever, whether or not insurance covered it. More importantly, did he have a -- I would say a deduction that he paid?

THE COURT: That -- right.

MR. KELLY: I have no evidence with regard to that at all.

I was first alerted that he was the owner of the vehicle. I provided documentation that would indicate that he's not. He's not even listed as the lessee on the car. But obviously the car was damaged to some appreciable degree. Who the rightful victim is, I'm not so sure its this gentleman. That was my first issue.

THE COURT: But is there -- is there an amount based on the documents that the Commonwealth has provided -- and there might not be, that restitution would be agreed to, so that I know that we're focusing on which is to what the portion is that's not agreed to? Are you suggesting there's no restitution owed on this at all?

MR. KELLY: Well, I think restitution was owed. In fact, it kind of was damaged. It's owned by someone else. So, technically, whether this individual who the check would be made out to or whether or not he paid a

Page 133

deduction, yes, I would agree that the amount listed -- in fact, we made an offer to pay that whole amount. And so, I'm not disputing that.

THE COURT: So, then let's go on. So, what is the amount that your client agrees to pay somebody, whatever that might be?

MR. KELLY: $870 divided by two guys. That's always been the issue.

THE COURT: And was that the acceptable amount to the Commonwealth?

THE COMMONWEALTH: Your Honor, the amount that Mr. Ben Bourassa has presented to the district attorney's office, is $8,700.

THE COURT: Okay. So, I don't believe that the Court can order lost wages. Okay? I mean if there is additional monies sought, there's certainly civil rights that are available. There's small claims, there's civil suits. I mean what this Court can determine is what the actual loss is.

Based on that, what is the amount that the Commonwealth would suggest is the actual loss? Knowing that there may be some other remedies available.

THE COMMONWEALTH: Understood. If I could just have one second?

Page 134

THE COURT: Okay.

(Commonwealth confers.)

THE COMMONWEALTH: So, Your Honor, the $870 is -- there is a copy of the check made out from the victim for that amount right up top; I have two copies of checks. And he's also presented $1,000 check for car rental during the time his car was being fixed. So, that's how it got to the $1,900 on here.

THE COURT: So, that would $1,870, right?

THE COMMONWEALTH: Yeah, $1,870. And I do have -- if Your Honor would like to see just for purposes of who wrote the check, those two?

THE COURT: Sure. And Counsel, I'm not suggesting that we can't have a full hearing on this --

MR. KELLY: Right.

THE COURT: -- but if we don't need to have a hearing 'cause its agreed to, then you know, I can make whatever orders are appropriate by agreement. But you have a right to a full hearing.

Is --

MR. KELLY: I realize that.

THE COURT: So, what I'm looking at here are two checks to a rental car company, one for $1,000 from Mr. Ben Boussa (sic) -- Bourassa, and one for -- it looks like

Page 135

it's $869. I can't --

THE COMMONWEALTH: Yes.

THE COURT: $869, yes. That was a deposit and that was the actual car rental. So, the deposit was $1,000, and the actual car rental was $869, is that correct?

MR. BOURASSA: This is different than last one who covered the damage.

THE COURT: There's two car rental amounts here. Are both of those --

MR. BOURASSA: No, just one. There's one --

THE COMMONWEALTH: One is for the damage repair, and the other is for renting a car while --

THE COURT: Understood, okay.

THE COMMONWEALTH: -- the -- while the car was being repaired.

THE COURT: Understood. Counsel, have you seen this?

MR. KELLY: I have not seen that.

THE COURT: Okay. Let me show this to you.

MR. KELLY: Judge, I'd like to pass up something as well while we're exchanging documents.

This gentleman's had -- this is -- just in the year 2017 -- in the year 2017, he's had one, two, three, four, five, six, seven, eight, nine type of claims against various insurance companies. Just -- I just wanted you to

Page 136

see that. That was a result of an investigation that we conducted, which I've shared with the Commonwealth before that.

THE COMMONWEALTH: Again, the issue I have here is how much, if any, restitution is to be ordered. So, my question after you look at these documents, Counsel, looking at the dates -- I mean other than reading the police report, I don't really know anything about the underlying offense. I understand the Commonwealth and you have agreed to pretrial probation. I'd be inclined to order restitution in the amount of $1,870, if that's agreed to by all the parties. Anything above and beyond that, you know, I would suggest you could be subject to any additional civil action if --

MR. KELLY: I appreciate that. And just before you make that final decision, just check for the Star Car Rental, right? That was how long after the event --

MR. BOURASSA: Over a month, five weeks.

MR. KELLY: Over a month after the event. And so that would be I would think, something that would have happened on the day that you rented the car, not a month or two afterwards. So, that's where my curiosity lies.

THE CLERK: Counsel?

MR. KELLY: Thank you. The day of the incident was

Page 137

10/31/17.
THE COURT: Right, so that's November 1st, and then the rental car payment was --
MR. KELLY: It was in November or December, 12 --
THE COURT: 12/31/17. This is 12/4, so it's just about a month afterwards that the rental car is being paid for.
MR. FERRARO: Judge could you just -- I thought you said you were willing to order $870 or you --
THE COURT: $1,870. The rental car plus the repairs.
MR. KELLY: I guess the only portion they have, Judge, it was -- just some slight damage to a hood of a motor vehicle. The rental, which you have the payment, was that for how long a period of time I think the Commonwealth needs to let us know that. I mean -- or was it -- were they renting the car the whole time? 'Cause I don't know that the car that got repairs, whether he's driving that now or not, or whether or not he just rented a car.
THE COURT: But it doesn't really matter if he's driving it now --
MR. KELLY: It matters --
THE COURT: -- or not.
MR. KELLY: Right. But it matters how long he was

Page 138

without the use of a motor vehicle.
THE COURT: Right.
MR. KELLY: And how long the car --
THE COURT: Was in the body shop for --
MR. KELLY: -- exactly --
THE COURT: -- to repair --
MR. KELLY: -- exactly.
THE COURT: -- the hood.
MR. KELLY: Exactly. I mean, if it was three days as opposed to thirty days, I get that. I got the bill, you know?
THE COURT: Commonwealth, do you know the answer to that?
THE COMMONWEALTH: I don't know the answer to that.
(Commonwealth confers.)
THE COMMONWEALTH: So, Your Honor, Mr. Ben Bourassa reported that it was gone for five days at the $39.95 rate, so that's $200 roughly, a couple of dollars short for the rental. So, I guess what --
THE COURT: Okay.
THE COMMONWEALTH: -- we'd be asking is $1,070.
THE COURT: And then there's usually some extra taxes added onto that. So, --
THE COMMONWEALTH: I think an amount that had

Page 139

previously been discussed was about 11 or $1,200.
MR. KELLY: $1,100 sounds like a good figure.
THE COMMONWEALTH: $1,100, Your Honor, would be --
THE COURT: So, what I would -- assuming this is by agreement, I will order restitution in the amount of $1,100.
And sir, you do have the right to bring further civil action if you wish to, and if there's evidence with respect to other issues regarding the loss. I can't say for sure that there'd be a finding in your favor or not, but this is not the proper forum to determine that. A criminal forum is really to make up the difference as a result of the offense that -- against you.
So, assuming $1,100 is ordered, is that agreed to by your clients?
MR. KELLY: Yes, it is, Judge.
THE COURT: Jointly, severally, liable?
MR. FERRARO: Yes, it is.
MR. KELLY: $550 each today.
THE COURT: And when can they pay that?
MR. KELLY: Today.
THE COURT: Great. So, $1,100 is going to be paid to you today, sir.
MR. BOURASSA: Just -- the copy of the check -- the

Page 140

check on the 12th is not (indiscernible at 12:31 p.m.).
THE COMMONWEALTH: Oh, yeah.
MR. BOURASSA: There is a difference. Just because I take picture --
(Commonwealth confers.)
THE CLERK: You can just step back. Going to be a six-month pretrial probation --
THE COURT: Six-month pretrial probation period. The record reflected on the last date that this was just continued till today, it didn't reflect that pretrial probation was ordered. So, I'm just going to ask probation to update the record, 'cause I believe the pretrial probation should have started on the last day. Is that --
MR. FERRARO: I don't think --
THE COMMONWEALTH: Judge Crimmins didn't want to start it without having the issue of restitution determined. So, --
THE COURT: That's fine. So, the pretrial probation will begin today; restitution to be paid forthwith.
MR. FERRARO: Thank you, Your Honor.
MR. KELLY: We're going to write out the checks to the defendant and they're going to provide it to probation.

Page 141

THE COURT: I will let probation figure out how to make that out.
MR. KELLY: Clerk's office? Okay.
THE CLERK: So, the docket will reflect that there's pretrial probation for both Mr. Larosee and Mr. Jewett for a period of six months. That six-month end date will be Thursday, September 27, 2018. $1,100 restitution to be paid joint and several, and the docket will reflect that you're paying it today, and that will be the end of the matter. No further -- no further probation fees?
THE COURT: No further probation fees.
THE CLERK: No further probation fees.
MR. BOURASSA: And no conditions --
THE COURT: No conditions.
THE CLERK: There's no conditions.
THE COURT: Just stay out of trouble for six months.
THE CLERK: So, they don't need to sign anything?
MR. KELLY: May the fee be waived, since the restitution --
THE COURT: There is -- from pretrial probation, I didn't assess a fee.
MR. KELLY: Okay, thank you.
THE CLERK: So, do you need them to sign anything? So, if you gentleman could go downstairs and go to

Page 142

probation and just sign the conditions of the pretrial probation.
THE COMMONWEALTH: And then they can come back up and pay in the clerk's office, correct?
THE CLERK: Or they can pay --
THE COMMONWEALTH: First?
THE CLERK: First, and then that way --
THE COMMONWEALTH: Go right to the clerk's office.
MR. FERRARO: Mr. Olstein (phonetic), could you just - -
THE CLERK: What's that?
MR. FERRARO: -- could you please confirm that the record reflects that the reduction to the malicious destruction under $250?
THE CLERK: Yes, the docket did --
MR. FERRARO: There's been a lot of confusion on this.
THE CLERK: Yeah, there was a lot of confusion as to that issue, and the docket does reflect that -- do you want me to read it to you, Counsel?
MR. FERRARO: No, you don't have to read it. I just wanted to make sure.
MR. KELLY: I just want to make sure probation has it correct in there.

Page 143

THE CLERK: So, on the last date the case was continued to today for the restitution hearing. At the time of the hearing, the parties will request pretrial probation. At the request of the Commonwealth, and without objection of the defendant, charges amended to MGL Chapter 266, Section 127, malicious destruction of property under $250.
MR. FERRARO: Thank you.
THE COURT: Thank you.
THE CLERK: And that's on both cases.
MR. KELLY: Has the criminal record already been done since the last time they were arraigned? Is there a record? And does it show less -- they were arraigned on less?
THE COMMONWEALTH: Yes, and it's for -- at least Mr. Larosee, it says "under."
MR. KELLY: Yes. Are we good?
THE CLERK: Judge, do you want the payment to go through the clerk's office?
THE COURT: However probation wants to.
THE CLERK: That payment must be made to -- does probation have a position as to whether the restitution's paid directly to the defendant or to the court?
THE COURT: Since the victim -- since the victim is

Page 144

here, can he pay directly to the victim?
THE CLERK: You want it through the court?
MR. KELLY: Let's go through the court.
THE CLERK: Okay, through the court. So, if your clients can make payments to the Newton District Court, for the restitution amount, and then the court will send payment to the alleged victim -- or the victim. Okay? Just make sure we have -- if you could fill out a restitution form?
THE COMMONWEALTH: I just ran out. So, I just need to fill out a new one.
THE CLERK: Okay. If you could provide the Court with one at some point --
THE COMMONWEALTH: Yes.
THE CLERK: -- today?
THE COURT: I'll sign that.
THE CLERK: And then we will send the payment directly to --
THE COURT: Thank you.
MR. BOURASSA: Thank you, Your Honor.
THE COURT: You're welcome. Thank you Mr. Kelly.
THE CLERK: Okay, Judge. So, that's all we have, Judge, for the moment. We have -- just so you know what we have left -- we have Ms. Crystal Cosme downstairs that

Page 145

--
UNIDENTIFIED MALE: She's over there in the dark.
THE CLERK: Attorney Bostwick, have you spoken to Ms. Cosme yet?
MS. BOSTWICK: No, I -- I understood that counsel was looking to withdraw?
THE CLERK: She --
THE COURT: She did withdraw --
THE CLERK: -- did withdraw?
THE COURT: -- and I appointed you in your absence. Sorry.
MS. BOSTWICK: Yes.
THE COURT: Sorry, I guess --
MS. BOSTWICK: That's okay.
THE COURT: -- we didn't tell you that.
MS. BOSTWICK: That's okay.
THE CLERK: It was on for status review today, 'cause she was going to get her own attorney and that didn't happen.
MS. BOSTWICK: Okay.
THE CLERK: You were appointed --
MS. BOSTWICK: Okay.
THE CLERK: I guess the question is, do you want a date for -- for -- I guess the date before this was a

Page 146

final pretrial hearing, Judge.
THE COURT: Yeah, I believe that Counsel was going to leave her discovery packet for you.
MS. BOSTWICK: She did give me a package (indiscernible at 12:36 p.m.) Your Honor.
I guess if I could get a thirty day date. Is that --
THE COURT: Is she being held on this matter?
THE COMMONWEALTH: Yes, Your Honor. There is a 58A hearing on January 29th.
THE COURT: Do you want an oppor -- I mean I know you're just being appointed today. Do you want an opportunity to speak with her to see if this is something that might be able to resolve today? I know you're just being given the discovery packet. Or do you wish to have a date to come back within the time period that she's being held?
THE COMMONWEALTH: Your Honor, I am requesting a further date. This is a case where there is a complaining witness and it is being presented to the grand jury in April.
THE COURT: That's fine, then let's give it a date.
MS. BOSTWICK: Can we have May 1st, Your Honor, if that's a good day?
THE CLERK: That's a Tuesday, Judge.

Page 147

THE COURT: That's fine. Thank you.
THE CLERK: So, ma'am, Ms. Bostwick has been appointed to represent you. Your next date will be May 1, 2018. A habe will issue to get you back here for that date. Okay?
Now, Judge, will that be for further --
THE COURT: For further pretrial.
THE CLERK: Okay, for further pretrial hearing.
THE COURT: And if you can just update the record to show that Ms. Bostwick is --
THE CLERK: Yes.
THE COURT: Thank you.
THE CLERK: And Ms. Bostwick has been appointed to represent you, ma'am, and the record will reflect that, Judge.
And that's just -- Judge, that leaves us with Mr. Perez and Attorney Bostwick, are you still --
MS. BOSTWICK: I just sent a fax.
THE CLERK: Okay, so that just leaves --
THE COURT: Thank you. And Mr. Harrington, are you ready yet or do you need more time?
MR. HARRINGTON: Your Honor, I -- the defendant has some medical issues, and I would like some time to go and talk to her medical people. And I wonder if we could

Page 148

postpone this and bring it back after lunch?
THE COURT: Sure.
MR. HARRINGTON: That's what I would ask the Court.
THE COURT: That's fine. Mr. Harrington's medical call after the lunch break.
THE CLERK: 0Sure. So, that would be 2 p.m.?
MR. HARRINGTON: 2:00 p.m.? Can I come dressed the same way?
THE COURT: Absolutely. Thank you.
THE CLERK: Okay. Thank you, Judge.
THE COMMONWEALTH: Thank you, Your Honor.
MR. HARRINGTON: One more thing, Your Honor. The Commonwealth has the keys to the defendant's house, and I would like to recover those keys so that father can go in, close windows, and do things. I don't know where they'd be.
THE COURT: I'll let you discuss that with the Commonwealth and you know --
MR. HARRINGTON: They're probably over at the police station.
THE COURT: -- I don't know if those keys are being held as evidence or if they're in property. I'll let you discuss that with the Commonwealth then.
MR. HARRINGTON: Okay.

Page 149

THE COMMONWEALTH: I have no idea. It might be in the property --
UNIDENTIFIED MALE: She does have -- property came in from the police department. If we have it --
THE COURT: If its part of her property and you want to bring a motion and it's not -- and there's no objection from the Commonwealth, because those keys are not evidence, then I would allow you to have those keys.
THE COMMONWEALTH: Thank you.
MR. HARRINGTON: Do you want me to bring a motion when I come back?
THE COURT: Well, just find out --
THE COMMONWEALTH: Find out if --
THE COURT: -- if they're -- yeah.
THE COMMONWEALTH: -- its in property first.
THE COURT: Let's find out if there's any -- if it's evidence or if its just property.
MS. BOSTWICK: I will. I think, Your Honor, I have an appointment this afternoon, and I wanted to ask if we could have a -- and I understand that the interpreter has to be somewhere as well. If maybe we could have Mr. Medina's case called at 2:15 or so, that would give me time, and then we're not just waiting.
THE CLERK: At 2:15?

Page 150

MS. BOSTWICK: Somewhere --
THE CLERK: And the interpreter's okay with that too, 2:15?
MS. BOSTWICK: I have a medical appointment at 1:30.
THE COURT: Not a problem.
MS. BOSTWICK: So, I don't know if I'm going to be able to get back at 2:00.
THE COURT: Not a problem.
THE CLERK: That's fine.
THE COURT: We'll hold it. Do you have to be elsewhere today?
MR. HARRINGTON: I have a one o'clock in Needham.
THE COURT: Okay. So you can be back by 2:15, 2:30?
MR. HARRINGTON: Yes.
MS. BOSTWICK: Okay, thank you.
THE CLERK: So, that's it for now, Judge.
THE COURT: Okay, thank you.
(Court recessed at 12:40 p.m.)
(Court reconvened 2:33 p.m.)
THE COURT OFFICER: Court is back in session; please be seated. Phones off.
THE CLERK: Calling the matter of Commonwealth v. Pamela L. Hodgdon, docket 1712CR366, Attorney Harrington on behalf of Ms. Hodgdon, Judge.

Page 151

MR. HARRINGTON: Good afternoon, Your Honor.
THE COURT: Good afternoon. Have you had enough time to speak with Ms. Hodgdon?
MR. HARRINGTON: Yes. Might I ask that Ms. Hodgdon be allowed to come sit at counsel table so that she can assist in her defense?
THE COURT: I believe that probation is asking for a detainer in this matter. Why don't you come and stand with your client here?
MR. HARRINGTON: Okay.
THE COURT: Mr. Harrington, does your client have a problem with hearing? Is she able to hear everything?
MR. HARRINGTON: I don't know. Can you hear?
THE DEFENDANT: Yes.
MR. HARRINGTON: She tells me that she can hear.
THE COURT: Okay, thank you.
THE CLERK: May I proceed, Your Honor?
THE COURT: You may. Were you sworn earlier, Ms. Lawler? I apologize, I don't remember? Thank you.
MS. LAWLER: Good afternoon, Your Honor. Judy Lawler for the Probation Department.
Standing in lockup by her attorney is Pamela Hodgdon on probation out of this court, Your Honor, on docket number 1712 366. She was placed on probation out of this

Page 152

court, Your Honor, on 2/7/2018 until 2/7/2020 for the following terms of probation: substance abuse evaluation and any treatment, alcohol-free with a SCRAM device full-time today, twenty-four (indiscernible at 2:35 p.m.) referral to Mt. Auburn or two year loss of license, and to pay various fines and fees I will submit as evidence assigned conditions of probation.
THE COURT: Thank you.
MS. LAWLER: The surrender notice and detention notice, Your Honor, I'm asking the court officers to serve her as predicated on the following. The allegation is that Ms. Hodgdon failed to remain alcohol-free, tested positive for alcohol on March 31, 2018 with a breathalyzer reading of .032. I would submit as evidence to the Court, the surrender -- the signed surrender and detention notice, Your Honor.
THE COURT: Thank you.
MS. LAWLER: I would also submit as evidence, Your Honor, the breathalyzer reading from SCRAM, which indicates on 3/31/2018 at 12:21 a.m., ELMO received the test results with a positive reading of .032. They faxed a warrant to Newton Police, who verified they had the warrant, and then the Newton Police Department effectuated an arrest, Your Honor. I would submit as evidence the

Page 153

test results.
THE COURT: Thank you.
MS. LAWLER: I would inform the Court, Your Honor, that on 2/27/2018, Ms. Hodgdon was -- 2/28, excuse me, was before the court represented by Attorney Dinjian at that time, Judge Heffernan was presiding. She was also arraigned on a first step surrender on that day, Your Honor. Detention -- probable cause was found, and she was detained. And the predicate for that, Your Honor, was the fact that she failed to remain alcohol-free, and tested positive for alcohol on 2/27/2018, with a .029 reading, and a .04 -- .041 reading.
On 3/7/2018, Your Honor, represented by Attorney Martins, Ms. Hodgdon stipulated to a violation of probation, and she was re-probated, Your Honor, with the same terms and conditions.
I would submit her -- her record, Your Honor, in evidence to your attention. I'm most respectfully requesting her detention. And I'm asking that the Court detain her until a Tuesday, so she could be potentially evaluated for drug court. I have shared this with Ms. Merryfield as well.
THE COURT: Okay, thank you. And so based on what you've just told me, it's your allegation that this is the

Page 154

second violation since she was placed on probation back in February.
MS. LAWLER: Correct.
THE COURT: And as I see on the paperwork, it appears as if I was the one that put you on probation. Yep, okay.
MS. LAWLER: I also, Your Honor, gave a packet of all of the information that I presented to the Court to Attorney Harrington. There was also an incident report, Your Honor, that I had given to Attorney Harrington in the event that he brings it up to the Court. I would submit that to the Court's attention. The police officer doesn't -- she was cooperative and sober while interacting with her, but it doesn't indicate whether or not the officer -- what that means, Your Honor. I don't know what that means. So, I would submit that as evidence.
THE COURT: Thank you.
MS. LAWLER: You're welcome.
THE COURT: Counsel?
MR. HARRINGTON: Well, Your Honor, since it came up last, perhaps I should address it first. If the police officer said she was sober, I assume he's a qualified police officer, who's qualified police officers that I've seen or met in court, clearly able to indicate whether

Page 155

someone is sober or not sober, and I just pass that on for whatever use it may have to the Court.
Your Honor, Pamela Hodgdon has complained to our office. The probation department tells me they have not complain -- she has not complained to them, but to our office, that her breathalyzer that she has at home has malfunctioned on a number of occasions, and she has witnesses to that effect. I have not been able to contact the witnesses to be here today to testify about that.
Ms. Hodgdon suffers from Stills disease, which is a form of rheumatism. And she takes a -- she has to go to the hospital for shots once a month. I called the hospital -- I called the doctor, Dr. Derek Todd (phonetic), at the Faulkner Hospital and confirmed with his office that she has an appointment for this Thursday to get those shots. I understand -- I just received as I came into court, a list of the medications that she takes. The question comes to my mind whether or not these medications may impact or influence this breathalyzer machine that she's using. I see that she takes Abuterol, she takes a Alendrotat (sic), she takes some vitamins, she takes Welbutrin, she takes a calcium -- it's a vitamin, she takes Celebrex, she takes Timovate, she takes Colcrys, she takes Canabalamin (sic), she takes a ferrous sulfate,

Page 156

she takes a sutacasone propenate (sic), she takes flovatate, she takes a neutronium. These are prescribed by a Dr. Kathryn Exaris (phonetic), who is her primary care physician. She also takes --
THE COURT: So, Counsel, with respect to the laundry list of medications that you have recited and the ones that you're continuing to recite, do any of those effect a reading on the SCRAM unit that you're aware of?
MR. HARRINGTON: Your Honor, I'm not qualified to answer that question, and I haven't had sufficient time to submit this to anyone to clarify --
THE COURT: So, you don't have any of that information today?
MR. HARRINGTON: I do not have any of that information today. Although I -- and I say this with the caveat that I'm not sure, but my understanding that this -- Lozarapram is a -- well, maybe not, okay.
THE COURT: And are these medications --
MR. HARRINGTON: I'm not going to say, because I don't --
THE COURT: Are these medications that she takes daily?
MR. HARRINGTON: These are medications she takes daily --

Page 157

THE COURT: And yet the breath -- the SCRAM has only tested positive on two separate days, which are the subject of the violation?
MR. HARRINGTON: Right.
THE COURT: Okay.
MR. HARRINGTON: And the SCRAM has not functioned on other days, Your Honor.
THE COURT: And has she ever reported that to probation?
MR. HARRINGTON: I do not believe so. Did you ever report --
THE DEFENDANT: Yes. Adriane (phonetic) has (indiscernible at 2:42 p.m.).
MR. HARRINGTON: Who?
THE DEFENDANT: Adriane, my --
MR. HARRINGTON: No, did you report it to the court?
THE DEFENDANT: Oh. As far as I know, I went through your office and he went through them. I don't know how it works.
MR. HARRINGTON: Adriane Martin's in Idaho, Your Honor, and can't come to testify today.
THE COURT: I'm sorry. I don't know who Adriane Martin is.
MR. HARRINGTON: He's an attorney, my partner. He

Page 158

is listed as one of the attorneys that represented her, and represented her the last time she was in court. She said she called him and told him about it. I know just from hearing things in the office that she has called about complaints with the --
THE COURT: And has anybody from your office brought that to the probation department's attention?
MR. HARRINGTON: I do not have an answer to that question. So, I don't know.
MS. LAWLER: I don't --
THE COURT: Ms. Lawler, you've been supervising this matter.
MS. LAWLER: Right.
THE COURT: Has anybody --
MS. LAWLER: I don't recall any conversation. I mean Ms. Artian's (phonetic) looking at me like in disbelief, so maybe she has, but I can't recall anything, Your Honor.
THE COURT: Okay. And have you heard directly from Ms. Hodgdon's as to, you know, any issues with respect to the SCRAM unit?
MS. LAWLER: When she -- Ms. Hodgdon came in unannounced on 3/28, she made a payment, she said she's complying with SCRAM. I haven't heard anything otherwise.

Page 159

I don't recall her saying on that day, I had any issues with it, the mechanical piece of it.
THE COURT: Okay.
MS. LAWLER: I mean I certainly could call ELMO to see if she called ELMO to see if there were any issues.
THE COURT: Has your client called ELMO to tell them there's been any issues?
MR. HARRINGTON: We don't know, Your Honor. Is ELMO a man or a company?
MS. LAWLER: It's a phone number that would be in charge --
THE COURT: That's the --
MS. LAWLER: -- of the SCRAM device.
MR. HARRINGTON: She doesn't have any knowledge about that.
THE COURT: I mean they're the ones that administer the SCRAM; that's who puts forward the SCRAM unit.
THE DEFENDANT: They usually call me when there's a problem; they call my phone and they're like re-do it or get in a better light or go to a different room or go outside. It can take upwards of over an hour for one test over and over. Even -- my Q class, I did it in front of her seven times -- her name is Eva, and I did tell you about that. And Wednesday I did tell you that you said,

Page 160

"How's your SCRAM working now?" I said, "Well, it seems to be fine right now." I did tell you.
MS. LAWLER: I don't recall any issues, Your Honor.
THE COURT: Okay.
MS. LAWLER: And I certainly will call them and try to --
THE COURT: On the two positive readings, was there ever an independent blood test taken?
THE DEFENDANT: No.
MR. HARRINGTON: No. She didn't know -- I don't know.
THE DEFENDANT: May I say one more thing?
THE COURT: Well, talk to your lawyer. Don't -- you know.
THE DEFENDANT: To date, the first one, I offered -- they came to my house ten minutes later I offered to do the breathalyzer here, bring my own and do an on-demand test, and be taken to Newton Wellesley for a blood test and no one would do it, no one would help me.
MR. HARRINGTON: So, Your Honor, she would testify -- she would testify that on the first violation she offered to take a breathalyzer here at court, and she was not given the opportunity to take --
THE DEFENDANT: (Indiscernible at 2:45 p.m.) to do

Page 161

it.
MR. HARRINGTON: -- one. She offered to go to Newton Wellesley Hospital for a blood test and she was not -- they told her that wasn't --
THE DEFENDANT: They said it's not the police arresting, it was probation, and technically they're not here, so we can't authorize that. They wouldn't let me test on my own.
THE COURT: So, Ms. Lawler, what --
MS. LAWLER: Yes?
THE COURT: -- what is -- there's been very rare circumstances that I've seen where sometimes the SCRAM units don't work, somebody's location is bad. You know, I noticed you live here in Newton. I'm not familiar with the street where you live, you know, if that's a bad service area. You know, there's been a couple of isolated incidents where the SCRAM unit has malfunctioned, and it's been legitimately malfunctioning.
I don't believe that there's credible evidence that this is a medication induced issues. She takes these medications every day and it's only been a positive reading twice. And I'm familiar with many of the medications that you listed, not all of them, but the ones that I'm familiar with would not have a positive -- false

Page 162

positive reading.
That being said, do we have any SCRAM units here? How long would it take to get another one?
MS. LAWLER: I have to ask Mr. Longo. The SCRAM unit's at her home.
THE COURT: Okay. And if we were to exchange it for another one in case it were malfunctioning -- and I'm not suggesting that I'm going to order that -- when do we have access to another one?
MS. LAWLER: I have to call them and ask them.
THE COURT: Okay. Is that an easy call to make?
MS. LAWLER: Yeah, I mean I have to go downstairs and call him; I don't have the number right here, to whether or not --
MR. HARRINGTON: And we can go --
THE COURT: Are you asking that she be held till tomorrow or a week from tomorrow for evaluation? You said Tuesday, and --
MS. LAWLER: Yes. I don't know if Ms. Merryfield has time to do it. Can you perform an evaluation for drug court tomorrow?
MS. MERRYFIELD: I can do that.
THE COURT: Okay.
MS. LAWLER: To begin the assessment.

Page 163

THE COURT: To begin the assessment. What I'm going to ask is to make a quick call to see if we do have a SCRAM unit that can be swapped out, and then I will -- I will let you know in a bit.
Is there anything else that you want to tell me, Counsel?
MR. HARRINGTON: No.
THE COURT: I'm concerned. We have two OUIs within a very short period of time and two positive readings. It's not -- I mean she was just placed on probation a little -- slightly over a month ago; it's been --
MR. HARRINGTON: It probably is, Your Honor, but I can defer that -- if we're going to come back with a report.
THE COURT: Okay. Let me see it --
MS. LAWLER: (Indiscernible at 2:48 p.m.).
THE COURT: All right, thank you.
MS. LAWLER: You're welcome.
THE CLERK: Further call.
(Not transcribed between 2:48:14 to 2:54:58 as per instructions of transcript order.)
(Court resumed at 3:15 p.m.)
THE COURT OFFICER: Court is in session, please.
THE CLERK: Judge, calling the matter of

Page 164

Commonwealth v. Pamela Hodgdon, 1712CR566.
THE COURT: Thank you, Ms. Lawler.
MS. LAWLER: Good afternoon, Your Honor.
THE COURT: Good afternoon.
MS. LAWLER: I just wanted to also let the Court know, they had the opportunity to call ELMO, and I spoke to one of the representatives about Ms. Hodgdon's case and whether there were any reported ELMO issues, and they said there weren't, if you would.
THE COURT: Okay.
MS. LAWLER: I also brought up the fact that there had been issues where there's been -- between the time of the test -- taking the test actually and the response of the test has been lengthy -- I think that's what I heard -- and they said there hasn't been anything atypical, if you will. Maybe the longest one was seven minutes.
I also had the opportunity to speak to Paul Rowando (phonetic) who is charge of all the devices, Your Honor. And he said that if there were any issues, ELMO would have notified him, basically saying that there would be -- the machine needs to be changed out, basically from malfunctioning.
So, on both sides, there were not any reported, if you will --

Page 165

THE COURT: Issues.
MS. LAWLER: -- okay. And he also indicated that he could be here at eleven o'clock on Thursday, Your Honor, to switch out the devices --
THE COURT: If that's -- if that's --
MS. LAWLER: -- what you order.
THE COURT: -- necessary. Okay. Thank you.
MS. LAWLER: You're welcome.
THE COURT: And one other question, Ms. Lawler?
MS. LAWLER: Yes?
THE COURT: I understand that you've asked for me to detain Ms. Hodgdon, which I am certainly considering.
Given that the evaluation for drug court could start tomorrow, would you object to her being released tonight to report back here tomorrow?
MS. LAWLER: I'm going to stand by my request for detention, Your Honor.
THE COURT: Okay.
MS. LAWLER: And I would leave it up to the Court's discretion.
THE COURT: Okay.
MS. LAWLER: Thank you.
THE COURT: Counsel?
MR. HARRINGTON: I'd just like to address the Stills

Page 166

medication appointment that she has.
THE COURT: Of course.
MR. HARRINGTON: This is an appointment at the Faulkner Hospital with Dr. Derek Todd (phonetic) at his office. She's supposed to be there at nine o'clock, and she stays until two-thirty. She has an IV infusion of medicine that I'm not certain how long it is, but it's up to two hours. And then after that, she then goes to the rheumatologist and meets him or her, and that it is very important for her health that she get this medication.
And it does not appear to be something that can be given at an infirmary at the --
THE COURT: I understand that, but I mean she's not --
MR. HARRINGTON: Okay.
THE COURT: -- supposed to be drinking.
MR. HARRINGTON: No, I understand that, Your Honor. I'm just talking about her -- the physical problems that she has that I have to try and overcome, part of the problem.
And she also has a very low immune system, and is not kept in the general population at the person -- and is kept either confined in a room or someone has to be with her out and about.

Page 167

I was going to suggest to the Court that -- ask the Court to consider releasing her to her father's cognizance, and she'd be back tomorrow, and considering allowing -- if she doesn't go into some sort of facility -- - to allow that to continue so that she can go to the Faulkner on Thursday. And then whatever the Court wants to do after that, we'll have to address.
THE COURT: How often does she get these treatments?
MR. HARRINGTON: Once a month.
THE COURT: And is -- is her father here in court?
MR. HARRINGTON: He is, Your Honor, he stands (indiscernible at 3:19 p.m.).
THE COURT: Good afternoon, sir.
UNIDENTIFIED MALE: Hi.
THE COURT: And Ms. Lawler, how long does the drug court evaluation take? I would assume it's more than a one day evaluation?
MS. LAWLER: Yes. I don't know what they're -- in my experience when I was a drug court PO, it may take a couple of weeks, Your Honor. So, they can, you know, commence with the assessment tomorrow, and then they would meet as a drug court team, providing that Attorney Harrington's here or Attorney Martins is here, or I know Attorney Jellinek's always in drug court and see how we go

Page 168

with that. I don't -- and I haven't done a thorough assessment on her because I haven't had any --
THE COURT: You haven't had a need to, exactly.
All right. This is what I'm going to do. I'm going to reluctantly, release you. I am ordering you back here tomorrow.
What time would you like her here, Ms. Lawler, for the --
MS. LAWLER: May I have second to call Ms. Merryfield?
THE COURT: You may.
MS. LAWLER: Ms. Merryfield will (indiscernible at 3:21 p.m.) 9 a.m.
THE COURT: 9 a.m.?
MS. LAWLER: Uh hm.
THE COURT: That's fine. I'm going to order that you come back to this court at nine o'clock tomorrow morning.
Counsel, is there an issue with the SCRAM unit that doesn't need to be swapped out on Thursday or not?
MR. HARRINGTON: My understanding is --
THE COURT: Why don't you ask your client?
MR. HARRINGTON: Yes, please.
THE COURT: If we could swap out the SCRAM units to

Page 169

make sure that we have a working one at the court's -- if Thursday is not a good day for the court to swap those -- I understand she has a medical appointment -- if we can work out the timing for that, great. If not, the next available date to swap that out -- I want to keep a quick date on this. What date would you like for final surrender? And I don't want to -- I want -- I -- I don't want to go out thirty days, unless you need that long to prepare, 'cause I want to make sure that she's in compliance with the evaluation for drug court.

MS. LAWLER: You know what, Your Honor? I think that we should just put it on for next Tuesday -- keep it on Tuesdays --

THE COURT: Okay.

MS. LAWLER: -- for status, and have it heard in drug court.

My question to the Court is, from now until -- and maybe Thursdays not going to be a good day, because she has the medical appointments --

THE COURT: Right.

MS. LAWLER: So, I'm going to call Mr. Longo back before --

THE COURT: Why don't we bring it in next Tuesday? So, she can start the evaluation tomorrow --

Page 170

MS. LAWLER: Yes.

THE COURT: And then we'll put it on for -- how about probation status next Tuesday?

THE CLERK: Correct, Your Honor.

THE COURT: And then we can swap out the -- the SCRAM unit --

MS. LAWLER: Next week.

THE COURT: -- next week.

MS. LAWLER: But you would like her to continue to go -- to go home today and charge it, and be available for her next test?

THE COURT: Yes. And I'm sure counsel will explain to you if there's a positive reading, a good way to bring positive evidence back to the court is to go and get a blood test. I'm not ordering you do that. But you can walk into the ER and get a blood test, they'll take your ID, they'll make sure its you, and if it's negative, that's evidence that you can bring to the court to show that you're not under the influence.

I'm sure Counsel can explain that to you.

MR. HARRINGTON: If --

THE DEFENDANT: Do you want me to get one (indiscernible at 3:23 p.m.) while I'm at Faulkner?

MR. HARRINGTON: No. I'll tell you (indiscernible

Page 171

at 3:23 p.m.).

THE COURT: What is next Tuesday's date?

THE CLERK: The 10th, Your Honor.

THE COURT: So, I'm ordering that you abstain from the consumption of alcohol, and that you submit to the electric monitoring of the SCRAM unit four times a day, as previously ordered.

THE CLERK: (Whispering: We've got to bring her down so we can give her her stuff back, and then bring her --).

THE COURT: And ma'am, I believe the probation department, I find that the evidence they've given me to be credible. The only reason that I am allowing you to be released is because the police report indicated that you were cooperative and appeared to be sober by the time that they got there. But I'm concerned, okay, I'm very concerned. And I'm super close to having held you today. Okay? So, there's no wiggle room for positive readings on the SCRAM unit, okay?

MS. LAWLER: I think we're all set.

THE CLERK: Oh, I'm sorry. I thought I was (indiscernible at 3:25 p.m.).

THE COURT: No, that's okay.

THE CLERK: I'm sorry. So, Ms. Hodgdon, after

Page 172

hearing, the Court has released you on the condition that you show up tomorrow at the Newton District Court, Probation Department, 9 a.m., to meet with PO Merryfield. This case has been continued till April 10, 2018 for further status on your probation surrender. Okay?

As the Court has again issued an order requiring you to abstain from alcohol use and requiring you to submit to the SCRAM device four times per day as previously ordered.

We'll see you back tomorrow morning. Okay?

MS. LAWLER: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. HARRINGTON: Will that order get transferred to the drug court so they know?

THE COURT: It's being -- the evaluation for drug court will begin tomorrow. There's no decision yet whether or not Ms. Hodgdon is a candidate for drug court, but the evaluation will begin tomorrow.

MR. HARRINGTON: Okay.

MS. LAWLER: Thank you, Your Honor.

MR. HARRINGTON: With respect to the --

THE COURT: Restraining order.

MR. HARRINGTON: Thank you, Judge. So, there are two issues potentially (indiscernible at 3:26 p.m.).

THE COURT: There's a permanent restraining order?

Page 173

MR. HARRINGTON: Yes.
THE COURT: Yeah. So, I'm not inclined to -- tend to hear it.
MR. HARRINGTON: Okay.
THE COURT: Do you want me to put that on the record, or?
MR. HARRINGTON: Yes.
THE COURT: Okay. Thank you.
(Court recessed at 3:27 p.m.)
(Court reconvened at 4:14 p.m.)
THE CLERK: Judge, calling the matter of Commonwealth v. Darkari Jewell, docket 1512CR618. P.O. Merryfield for the probation department, Judge.
THE COURT: Good afternoon.
PROBATION: Good afternoon, Your Honor. Probation's going to request a warrant for Mr. Jewell. I just found out he was arrested in February for charges of assault, home invasion, burglary, and criminal mischief. And we were able to confirm with the Connecticut Department of Correction he's being held on those charges. So, I'd be asking for a warrant.
THE COURT: Is he on probation? He's on probation here?
PROBATION: Correct.

Page 174

THE COURT: For what?
PROBATION: That is --
THE CLERK: Forgery, Judge, checks.
PROBATION: Yeah --
THE COURT: Okay. Warrant's issued.
PROBATION: (Indiscernible at 4:15 p.m.) the larceny. Thank you, Judge.
THE COURT: You're welcome.
THE CLERK: Warrant to issue.

(Court recessed at 4:15 p.m.)

Page 175

CERTIFICATION

I, MARY INDOMENICO, AN APPROVED COURT TRANSCRIBER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE AUDIO RECORDING PROVIDED TO ME BY THE MIDDLESEX COUNTY, NEWTON DISTRICT COURT DEPARTMENT, IN THE PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

I, MARY INDOMENICO, FURTHER CERTIFY THAT THE FOREGOING IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT DIRECTIVE ON TRANSCRIPT FORMAT.

I, MARY INDOMENICO, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

Mary C. Indomenico

November 13, 2019

212 Vineland Avenue, East Longmeadow, MA 01028

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$1,000
131:15 134:6, 23 135:4
$1,070
138:21
$1,100
139:2,3,6,14, 22 141:7
$1,200
139:1
$1,870
134:9,10 136:11 137:10
$1,900
134:8
$100
38:15 68:9
$150
41:6 44:2 68:10,11,16, 21 69:1 98:9
$200
138:18
$250
6:16 7:4,5,6,8 90:7 102:14 125:11 142:14 143:7
$300
13:9,24
$39.95
138:17
$50
80:8 111:12 125:12
$550
139:19
$65
80:9 99:2 111:13 125:13
$8,700
133:13
$869
135:1,3,5
$870
131:14,24 133:7 134:3 137:9
$90
99:2

0

029
153:11
032
152:14,21
04
153:12
041
153:12
0sure
148:6

1

1
4:6 5:5 55:13 125:6 147:3
1/10/19
29:18
10
172:4
10/31/17
137:1
10:00
101:13
10:19
30:24
10:33
39:16
10:34
40:6
10:40
45:13
10:52
55:8
10th
171:3
11
72:11 139:1
11:00
5:13 6:3 28:8 58:20 61:6
11:02
62:19
11:03
63:14
11:07
63:15
11:11
67:20 68:5
11:20
63:3
12
137:4
12/31/17
137:5
12/4
137:5
124-mile
33:15
127
143:6
129
19:23 60:6 62:3
12:04
117:23
12:08
121:6
12:09
121:12
12:19
129:14
12:21
152:20
12:30
72:12
12:31
140:1
12:36
146:5
12:40
150:18
12th
140:1
13(a)
43:18
13th
7:15,17 11:20 12:3,9,11
14
21:20,23 57:5 113:22
1412CR570
14:19 28:17
14th
20:23 21:18, 19 56:22
150
40:8,9
1509CR61
74:1
1512CR618
173:12
1592
33:21 36:9
16
43:17
1612CR638
14:8 80:23
16th
54:18
1712
151:24
1712-710
15:17
1712-722
19:20
1712CR
32:1
1712CR303
67:3
1712CR366
126:19 150:23
1712CR420
25:15
1712CR49
16:10 58:5
1712CR566
164:1
1712CR685
67:16
1712CR709
15:10 128:14
1712CR710
128:13
1712CR711
22:14 100:9
1712CR722
18:20 58:24 61:11
1712CR723
18:20 58:24 61:11
1712CR727
3:5
1712MV648
32:7
1712MV775
28:2 31:5
17th
54:18
1812-26
12:15
1812CR0032
32:3
1812CR12
26:11 46:23 70:5
1812CR124
42:23 112:11, 24
1812CR126
9:4
1812CR129
8:3 58:24 59:18 61:17
1812CR149
118:1
1812CR150
57:4
1812CR17
6:8
1812CR25
10:9 12:18 14:1
1812CR26
10:11 13:9,18
1812CR32
22:3 88:9
1812CR34
17:23 87:5
1812CR57
23:6 62:9 63:19
1812CR58
24:3 63:19
1812CR79
17:4 51:22
1812CR83
20:13
1812RO34
2:16 43:9 45:17
1:30
150:4
1st
137:2 146:22

2

2
8:10 124:23 148:6
2/27
84:14

2/27/2018
83:8 153:4,11
2/28
153:4
2/7/2018
152:1
2/7/2020
152:1
20
40:13
2015
74:2 78:1
2017
33:13 36:2
59:13,14 90:4
101:13 108:23
135:22
2018
5:5 8:8 13:19
14:3 21:20,23
40:11 43:17
52:21 57:5
61:14 66:8
72:12 78:1
86:12 89:20
99:21 113:23
141:7 147:4
152:13 172:4
2019
55:14 85:10,
13 86:12
98:21 111:12
125:9
2026
10:24
20th
11:13,15
21st
101:21
22
52:21 61:14
22nd
52:17 61:4,8,
9,12 102:3
23rd
17:13
24
90:4
24-D
124:16 125:9
24th
90:10,11
25
11:2 13:2
101:13
26
10:11 11:1
12:22 111:12
265
43:18
266
143:6
26th
83:14
27
13:19 14:3
141:7
275
8:10
276
40:13
27th
9:16 12:4,11,
14 17:12,13
28
98:21 125:8
29th
146:9
2:00
148:7 150:7
2:15
149:22,24
150:3,13
2:30
150:13
2:33
150:19
2:35
152:4
2:42
157:13
2:45
160:24
2:48
163:16
2:48:14
163:20
2:54:58
163:20
2nd
18:11 71:2

3

3
99:21
3/28
158:23
3/31/2018
152:20
3/7/2018
153:13
30
40:11
30th
33:12 36:2
86:2,3,10
31
85:10,13
152:13
31st
85:16,21 86:1,
5
34
40:15,17
366
151:24
37
55:22
3:15
163:22
3:19
167:12
3:21
168:13
3:23
170:23 171:1
3:25
171:22
3:26
172:23
3:27
173:9
3rd
69:16,19

4

4/27/18
10:1
4:14
173:10
4:15
174:6,11

5

5
8:8 66:8
5/14
57:13
55
36:6
55-mile
34:3
55-mile-an-
36:19
58A
146:8
5th
64:7,14 65:16,
17,24 66:14

6

62
34:13
63
34:13
65
34:3 36:5,19
65-
33:17

7

722
19:23 59:13
723
19:20,23
59:13
7:45
33:15 36:3

8

80
33:24 36:12,
16
812-129
19:22
83
33:20 36:8,13,
14
85
33:24 34:12
36:12,16

9

9
168:13,14
172:3
90
33:13 36:4
94(c)
40:15,17
9:00
13:19 90:10
9:14
2:2 3:2
9:21
10:14
9:23
12:1
9:28
17:6
9:30
19:18
9:34
24:4,6
9:36
26:22
9:37
28:3
9:38
28:12,19
9:40
90:11
9:49
30:23

A

a.m
3:2 10:14 12:1
17:6 19:18
24:4 26:22
28:3 39:16
40:6 45:13
55:8 63:3
67:20 68:5
a.m.
2:2 5:13 6:3
13:19 24:6
28:9,12,19
30:23,24
33:16 36:3
58:20 61:6
62:19 63:14,

15 72:12
152:20
168:13,14
172:3
abide
56:10,16 57:8,
22
abilities
32:14
ability
3:21 32:11
74:24 82:4
92:7 103:7
abruptly
91:3
absence
145:10
absolutely
35:6 46:18
65:15 148:9
abstain
171:4 172:7
abuse
55:17 57:11
83:6 84:9
152:2
Abuterol
155:20
accept
41:17 47:11
48:18 51:12
77:17 89:9
95:14 97:11
98:5 106:13
110:19 124:12
125:2
acceptable
133:9
accepted
80:1 98:19
111:8 125:4
accepting
105:12
access
121:8 162:9
accurate
3:20 29:3
32:10 48:22
accusations
54:15
acknowledging
79:21
act
94:11
acted
54:12,15 55:7
action
50:16 136:14
139:8
active
55:6
actual
133:19,21
135:4,5
added
77:21 138:23
addicted
109:2
addition
56:16 73:22
additional
8:23 69:2
84:23 86:18
110:17 111:5
114:18 119:14
125:1 131:15
133:16 136:14
address
20:3 30:8
39:19 47:10
88:2,8 154:21
165:24 167:7
administer
159:16
admission
77:3,4 94:19,
23,24 105:22,
23 123:18,19
124:2 125:5
admit
76:13 94:10
105:2 117:7
admitted
17:12 92:18
admitting
75:3 88:20
92:20 93:23
94:3 105:3
116:1,5,23
117:11 123:13
adopt
79:6 85:5
Adriane
157:12,15,20,
22
adult
95:19 96:9
advent
24:20
advice
48:14 92:12
103:12 115:19
advise
48:10 94:22
105:20 123:16
advised
44:7 62:2
advocate
130:21
affect
74:24 82:3
92:6 103:6
affidavit
46:4,12,14
53:8,9,18
54:5,10,18
55:10
affirm
3:19 29:2
32:9,22 45:18
48:21 70:14
81:5 88:13
100:11 113:3
afternoon
113:7 128:19,
20,23 149:19
151:1,2,20
164:3,4
167:13
173:14,15
agent
39:12,13
agree
11:12 57:2
74:6 78:10
83:23 133:1
agreed
51:13 73:11
81:11,12
130:15
132:17,19
134:17
136:10,12
139:14
agreeing
82:9,17 83:17
agreement
51:13 65:12
71:14,19
82:21 84:2
124:23 131:23
134:18 139:5
agrees
133:5
ahead
4:3
alcohol
72:24 73:7
74:23 77:21
78:10 80:6,8
82:3 92:6
103:6 114:5
115:14 125:9
152:13 153:11
171:5 172:7
alcohol-free
152:3,12
153:10
Alendrotat
155:21
alerted
132:9
allegation
57:11 152:11
153:24
allegations
49:12,13
50:24 72:4
alleged
8:7 40:10
43:16 57:7
65:21 76:15
117:9 129:6
130:22 132:2
144:7
allowed
88:7 127:21
151:5
allowing
167:4 171:13
altercations
54:11
amend
59:11,13
129:22
amended
130:4 143:5
amendment
44:12
amount
7:8 91:10
101:19 102:4
118:5 131:10,
20 132:2,15
133:1,2,5,9,
11,20 134:5
136:11 138:24
139:5 144:6
amounts
135:8
and/or
39:18
announce
30:5
anticipation
130:14
anybody's
30:3
apologize
6:1 35:3 43:5
73:21 86:4
127:2 151:19
appeals
27:23
appearance
3:7,14 5:14,21
appeared
101:16 171:15
appearing
31:13
appears
59:1 154:5
application
54:7
appoint
8:21 27:9,19
41:6 44:1,24
87:13,16
appointed
5:19 8:17
17:10,19
145:10,21
146:11 147:3,
13
appointment
41:17 149:19
150:4 155:15
166:1,3 169:3
appointments
109:16 169:19

appreciable
132:13
approach
31:6 90:17
approached
72:22 90:21
approaching
20:15
approximately
33:12,15,23
36:17
April
7:15 9:16
18:11 55:13
71:2 146:20
172:4
area
72:13 161:16
arguments
54:11
Arianna
102:3
arraigned
28:22 41:20
59:21 69:4
83:7 108:1,11
130:1,8,10,14,
15 143:12,13
153:7
arraignment
4:22 8:6,14
10:1 18:23
26:19 43:11,
12 59:18 69:1
129:17
arraignment/di
9:18
arrest
28:6 40:3,4
73:16 102:8
114:14 152:24
arrested
173:17
arresting
161:6
arrive
90:14
arrived
23:23 72:18
Arthur
9:6 62:16
128:22
Artian's
158:16
asks
39:6
assault
43:17 54:22
173:17
assess
8:23 141:21
assessed
99:2 125:1
assessment
99:17 125:12,
13 162:24
163:1 167:21
168:2
assigned
152:7
assist
7:11 48:2
126:13 151:6
assume
44:18 154:22
167:16
assumed
18:9
assuming
44:15 45:6
97:13 131:21
139:4,14
attached
118:12
attempt
96:19
attend
124:16 125:9,
14
attendance
2:6
attends
109:15
attention
76:5 153:18
154:12 158:7
attenuated
71:23
attire
127:3
Attleboro
28:23
attorney
3:6 4:21 7:22,
24 8:21,23 9:5
13:13 18:21
19:4,6 20:13
22:3,15 25:19
26:17,20 27:3,
15 28:8 32:3,6
40:22,24 41:2,
3,7,9,10 42:23
43:23,24 44:2,
24 46:23 47:3
48:1,5,8 49:22
51:23 87:16,
24 88:2,4,6,8,
24 92:10
95:10 97:4
98:9 100:9,21
101:2 103:10
106:8 110:3
113:15 115:17
117:1 118:2
120:5 122:22
124:8 145:3,
18 147:17
150:23 151:22
153:5,13
154:9,10
157:24
167:22,23,24
attorneys
158:1
attorney's
13:23 49:12,
16 99:4,21
113:9 133:12
atypical
164:15
Auburn
152:5
August
101:13,21
102:3 108:2
authorize
161:7
aware
156:8

B

bachelors
81:22
back
6:18 9:14 15:1
17:19 21:23
26:6 30:20
31:1,22,23
50:16 51:24
52:6 59:22
63:8,9 64:14
65:22 70:22
71:2 72:21
85:22 86:9
90:9 99:10
100:17,20
107:13,17
113:10 120:2
140:6 142:3
146:15 147:4
148:1 149:11
150:7,13,20
154:1 163:13
165:15 167:3
168:5,17
169:21 170:14
171:9 172:9
backing
54:13
backpack
114:9,10,15,
16
bad
11:19 161:13,
15
bag
91:6
bail
24:6,9 26:16,
21 27:16,18,
20 42:4 45:6,
10 53:14
57:17 60:4,5
62:5,19
121:22
bailed
102:3
balance
73:5
based
36:24 54:24
55:4,9 96:5
107:17 118:24
119:9,20
132:15 133:20
153:23
basically
164:20,21
basis
57:11 84:24
95:13 106:11
124:10
batterer's
86:7
battery
43:17 54:22
bedroom
101:18,20
beer
114:17,18
beers
114:7
begin
140:20 162:24
163:1 172:15,
17
beginning
34:16,17
behalf
8:16 9:5,7
40:21 43:20
51:23 62:17
94:1 110:4
117:2 128:22
130:19 150:24
behavior
78:2
beige
72:15
belief
48:23
believed
91:7
belonged
102:5
Ben
131:4,16
133:12 134:24
138:16
bench
25:17,18
75:15 93:7
116:15
benedetto
9:18
benefit
15:19 97:10

Bickford
17:4,5 51:22, 23,24 52:1,3, 10,13,15,17, 23
Bickford's
17:7
big
79:9,10,11
bill
138:10
Billerica
64:13
birthday
11:15,16,17
bit
96:6 120:6 163:4
Blain
26:20
bless
29:22
blood
160:8,18 161:3 170:15, 16
bloodshot
73:6 114:3
board
106:18
body
138:4
Bostwick
17:24 18:6,17 23:11 27:3,4, 7,15 40:22 41:2,10,18 42:10,16,18, 21 46:23 47:1, 3,5,10 48:1 49:23 51:5 62:10,12,15 65:9,13 66:3, 4,10,24 87:16, 24 88:2,8 118:2,4,7,16, 20,23 119:7, 16 120:7,11, 21 121:5,9,12 145:3,5,12,14, 16,20,22 146:4,22 147:2,10,13, 17,18 149:18 150:1,4,6,15
bottle
73:8
bottom
78:16 79:19
bound
82:22
Bourassa
131:5,16 133:12 134:24 135:6,10 136:18 138:16 139:24 140:3 141:13 144:20
Boussa
134:24
Brains
124:22 125:15
break
148:5
breakdown
87:14
breaking
106:19
breath
157:1
breathalyzer
152:13,19 155:6,19 160:17,22
bright
96:11,13
bring
49:6 76:5 108:17 120:1 139:7 148:1 149:6,10 160:17 169:23 170:13,18 171:8,9
brings
154:11
briz
90:7
Brockton
108:14 109:4 110:14
Brookline
73:24 74:6
brought
63:3 67:6 119:21 158:6 164:11
brown
89:22 90:3 91:6
Bruce
23:13 24:2 63:19
Brush
101:14
bunch
3:1
burden
75:24 93:20 104:21
burglary
173:18
Burke
33:9,10 35:24 36:2,14,22 37:5,16,20,22 38:16
Butler
60:7
Bye
29:22

C

Cabot
72:13
calcium
155:22
calculated
131:17
Caleb
17:4 51:22 60:7
California
9:11
call
2:21,22 3:1 5:13,16 6:3 8:14 9:2,3 14:9,11 15:3, 6,19 16:4,9, 14,20,22,23 17:2,3,17,20, 22 18:12,15 19:5,6 20:4,11 21:13 22:10, 13 23:2,5,10, 18 24:16 26:7 27:12,14,16, 18,22 28:9 30:2,4,18 31:23 32:4,5,6 42:2,17,19 43:2,5 46:16, 17,20 50:14 51:17,19,21, 24 63:22 88:2, 3,8 91:1,2 117:17,19 118:6,17 119:22 120:23 121:24 122:1, 2 127:14 128:8 148:5 159:4,18,19 160:5 162:10, 11,13 163:2, 19 164:6 168:9 169:21
called
2:1 14:8 15:6, 20 30:4 32:1 47:20 63:18 130:6 149:22 155:12,13 158:3,4 159:5, 6
calling
3:4 5:10 8:2 10:8 14:7,18 15:9 16:9 17:3,22 18:19 20:11 22:2,13 23:5 26:10 28:1 31:4,24 32:2,7 40:1 42:22 43:8 45:15 46:22 51:21 58:4,22 62:8 67:2,15 87:2,4 88:8 93:21 100:8 112:10 117:24 126:18 128:12 150:22 163:24 173:11
Canabalamin
155:24
Canastuj
6:7
candidate
107:6 172:16
cans
114:18
can't
26:5 35:13 94:15 118:15 119:12 128:4 134:14 135:1 139:9 157:21 158:17 161:7
car
36:11,17 37:9, 13,17,21,22 38:1 131:13 132:12 134:6, 7,23 135:4,5, 8,12,14 136:16,21 137:3,6,10,16, 17,19 138:3
Caramanica
3:6,9,10,13,17 4:4,11,14,17, 23 5:3,9
card
7:12 24:21
care
96:17 156:4
Carney
17:13
Carolyn
101:15
case
6:14,23 8:11, 13 9:10 10:21 13:6 14:3,13 16:18 24:18 25:10,18,20 26:3,8 28:8 46:17,24 47:2 50:12 51:1 56:19 57:16, 17 62:4 63:2 65:20 67:10 69:3 71:21 83:18 87:8 92:10 93:15 95:21 96:1,4 97:12 103:10 104:24 107:11 115:17 116:18 117:20 131:6

143:1 146:18 149:22 162:7 164:7 172:4
cases 8:19 9:1 10:9 15:19 19:4 25:17 66:7 129:24 143:10
cash 7:12
Castillo 5:4 32:1
caveat 156:16
Celebrex 155:23
cell 2:12 63:17 90:18 91:1
center 73:9 83:7 110:14
certificate 91:13
certified 73:24
Chad 15:10 128:13
chance 22:22 26:4 127:13
chances 107:5
change 50:4,20 51:12
changed 164:21
Chapter 8:10 40:13,15, 17 43:18 143:6
charge 42:2 92:16 95:22 96:5 121:15 159:11 164:18 170:10
charged 48:5 57:15 62:3 93:18 94:12 104:19 116:21
charges 42:6 54:6 58:11 103:16 106:21 115:23 143:5 173:17, 20
check 7:12 14:16 64:24 66:15 132:23 134:4, 6,12 136:16 139:24 140:1
checked 37:17 58:7
checks 134:5,23 140:22 174:3
Chen 32:18
Chevy 33:16
choices 50:10 92:17 103:17 115:24
choosing 95:20
circumstances 10:19 49:7 50:7 161:12
cited 34:3 91:16 102:16
citizen 77:3,5 94:23 95:1 105:21, 24 123:17,20
city 33:14
civil 56:3 133:16, 17 136:14 139:7
claiming 130:22
claims 133:17 135:23
clarify 156:11
clarifying 20:8
class 40:14,16 41:20,21 91:9, 14 95:23 159:22
clean 71:16
clear 91:1 119:10
cleared 98:12
clerk 2:11,14,20,22, 24 3:4,15,18, 23 4:3,9 5:4, 10,18 6:1,3,6, 11 7:3,6,18, 20,23 8:1,6,24 9:3,9 10:1,5,8 11:24 12:3,7, 15,17 13:8,11, 17,22 14:7,18 15:6,9,14,17 16:4,9,14 17:3,22 18:2, 4,10,14,19 19:13,15,18, 20,22 20:3,6, 8,11 21:2,13, 19 22:2,13,20 23:5,15,18,23 24:2,9,11,14, 16 25:9,14,24 26:7,10,15,20 27:3,14,17,20, 22 28:1,5,13, 15 29:2,6,11, 15 30:1,6,20 31:4,9,13,18, 22 32:5,13,16, 19 33:1 38:18 39:5,8,11,15, 22 40:1,10,22 41:2,10 42:19, 22 43:3,5,8,15 45:6,12,15,23 46:7,9,20,22 47:2 48:20 49:1 51:21 52:12,14,16, 18,20,24 53:4 55:13 57:3,14, 22 58:4,19,22 59:17,20 61:10,14,17, 21 62:1,8,14, 18,22 63:1,6, 8,12,16,18 64:13,21,23 66:7,12,17,19, 21,23 67:2,15, 22,24 68:5 69:13,16 70:4, 12,18 78:19, 23 79:10,13, 24 80:15,17, 22 81:2,5 85:7,13,16,19 86:1,4,13,22, 24 87:2,4,24 88:6,12,17 98:18 99:7,16, 20 100:4,8,14 108:3,12,15, 17 111:8 112:5,10,16, 18,22,24 113:6 117:19, 22,24 121:3, 24 122:2,6,8, 10,18 125:4, 19,21,23 126:1,4,6,11, 14,16,18 128:8,12 136:23 140:6 141:4,12,15, 17,23 142:5,7, 11,15,18 143:1,10,18, 21 144:2,4,12, 15,17,22 145:3,7,9,17, 21,23 146:24 147:2,8,11,13, 19 148:6,10 149:24 150:2, 9,16,22 151:17 163:19,24 170:4 171:3,8, 21,24 173:11 174:3,9
clerk's 7:9,10 23:18 26:8 52:8 60:6,19 141:3 142:4,8 143:19
client 52:22 81:15 96:7 109:17 115:23 116:2 128:1,3 133:5 151:9,11 159:6 168:22
clients 139:15 144:5
Cliff 15:15 128:13
close 107:11 148:15 171:17
closeness 77:23 78:3
co-defendant 15:11,12,14 23:11 24:2 62:11,12,14
co-defendants 65:20
cognizance 167:3
Colcrys 155:23
College 47:18 74:15
color 60:21 70:21
column 78:17,23
commence 167:21
comments 107:23
commit 8:8,9 43:17
committed 76:14 94:11 106:16 107:8, 10 109:3,11, 22 110:8 117:8
common 90:22
commonwealth 2:7,10 3:4,12 4:21,24 5:10, 12,17 6:2,7,15 7:4,7 8:2,13

9:4,20 10:8,24 11:7 12:23 14:7,18 15:9, 14 16:1,7,10 17:4,23 18:19, 22 19:3 20:8, 10,12,17 22:2, 4,7,14,17,23 23:6,13 25:14, 16,23 26:5,11 28:16 31:24 40:2 41:12,14, 22 42:1,12,22 43:2,13 45:10, 11 46:22 49:18,20,22 50:2 51:1,22 52:7,9 53:13, 15 56:7,9,14, 21,23 57:2,10, 12 58:4,23 59:10,12,23 60:1,3,5,17 62:8 65:19 67:2,15,22 68:1,3,22,23 70:4 71:5,21 72:5,8,9,10 73:18,21,23 74:5 75:9 76:15 77:15, 17,19 80:17, 22 87:4 88:9 89:4,13,16,17, 18 91:12,17 93:2,21 94:2, 12 95:15,17 96:2,8 100:8, 24 101:8,10, 11 102:17 104:3 105:5, 12 106:14,15 107:22 109:24 110:22 111:1 112:10 113:18,19,20, 21 114:22 116:12,22 117:2,9 118:1, 11 121:14,16, 18,20 126:7 128:12,13 129:5,9,15,21 130:1,17,24 131:4 132:16 133:10,11,21, 23 134:2,3,10 135:2,11,14 136:2,4,9 137:15 138:12,14,15, 16,21,24 139:3 140:2,5, 16 142:3,6,8 143:4,15 144:10,14 146:8,17 148:11,13,18, 23 149:1,7,9, 13,15 150:22 164:1 173:12

Commonwealth's
12:24 71:14, 20 75:23 78:8 79:21 93:19 97:3,16 104:21 119:19 130:20

community
75:8 93:1 104:1 116:10

companies
135:24

company
134:23 159:9

complain
155:5

complainant
43:16

complained
155:3,5

complaining
11:7,9 60:8 131:6 146:18

complaint
4:16 30:9 60:6 70:13 119:22

complaints
14:14 59:13 158:5

complete
12:21 54:12 83:16,21 84:4 85:20 86:7,16 98:23 107:7 125:9,14

completed
84:12

completes
84:21

completing
84:6

compliance
11:14 12:20 13:3,4 14:1 20:21 21:21 28:21 60:24 61:15 66:9,12 84:7 86:8 169:10

comply
97:14

complying
158:24

computer
64:13 66:17

concern
60:19

concerned
163:8 171:16, 17

condition
56:18 77:21 84:9,12 172:1

conditions
5:6 13:22 14:2 21:21 53:15 57:6 62:1 66:13 78:5 80:13 86:8,21 97:14 100:5 112:7 126:9 141:13,14,15 142:1 152:7 153:16

conduct
96:12 106:19 109:9

conducted
114:11 136:2

conference
3:7 5:6 6:12 10:10,12 11:22 12:18 20:14 21:3,4 49:4 57:5 61:19,21

confers
134:2 138:15 140:5

confidential
89:21,23

confined
166:23

confirm
142:12 173:19

confirmed
155:14

confusion
142:16,18

Connecticut
173:19

consequences
85:3 95:14 106:12 116:2 124:12

consideration
81:13

considered
124:4

console
73:9

consumption
171:5

contact
55:18 56:10, 15,20 57:7,21 60:7 84:13,16, 18 90:1,5 107:12 155:8

contacted
23:7

contained
55:9

contention
119:19

contest
26:18 50:6 76:3 79:22 94:1 105:2 117:1 131:24 132:1

contested
131:21,23

contesting
50:24 51:3

context
49:6 50:8

continuance
83:20 85:8

continuation
74:2

continue
29:9,14 35:8 52:21 97:5,12 109:18 110:12 111:17 115:9 123:2 124:14 167:5 170:9

continued
5:5 21:20 26:1 29:16,17 57:4 61:12,14,18 66:8 83:8 87:9 98:19 111:17 125:7 130:11 140:10 143:2 172:4

continuing
156:7

conversation
127:16 158:15

convicted
96:23

conviction
73:24

cooler
114:18

coolers
114:17

cooperative
154:13 171:15

copier
60:22

copies
120:16 121:5 134:5

copy
52:7 67:7,9 120:8,13,24 134:4 139:24

corner
91:6

correct
47:9 56:23 81:14 85:11 119:24 135:5 142:4,24 154:3 170:4 173:24

correction
80:3 101:1,3
111:10 173:20
correctly
129:23
Cosme
17:23 87:3,5,
9,12 122:8,9
144:24 145:4
costs
6:16 29:9 68:9
69:1 99:5
131:16
counsel
3:6 4:3 5:1,12,
19,23 6:9,13,
22 7:1,5,14
10:2 12:9 13:1
26:16,24 27:1,
5,8,10 41:5,
16,17 42:8,15
43:1 44:1,4,6
47:4,6,8,12,20
48:15 52:7,21
58:14 59:1,15
60:13,23
61:12,22
65:24 66:15
85:4 86:22,24
87:10,13,19
92:15 96:6
98:6 103:15
107:19 110:22
115:22
120:13,23,24
122:11
126:11,16
127:9,10
128:23
131:18,22
134:13 135:16
136:6,23
142:20 145:5
146:2 151:5
154:19 156:5
163:6 165:23
168:19
170:12,20
counseling
108:8
counsel's
10:11 106:16
122:12 127:7
count
80:7,10
108:24 124:23
125:5
County
107:3
couple
4:17 47:12
58:11 78:5
81:16 108:4,5,
7 138:18
161:16 167:20
court
2:1,3,5,7,8,9,
12,19,21 3:3,
8,11 4:2,4,7,
10,13,15,20
5:2,15,16,22,
24 6:10,16,20,
23 7:2,19,22,
24 8:4,11,15,
19,21 9:2,8,
12,15,17,21,
24 10:7,15,20
11:1,18 12:2,
5,8,13,16,21
13:2,5,10,13
14:5,9,11,13,
17,23 15:5,7,
22,24 16:3,5,
8,15,17,20,23
17:2,7,9,11,
16,20 18:3,9,
12,15,18 19:6,
11,14,17,19,
21,23 20:2,5,
7,17,21 21:1,
4,7,10,12,16
22:1,11 23:2,
4,7,10,17,20,
21 24:1,15,20,
23 25:2,6,11,
13,22 26:3,9,
14,17,19,23
27:2,5,8,16,
18,21,24 28:4,
10 29:9,10,20,
24 30:3,8,11,
12,15,17,21,
22,23,24 31:1,
7,11,13,17,20
32:4 33:2,8
34:5,14,17,19,
23 35:3,11,13,
17,22 36:1,21,
23 37:10 38:3,
6,12,17,18,24
39:3,13,21,23
40:8,12,20,24
41:3,9,12,16,
19 42:8,11,14,
17,20 43:4,12,
19,22 44:5,10,
23 45:3,8,14,
24 46:3,11,14,
19,21 47:4,10,
11,15,17,19,
22,24 48:2,4,
8,11,13,17,22
49:2,8,11,15,
19,21 50:1,4,
10,12,17,19,
23 51:4,8,11,
16,20 52:2,6,
19 53:3,6,13,
16,23 54:2,17,
24 55:9,15
56:3,12,24
57:10,19,24
58:2,9,11,12,
14,18 59:1,5,
10,15,19,21,
24 60:3,13,15,
24 61:3,5,23
62:21,24 63:4,
7,9,14,15,17,
21,24 64:1,4,
8,11 65:1,3,6,
8,11,14,17
66:1,6,11,22
67:6,8,10,12,
14,19,21 68:1,
6,9,11,22
69:1,8,12,15,
18,21 70:1,3,
6,10,19 71:1,
5,18,24 72:3,8
73:17,20 74:1,
4,6,9,12,14,
16,19,22 75:2,
6,14,19,22
76:4,8,11,19,
22 77:2,12,15
78:7,13,15,22
79:1,3,5,6,9,
11,12,15,17,
19,20 80:1,16,
18,20 81:6,10,
13,15,19,21,
23 82:2,6,9,
13,16,20 83:2,
11,13,19,23
84:2,6,11,17,
19,22 85:15,
18,20,22 86:3,
6,9,12,15,18
87:7,13,15,18,
21,23 88:3,11,
18,23 89:3,7,
12,16 91:16,
19,22,24 92:2,
5,9,12,15,20,
23 93:7,11,14,
17 94:6,8,18,
22 95:8,12
96:6 97:2
98:5,9,14,18,
21 99:12,14,
17,23 100:3,7,
15,19,23
101:7 102:16,
19,22,24
103:2,5,9,12,
15,20,23
104:7,11,16,
19 105:8,16,
20 106:6,10
107:3,19,24
108:4,11,21
109:8,23
110:17,21
111:4,8,9,14,
15,23 112:1,4,
9,17 113:7,14,
17 114:21,24
115:3,5,7,10,
13,16,19,22
116:4,8,20
117:5,15,18,
21 118:3,6,7,
15,19,22
119:2,8,17,21
120:7,10,12,
17,19,22
121:4,7,10,14,
17,19,23
122:1,4,7,9,
12,16,20
123:3,8,9,12,
16 124:2,6,10,
21,22 125:4,6
126:10,15,17,
22 127:1,3,4,
10,14,19,24
128:7,9,16,20,
23 129:2,7,12,
16,18 130:5,7,
11,13 131:1,
17,20 132:6,
15 133:4,9,14,
18 134:1,9,13,
16,22 135:3,8,
13,16,18
137:2,5,10,20,
23 138:2,4,6,
8,12,20,22
139:4,17,20,
22 140:8,19
141:1,11,14,
16,20 143:9,
20,23,24
144:2,3,4,5,6,
12,16,19,21
145:8,10,13,
15 146:2,7,10,
21 147:1,7,9,
12,20 148:2,3,
4,9,17,21
149:5,12,14,
16 150:5,8,10,
13,17,18,19,
20 151:2,7,11,
16,18,23
152:1,8,10,14,
17 153:2,3,5,
19,21,23
154:4,8,11,17,
19,24 155:2,
17 156:5,12,
18,21 157:1,5,
8,16,22 158:2,
6,11,14,19
159:3,6,12,16
160:4,7,13,22
161:9,11
162:6,11,16,
21,23 163:1,8,
15,17,22,23
164:2,4,5,10
165:1,5,7,9,
11,13,18,21,
23 166:2,13,

16 167:1,2,6, 8,10,13,15,16, 19,22,24 168:3,11,14, 16,17,22,24 169:2,10,14, 16,17,20,23 170:2,5,8,12, 14,18 171:2,4, 11,23 172:1,2, 6,11,13,14,15, 16,21,24 173:2,5,8,9, 10,14,22 174:1,5,8,11
court-appointed 41:5 44:1
courthouse 80:12 120:19 126:8
courtroom 7:9 15:8 41:11
Courts 64:10 107:2
court's 63:12,16 76:5 154:12 165:19 169:1
covered 6:19 132:4 135:7
crash 113:24
credible 161:19 171:13
credit 7:12
Cremmins 129:20
crime 8:9 93:18 96:23 104:20 116:21 117:8
criminal 44:11,15,17 48:6 54:4 56:4,19 57:15 62:4 97:6,13 139:12 143:11 173:18
Crimmins 140:16
Crisis 83:6
cross 76:2 93:24 105:1
cruiser 33:22
Crystal 17:23 23:6 62:9 63:18 87:3,5 122:9 144:24
curiosity 136:22
custody 17:24 23:21
cut 97:12
CWOF 85:8

D

daily 156:22,24
damage 131:2,13 135:7,11 137:12
damaged 132:12,22
dangerous 95:24 97:9
Danieliz 25:14
dark 145:2
Darkari 173:12
date 4:5,7,12 5:7 10:5,6,13 12:20 13:3,4, 15,23,24 14:2 17:5 20:20,23 21:1,15,18,22 26:3 29:9,14, 17 34:11 35:9, 14 42:5 50:17 52:5,6,22 55:12,13 56:20 60:18 61:1,7,18,24 64:6 65:22,24 66:1 69:11 85:15 90:10 98:6,21 99:20 108:2 110:22 111:2,11 124:18 125:8 130:2 140:9 141:6 143:1 145:24 146:6, 15,18,21 147:3,5 160:15 169:5, 6 171:2
dated 17:11,13 71:2
dates 136:7
daughter 101:22 102:3
David 33:10
day 11:10,18 12:10 13:5 21:16 22:5 24:21 31:18 37:14 38:16 50:16 57:1 64:14 69:19 102:2 124:17, 21 125:10,15 136:21,24 140:13 146:6, 23 153:7 159:1 161:21 167:17 169:2, 18 171:6 172:8
days 39:17 57:17 62:5 80:4 101:21 138:9, 10,17 157:2,7 169:8
deadly 95:24
Dececca 8:2 18:23 19:10,12,24 20:1,2 58:24 59:6,8,9,14 62:2,7
December 137:4
decide 77:9 82:23 95:5 106:3 123:24
decision 75:17 93:8 104:9 116:15, 16 119:24 136:16 172:15
Dedham 58:11
deduction 132:5 133:1
deemed 98:24
default 16:20 58:12, 19 67:16,24
Defaulted 22:4
defendant 3:10 34:16 72:20 79:13 80:24 90:23 101:23 113:24 126:24 140:23 143:5,23 147:22 151:14 157:12,15,17 159:18 160:9, 12,15,24 161:5 170:22
defendants 129:24 130:19
defendant's 5:19,23 6:9, 13,22 7:1,5,14 148:13
defense 4:24 5:8 76:1 151:6
defenses 92:17 103:16 115:24 117:2
defer 163:13
degree 132:13
Delossantos 28:2 31:5,16, 19,21
Demelo 23:13,20 24:2, 19 25:10 62:15,17 63:19 64:6,15, 17 65:2 66:7, 14 67:1
Demelo's 23:21 62:16, 19
denial 77:5 95:1 105:23 123:19
denying 84:15
department 8:7 22:21 40:11 41:5 51:14 54:20 56:6 80:20 81:9 98:2 99:1,24 111:16 126:20 149:4 151:21 152:23 155:4 171:12 172:3 173:13,19
department's 158:7
depending 13:6
deportation 77:4 94:24 105:22 123:18
deposit 135:3,4
Derek 155:13 166:4
describes 54:17
desk 63:10
destruction 129:22 142:14 143:6
detain 153:20 165:12
detained 153:9
detainer 151:8

detect
114:4
detective
90:12 91:11
detectives
89:20,24 90:4, 19 107:12
detective's
91:4
detention
127:7 152:9, 15 153:8,19 165:17
deter
109:9
determination
75:10 93:3,8 116:12 119:12 120:6
determine
27:10 119:23 120:4 133:18 139:11
determined
37:12 140:18
device
33:20 36:7,8, 15 37:12 152:3 159:13 172:8
devices
164:18 165:4
Diaz
84:13,19
didn't
13:16 22:6 25:9,20 34:12, 22 35:1 37:14 38:5 40:19 98:11 99:4 111:1 140:10, 16 141:21 145:15,18 160:10
difference
59:3 109:2 139:12 140:3
difficult
87:11 114:8
difficulty
73:4
Dinjian
153:5
directly
55:19,21 63:1 143:23 144:1, 18 158:19
disabled
96:17
disagreed
131:10
disarray
101:18
disbelief
158:17
discover
101:21
discovered
73:8
discovery
12:24 13:1 50:14 61:24 65:20 87:18 146:3,14
discovery's
12:21
discretion
34:2 165:20
discuss
25:1 47:24 50:7 100:20 113:14 148:17,23
discussed
139:1
disease
155:10
dismiss
6:16
dismissed
6:23 7:7,13 68:9,24 69:4 97:8
disposition
6:14 22:16 51:13 77:18, 20 82:21 89:10 95:16 97:11 106:14 113:15 130:15
disputing
133:3
distance
33:21 36:9,16
distribute
95:23
district
2:5 49:12,16 58:11 73:24 74:6 107:2 111:15 113:9 133:12 144:5 172:2
divided
133:7
Dmitry
22:14 100:9 101:24 102:21
dock
62:16
docket
2:16 3:5 6:7 7:16 8:3 9:4 10:9 12:15 13:24 14:8,19 15:10,17 16:10 17:4,23 18:20 19:20 20:12 22:14 23:6 25:15 26:11 28:16 31:5 32:1,3,7 42:23 46:23 51:22 57:4 58:5,24 59:18 61:10,11 62:3, 9 67:16 68:23 70:4 73:20 74:1 80:23 86:13 87:5 88:9 100:9 112:11,24 118:1 128:13, 14 129:23 141:4,8 142:15,19 150:23 151:23 173:12
dockets
61:17
doctor
155:13
documentation
106:23 132:10
documents
129:5,8 130:18 132:16 135:20 136:6
doesn't
12:5 27:8 109:19 112:20 137:20 154:12,14 159:14 167:4 168:20
dollars
34:4 98:16 99:8,22 138:18
domestic
54:22
don't
5:18 7:20 9:1 11:1,10,16,18 17:16,24 18:4, 5 25:3,19,21, 23,24 26:24 27:16 28:13 39:3 40:4 44:17 62:12 63:2 64:19,21, 23 66:4,19,20 68:3 69:21 71:12 78:12 79:7 88:3 97:2,14 99:11, 24 108:8 118:9 119:1, 11 127:7,8,19 129:21 132:1 133:14 134:16 136:8 137:17 138:14 140:15 141:17 142:21 148:15,21 150:6 151:8, 13,19 154:15 156:12,20 157:18,22 158:9,10,15 159:1,8 160:3, 10,13 161:13, 19 162:13,19 167:18 168:1, 22 169:7,23
door
73:5 90:22
Dore
20:12,15
doubt
75:24 93:21 104:12,22 105:6 116:23
downstairs
58:3 80:22 86:20 88:1 90:20 112:6 122:15 141:24 144:24 162:12
drawers
101:18
dressed
148:7
drink
73:3,10 125:16
drinking
166:16
drive
34:12 38:9 72:21
driver
6:17 131:9,19
driver's
126:6
driving
34:13 37:3,24 72:15,16 114:1 131:8 137:18,21
drove
36:10,11 108:11,19
drug
24:20 40:14 63:23 65:3 91:12 99:17 106:22,23 110:2 121:18 153:21 162:20 165:13 167:15,19,22, 24 169:10,16 172:13,14,16
drugs
74:23 82:3 92:6 103:6 109:2 110:13 111:19 115:14
due
72:22 131:18

DUI
42:2
duty
27:2 40:22
41:9 55:6

E

earlier
65:4 151:18
early
85:23 86:7,14,
15 95:21
Eastside
72:13
easy
162:11
Eddy
6:7
education
125:10
effect
84:16 155:8
156:7
effectuated
152:23
eighteen
110:5,10,11
111:11
eighteen-month
111:11
elect
93:7 116:15
election
11:14 12:20
14:1 21:21
61:15 66:9,12
electric
171:6
electronic
4:18
elements
92:15 103:15
115:23
eleven
28:10 43:2,4
165:3
Elizabeth
27:3
Elliot
90:13,15
ELMO
152:20 159:4,
5,6,8 164:6,8,
19
email
60:23
emanate
10:18
Emily
67:3
employment
68:18 96:24
empty
114:16,17
end
29:9,14,17
30:1 83:21
85:16 98:21
111:11 125:8
141:6,9
engaged
83:10 106:23
enter
8:15 40:20
43:19 95:18
entered
90:22
enterings
106:20
entertain
50:23
entrenched
96:15
entries
108:23,24
entry
95:19
ER
170:16
Eric
4:1
erratic
72:15
establishment
125:17,19
estimated
33:17
Eva
159:23
evaluated
63:23 153:21
evaluation
25:4 84:10,12
97:21,23
98:22 152:2
162:17,20
165:13
167:16,17
169:10,24
172:14,17
event
136:17,19
154:11
evidence
75:9 76:3
93:2,22 94:1,2
104:2,23,24
105:2 114:19
116:11 117:1
132:7 139:8
148:22 149:8,
17 152:6,14,
18,24 153:18
154:16 161:19
170:14,18
171:12
examine
76:2 93:24
105:1
Exaris
156:3
exceed
82:23 89:7
excelling
109:15
excess
33:17 36:19
exchange
76:23 82:17
94:19 162:6
exchanging
135:20
exclusion
77:4 94:24
105:22 123:19
exclusively
116:16
excuse
3:15 36:24
66:2 153:4
execute
49:20
existing
29:14
exit
90:16
expect
15:21
experience
48:9 97:6
167:19
expert
67:5
explain
170:12,20
extend
55:11
extended
83:21 84:3,15
85:10
extending
55:15
extension
68:20
extenuating
99:5
extra
120:6 138:22
extradite
42:3
eyes
73:6 114:3

F

facial
119:10
facility
167:4
fact
83:5 95:20,24
132:22 133:2
153:10 164:11
facts
50:24 71:21
72:11 73:17
74:4,7 75:3
76:13 88:20
89:13,19
91:14,16
92:18,21
93:23 94:3,10,
20 101:7,12
102:15,16
105:3,12
113:17,22
114:19,21
116:1,5,24
117:8,11
123:14,18
124:3 125:5
factual
57:11 84:24
95:12 106:10
124:10
failed
152:12 153:10
fair
118:5
false
161:24
familiar
161:14,22,24
father
127:15 128:1
148:14 167:10
father's
167:2
Faulkner
155:14 166:4
167:6 170:23
favor
139:10
favorite
109:16
fax
147:18
faxed
152:21
fear
53:23
features
119:13
February
8:8 17:19
154:2 173:17
federal
77:7,9 95:3,5
106:2,3
123:22,23
fee
7:22,24 8:23
13:13,23 41:6
44:2 68:16
80:8,9 97:18
98:9 99:2,14,
17,22 111:12,
13,21 112:2
125:11,12,14

141:18,21
feel
97:15 110:6
fees
84:20,23
85:13 86:19
99:4,21
141:10,11,12
152:6
feet
33:21 36:9
felony
129:22
FEMALE
18:16 23:14
24:5,10,13
111:7 120:15,
18
fentanyl
91:10,14
95:23 96:3
97:8
Ferraro
128:19,21
137:8 139:18
140:15,21
142:9,12,16,
21 143:8
ferrous
155:24
field
73:11,14
114:10
fifteen
71:17
fifty
98:15
fifty-three
96:16
figure
119:14 139:2
141:1
file
3:13 9:21 10:2
12:17 14:15
21:17 23:15
62:19 68:2
80:11 125:1
filed
3:6 5:14 10:12
43:1 46:4 54:6
55:2,4 61:21
67:4
files
18:24 19:7
fill
111:2 144:8,
11
final
136:16 146:1
169:6
find
38:13 48:17
57:10 59:24
66:17 68:19
71:7 77:15
83:19 84:24
89:4 95:12
96:18 97:17,
19 100:24
101:2 106:10
124:10
149:12,13,16
171:12
finding
74:2 83:18,20
85:9 95:18
96:4 97:5,13
98:20 124:15
125:2,7
129:13 139:10
fine
4:10 34:4
36:18 38:14
52:6,19 66:5
68:22 99:13
125:1 128:7
130:10 140:19
146:21 147:1
148:4 150:9
160:2 168:16
fines
152:6
fingerprint
42:12 118:14
119:20
firearms
56:5
fixed
134:7
floor
13:20 112:6
flovatate
156:2
focusing
132:18
follow
97:21 98:2,23
126:12
follow-up
97:23,24
foray
96:12
force
90:20
forced
76:16,22
82:16 94:13,
15,18 105:10,
16 117:10
123:12
Ford
90:14
forever
96:22
Forgery
174:3
form
47:19,20,22
48:1 70:20,21,
23 88:19,21
100:16,17,20
113:8,11,15
144:9 155:11
forthwith
140:20
forty-five
124:17,20,21
125:10
forum
139:11,12
forward
16:5 33:6
34:10 113:12
123:1 127:5
159:17
found
31:14 38:18
91:5 114:16
124:24 153:8
173:16
fourteen
80:4
fourteen-day
71:10
Framingham
18:6 58:8
Francisco
112:11 115:4
122:19
frankly
106:24
freely
85:2 95:13
106:11 124:11
Friday
5:13,14 12:7,8
62:20 101:12
friend
71:15
friends
71:18 101:23
front
159:22
fugitive
40:12 41:13,
21,24 119:22
full
85:3 95:14
106:12 109:7
111:22
114:17,18
124:12
134:14,19
full-
152:3
functioned
157:6
functioning
60:22
funds
67:5
Fusion
90:14
future
109:9

G

G-E-O-X-X-X
90:2
gave
21:8 36:18
154:7
GED
115:9
Geiger
83:6
general
8:10 40:13,15,
17 43:18
166:22
gentleman
9:11 84:10
129:10 132:14
141:24
gentleman's
135:21
Geoxxx
90:2,6,9,12,19
91:3
girls
122:5
give
2:6 16:22
17:16,20
21:16 27:12
38:10,14 42:8,
17 46:15,16
51:16 69:2,8,
12,13 70:13
76:8,19 89:24
93:14 94:16
97:10,18
99:12 104:13
105:14 111:4
116:17 119:13
120:15,22,24
127:24 146:4,
21 149:22
171:9
giving
75:3,22 92:21,
23 93:11,17,
23 94:3,8
103:21,23
104:17 105:3,
4,8 116:5,8,
20,24 117:5,
11 123:4,6,10
glassy
114:3
God
2:6 3:21 29:4,
22 32:11,14,
23 45:20
48:23 70:16
81:7 88:15
100:12 113:4
good
2:9,10,11 3:8,

9,11,12 4:2,7 6:9,10 8:4 9:6, 8 12:9,11,12 21:1 26:13,14 28:18 31:18 33:9 38:16 41:17 68:1 81:10 86:19 87:6,7 88:18 96:21 108:4 111:4 112:9 113:7 121:13 126:21,22 127:4 128:19, 20,23 139:2 143:17 146:23 151:1,2,20 164:3,4 167:13 169:2, 18 170:13 173:14,15

graduated 103:1

grand 146:19

great 3:3 6:23 32:19 53:3 69:10,23 139:22 169:4

green 47:6 49:20,23 50:20 51:4 70:8,20 110:22

Gregory 26:11 46:23 47:14 70:4 72:19 74:11

Griffin 2:16 43:9,11, 15 44:4,9,22 45:2,17,22 46:13,18 53:1, 5,12,23 54:2, 9,21 55:1 56:2 57:3,14,18,20 58:2

guess 11:12 20:3,22 42:5 118:16 137:11 138:19 145:13,23,24 146:6

guilt 76:24 98:20 125:7

guilty 8:16 40:21 43:20 71:7 75:10,11,24 77:13 80:1,2 82:24 89:4 93:3,20 95:18 96:4 100:16, 24 101:2 103:17,21 104:3,4,21 105:5,11,17 106:13 111:9 116:13,23 124:4 129:13

guy 10:8 108:13

guys 133:7

Gwanachapi's 125:20,22,23

H

habe 66:13 147:4

Habe'd 18:8

hair 119:11

half 125:15

half-day 124:22

hand 32:20 45:18 48:20 70:14 88:13 91:6 100:10 112:19 113:2

handle 48:10

hanging 109:18

happen 77:7 95:3 106:1 107:14 123:21 127:18 128:4 145:19

happened 33:3 35:23 55:3 87:10 107:24 114:4 136:21

happy 11:4 65:23 118:7 130:14

hard 68:18 119:4,8

Harrington 126:21,23 127:2,12,15, 20,23 128:5,9, 11 147:20,22 148:3,7,12,19, 24 149:10 150:12,14,23 151:1,4,10,11, 13,15 154:9, 10,20 156:9, 14,19,23 157:4,6,10,14, 16,20,24 158:8 159:8, 14 160:10,20 161:2 162:15 163:7,12 165:24 166:3, 15,17 167:9, 11 168:21,23 170:21,24 172:12,18,20, 22 173:1,4,7

Harrington's 148:4 167:23

hasn't 23:23 87:10 129:17 164:15

haven't 22:22 68:17 99:6 118:4 127:13 156:10 158:24 168:1, 2,3

Hawley 101:15 102:13

head 53:24 109:18 125:11

headed 41:10

health 74:16,19 81:23 92:2 103:2 109:5 110:14 115:10 166:10

hear 2:3 31:8 33:2 43:13 44:5 45:9,10 49:2 53:9 56:7 71:20 72:4 77:17 78:7 83:2 89:12 95:15 101:7 106:13 113:17 151:12,13,15 173:3

heard 2:6 6:17 55:10 158:19,24 164:14 169:15

hearing 2:18 35:8,15, 20 38:12,18, 23 39:1 43:11 52:21 60:6,19 79:24 82:11 119:22 128:15 129:1,3 130:18 134:14,16,19 143:2,3 146:1, 9 147:8 151:12 158:4 172:1

heavier 119:3

Hector 22:3 32:2 88:9 90:24 91:21

Heffernan 153:6

height 119:11

held 18:7 31:12 42:4 57:16 62:5 87:11 121:21 146:7, 16 148:22 162:16 171:17 173:20

Henderson 18:20,22 19:9 58:23

Henderson's 59:6

Hernandez 22:3 32:2 88:9,12,16,18, 22 89:2,6,11, 15 90:24 91:3, 11,18,21,23 92:1,4,8,11, 14,16,22 93:6, 10,13,16 94:5, 7,17,21 95:7, 11 96:10 98:4, 11,15,18 99:6, 8,13,19 100:2, 6

Hernandez's 91:5 95:19

heroin 89:23 90:8 91:7

He'll 39:11,13

he's 6:5 7:16 14:9 23:21,23 27:10 34:7 39:8 40:7 62:12 64:9 71:16 96:10, 18 106:23,24 107:4 108:15, 16 109:3,4,6, 16,17 112:15 115:20 119:14 121:21 122:17 131:7 132:11 134:6 135:22 137:17,20 154:22 157:24 173:20,22

high 60:9,12 92:1 103:1

Hill 101:14

hire 26:15,17 27:10 41:3 43:24

Hispanic
90:15
history
107:11,17
110:1
hit
42:13 118:14
hm
168:15
hoarding
22:23
Hodgdon
122:7,10
126:18 128:3
150:23,24
151:3,4,22
152:12 153:4,
14 155:3,10
158:22 164:1
165:12 171:24
172:16
Hodgdon's
158:20 164:7
hold
45:8 46:21
119:24 150:10
home
101:17,22
102:2 155:6
162:5 170:10
173:18
Honor
2:10 3:9,12
4:4,14 5:3 6:9,
13,15,22 8:5,
14 9:6 11:8
12:23 14:21
15:18 16:1,7,
18 20:19
21:24 22:18
25:16 26:13
28:18,20 33:9
36:22 38:16
41:14 42:1,13
43:21 44:22
46:13 47:21
49:18 51:7,19,
24 53:15 56:2,
9,11 58:6
59:12,16,23
60:5,17 62:23
63:22 65:19
66:5 67:4 68:8
70:9 72:9
73:21 77:1,19
81:11,14 82:1,
8,12,15 83:1,
4,9,12,22
84:1,5,8,11
85:6,24 86:1,
14,23 87:8
89:17 91:15
95:17,18 96:8
100:18,22
101:6,10
102:15,18
103:4,8,11,14,
19,22 104:6,
10,15,18
105:7,15,19
106:5,9,15
107:18,20
108:24 109:7
110:16,20
111:6,24
112:3 113:20
114:20
117:13,16
118:4,11,16
119:1 120:8
121:3 126:21
127:5,12,23
128:6 129:15
130:1 131:4
133:11 134:3,
11 138:16
139:3 140:21
144:20 146:5,
8,17,22
147:22
148:11,12
149:18 151:1,
17,20,23
152:1,10,16,
19,24 153:3,8,
9,13,15,17
154:7,10,15,
20 155:3
156:9 157:7,
21 158:18
159:8 160:3,
20 163:12
164:3,18
165:3,17
166:17
167:11,20
169:11 170:4
171:3 172:10,
19 173:15
Honorable
2:4,7
hood
137:12 138:8
hopeful
109:16
hospital
17:13 52:1
155:12,13,14
161:3 166:4
hot
89:22 90:3
hour
33:20,24 34:3,
12,13 36:5,6,
9,12,14,16,19,
20 114:7
159:21
hours
74:22 82:2
92:5 103:5
115:13 166:8
house
80:3 101:1,3
111:10 148:13
160:16
household
96:18,20
How's
69:8 160:1
hundred
34:4 98:11,16
99:8,9
hung
91:4
Hunt
22:14 100:9,
10,13,18,22
101:6,24
102:1,4,11,18,
21,23 103:1,4,
8,11,14,22
104:6,10,15,
18 105:7,15,
19 106:5,9,22
108:21 109:24
110:16,20
111:6,8 112:3,
8
Hunt's
106:18

I

ID
118:3 170:17
Idaho
157:20
idea
149:1
identification
42:11
identified
34:1 36:17
72:18 90:23
114:9,15
identify
3:24 32:16
102:10
ignore
99:24
illegal
110:13 111:19
immediately
72:24 114:2
immigration
116:2 124:3
immune
166:21
impact
155:19
impairment
73:15 114:13
implications
49:23
important
35:9 96:24
166:10
importantly
132:4
impose
78:9 107:18
110:10
imposed
84:9 99:18
107:8
imposing
109:11,21
impression
130:3
in-patient
71:10 80:4
incarceration
109:20
incidences
106:19
incident
54:19,24 55:1
107:4 131:19
136:24 154:9
incidents
161:17
inclined
83:19 136:10
173:2
including
70:22
incredibly
97:8
incurring
84:20
independent
160:8
indicating
17:12 76:14
78:2 88:19
indicative
106:21
indigent
40:7
indirectly
55:19
indiscernible
3:2 10:13
11:24 17:6
19:18 24:3,6
26:21 28:3,12,
19 39:16 40:6
45:13 55:8
61:6 62:18
63:3 67:20
68:5 108:13
117:23 121:6,
12 129:13
140:1 146:5
152:4 157:13
160:24 163:16
167:12 168:12
170:23,24
171:22 172:23
174:6
individual
60:11 67:19
89:22 90:5,9,
23 96:2 119:3

132:23
induced
161:20
inevitable
77:6 95:2
105:24 123:21
infirmary
166:12
influence
80:7 125:6
155:19 170:19
inform
77:2 84:14
153:3
informant
89:21,23 90:7
information
20:16 41:13,
23 42:15 44:5
49:11 50:14
53:10 55:9
89:21 90:5
118:17 121:2
128:1 131:11
154:8 156:13,
15
informed
41:4
infusion
166:6
injured
68:14,16
injuries
55:3
injury
125:11
innocent
75:23 93:18,
19 104:17,20
116:21,22
inside
114:16
instructions
163:21
insurance
6:19 39:8,10,
11,13 132:3
135:24
intelligent
48:18
intelligently
77:16
intending
87:9
intent
95:22
intention
10:18 48:13
82:13
interacting
154:13
interesting
15:22 129:9
interior
90:24
internet
55:20
interpreter
3:16,18,22
4:1,11 6:4,12
7:11 28:6
31:22 32:8,12,
15,18,21 33:6
34:9,10,22
35:1,12,16,21
36:13 38:20
39:10,22,24
40:3,4,18
108:12
112:12,14,20
113:1,5,12
117:20,22
122:14,15
123:1 124:18
126:10,11,13
149:20
interpreter's
150:2
interview
25:5
interviewed
65:5
intimate
83:6
introducing
93:22
invasion
173:18
inventory
114:15
investigation
136:1
involve
15:20
Island
28:21
isn't
12:9,11 49:8
60:22 78:3
110:7
isolated
161:16
issuance
53:11,20
issue
58:14,19
66:14 106:22
107:15 118:3
120:3 131:22
132:14 133:8
136:4 140:17
142:19 147:4
168:19 174:9
issued
53:22 56:11
60:6 172:6
174:5
issues
15:22 16:1
74:17,20
81:24 92:3
103:3 115:11
130:13 139:9
147:23 158:20
159:1,5,7
160:3 161:20
164:8,12,19
165:1 172:23
issuing
55:16
items
102:11,12
it's
2:15 3:7 8:7
11:5,7,8,15,16
12:7,8 15:20
22:14,16 35:9
40:10 43:15
49:9 51:13
54:5,14 55:1
63:10 64:2
67:11,16
68:18 71:24
72:1 75:23
77:6 79:6,19
82:13 85:16,
19 86:1 87:11
95:2,13 96:2,
21 99:9
104:20 106:11
107:14 109:9
110:9 118:9
119:1,3,8,9,18
123:20 124:11
127:4 130:10
131:14 132:22
135:1 137:5
143:15 149:6,
16 153:24
155:22 159:10
161:5,17,21
163:10,11
166:7 167:16
170:17 172:14
IV
166:6
I'd
13:8 21:14
45:9 53:21
54:9 120:7
135:19 136:10
165:24 173:20
I'll
7:10,21 8:21,
24 14:16
23:18 26:7
30:4 43:13
45:10 46:17
49:2 53:2 56:7
63:10 68:21
69:2,7,23
77:17 78:7
79:6 83:2
89:13 95:15
101:8 106:13
108:17
110:11,21
112:1,20
113:18 117:22
119:13 126:13
127:24 128:5
144:16
148:17,22
170:24
I'm
3:1,13,17
4:17,24 8:15,
24 11:4,8
13:16 14:21
17:8 20:15,19
21:11 22:23,
24 23:15
26:18 27:11
28:24 29:11
30:3,9 32:2,
12,19 33:2,10
34:15,22
35:16 36:13
37:5 38:20
39:3,5 40:20
41:4,9 42:4,8
43:3,5,19
44:4,15,23
45:2,6,8 46:3,
11,15,21 49:7
50:2,9 51:3,16
53:7 56:5,9
62:14,18
63:11 65:22
68:18 70:12
71:18,19 72:3,
5 74:18 78:13,
15 83:19 86:4,
5 89:12 91:23
96:22 97:4,10,
11,15 98:1
99:3 101:7
107:17 110:4,
17 112:22
113:17 118:7
120:5,12
121:12 124:18
125:15,21
126:23 127:8,
21 130:14
131:1,22
132:13 133:3
134:13,22
140:11 150:6
152:10
153:18,19
156:9,16,19
157:22
161:14,22,24
162:7,8 163:1,
8 165:16
166:7,18
168:4,16
169:21
170:12,15,20,
23 171:4,16,
17,21,24
173:2

I've
14:22 16:12 33:11 53:8,17 68:17 106:6 107:21 118:5 121:5 129:11 136:2 154:23 161:12

J

jail
23:24 68:9 102:4
Jaime
5:11 42:23 112:11,24 113:24 115:2, 4 122:18
Jake
9:4
James
8:2 18:20,22, 23 19:9,10,24 58:23 59:14 128:21
January
72:11 83:21 84:3,21 85:10, 13,15,16,17, 21 86:2,10 90:4,10,11 107:24 108:1, 7,10 146:9
jargon
90:8
Jeanne
83:6
Jellinek's
167:24
Jesen
28:1 31:4
Jewell
173:12,16
jewelry
101:19 102:1, 5,7,9,10
Jewett
15:15 128:13, 21 141:5
join
2:5 127:16
joint
85:5 113:10 124:13 125:3 141:8
Jointly
139:17
Jones
14:19,22,24 28:14,15,16, 20 29:19,22
Jose
40:2 118:1
Joseph
2:5
judge
2:11,14,16,24 3:5,16 4:9 5:4 6:11 7:23 8:1, 6,24 9:5 10:9, 11,16 11:24 12:4 13:8,12 14:8,10,20 16:22 17:5 18:10 19:8 20:3,13,15,23 21:2 22:15 23:7,23 24:19 26:7,15,21 27:3,22 28:2, 5,15 30:1,13 31:4,10,24 32:2,5 34:15 40:4 41:10,11 43:9,15 45:6, 12 47:2 53:2 55:13 58:22 59:17 62:18, 22 63:1,6,18, 20 64:21 66:19 67:24 69:13 75:7,16, 20 86:5 88:10 92:24 93:12, 15 103:24 104:9,14 112:16 116:9, 16,18 117:20, 24 122:10,19 126:2,20 128:14,19 129:20 135:19 137:8,12 139:16 140:16 143:18 144:22,23 146:1,24 147:6,15,16 148:10 150:16,24 153:6 163:24 172:22 173:11,13 174:3,7
judges
11:22
judge's
93:8
Judy
151:20
Julie
81:8 126:19
June
11:12,13,15, 23 12:3,4,14 13:19 14:3 64:7 65:16,17, 24 66:8,14
Jurgens
72:10 89:18 101:11 113:21
jury
10:13,17 13:18 75:7,15, 20 92:24 93:12,15 103:24 104:8, 14 116:9,14, 18 146:19
justice
2:5 40:12 41:21
juvenile
97:7

K

Kane
23:6 62:9 63:19 65:18 66:2,7
Kapiga
67:16,20,22, 23 68:13 69:6, 10,17,20,23 70:2
Kathryn
156:3
Kelly
9:5,6,10,13, 16,18,23 10:4, 6,16,22 11:4, 11,16,19 12:4, 11,14,19 13:4, 6 14:13 15:12, 18 20:13,15, 19,22 21:6,8, 11,14,18,24 62:16,23 63:22 64:2,5, 9,12,16,18,22 65:5,7,10,15 66:16,18,20 128:22,24 129:4,17,19 130:5,10,13 132:1,7,21 133:7 134:15, 21 135:17,19 136:15,19,24 137:4,11,22, 24 138:3,5,7,9 139:2,16,19, 21 140:22 141:3,18,22 142:23 143:11,17 144:3,21
keys
148:13,14,21 149:7,8
Kia
72:15,19
kind
67:7,10 132:22
kindly
84:20
knew
22:7 60:18
knotted
91:6
Knowing
133:21
knowingly
48:17 77:16
knowledge
29:4 48:9,23 85:3 95:14 106:12 124:12 159:14
Koury
22:3,6,9,12, 15,18 23:1,3 32:3 42:23,24 43:7 67:4,9, 11,13 87:6,8, 17,20,22 88:4, 5,6,24 92:19 96:8 98:8 100:9 103:19 107:20 108:1, 10,14,16,19, 22 111:3,20 112:15
Kristen
16:10 58:5

L

Laboy
14:8 80:23 81:18,20,22 82:1,5,8,12, 15,19 83:1,5 84:1,5,20 85:7,12 86:11
lane
33:19,23 36:6 38:1,9
larcenies
106:19
larceny
101:15 174:7
large
101:19 102:4
Larosee
15:10 128:14, 22 141:5 143:16
Larry
14:13
lastly
57:10
late
14:9 23:8
laundry
156:5
law
8:10 40:13,15, 17 43:18 77:7 95:3 106:2

123:22
Lawler
81:1,2,4,8,11 83:4,12,14 84:8,18 85:24 86:13,17,20, 23 126:19 127:5 151:19, 20,21 152:9, 18 153:3 154:3,7,18 158:10,11,13, 15,22 159:4, 10,13 160:3,5 161:9,10 162:4,10,12, 19,24 163:16, 18 164:2,3,5, 11 165:2,6,8, 9,10,16,19,22 167:15,18 168:7,9,12,15 169:11,15,21 170:1,7,9 171:20 172:10,19
Lawrence
84:11
lawyer
93:24 118:18 160:13
lawyers
127:22
lay
50:8
lead
10:21
leave
21:14,17 23:2 55:21 80:11, 15 100:4 112:5 126:8 146:3 165:19
leaves
147:16,19
led
96:20
left
7:10 28:9 33:19,23 36:6 38:1,9 144:24
legal
128:24
legitimately
161:18
lengthy
164:14
lessee
132:11
letter
17:11,14 24:19 25:11 52:8 63:1 65:2,9 110:13
letters
23:1 108:4,5,7 109:14 110:3
let's
35:3 41:16 43:12 131:21 133:4 144:3 146:21 149:16
Levinson
8:5,16,18,20, 21 14:12 16:12,16,24 17:8,10,15,18, 21 18:21 19:4, 7,8 51:23 58:6,10,13,17, 21 59:4,9,16 60:14 61:2,4, 8,13,16,20,23 80:24 81:14 85:6 87:1
liable
139:17
license
28:24 34:2 71:11 80:5 124:17,21 125:11 126:3, 5,6 152:5
lidar
33:19 37:11
lies
136:22
lieutenant
33:10 34:5,6, 21,24 35:4,7, 18,23 37:1 38:15
lieutenant's
37:10
life
110:8
light
159:20
limit
33:18 36:6
lining
96:11
liquor
74:3 125:6
list
18:3,4 19:11, 23 59:2 102:8 155:17 156:6
listed
39:19 132:11 133:1 158:1 161:23
listen
15:23 75:9 93:1 104:2 116:11
live
161:14,15
lives
28:21 96:16, 17
living
110:8
lobby
62:22
located
72:18 91:11 125:23
locating
73:9
location
60:10 65:21 90:14,22 161:13
lockup
151:22
logistically
87:11
long
46:15 65:22 110:1 136:17 137:14,24 138:3 162:3 166:7 167:15 169:8
longest
164:16
Longo
162:4 169:21
looked
101:19
loss
71:11 80:5 124:17,21 125:10 133:19,21 139:9 152:5
lost
131:18 133:15
lot
54:14 96:18 142:16,18
loud
46:6
Lovett
16:10,12,15, 19 58:5
Lovett's
58:7
low
166:21
Lozarapram
156:17
luck
86:19 111:4 112:9
Lugo
25:14,16
lunch
148:1,5
Luu
32:7 33:2,6,7 34:2,5,10,11 35:10,19 36:18,23 37:2, 7,14,18,21,23 38:4,8,17,22 39:2,6
Lyons
26:11,13,18, 24 27:5,13 46:23 47:5,9, 14,16,18,21, 23 48:3,7,12, 16,24 49:5,10, 14,17 50:3,6, 11,18,22 51:3, 5,6,15 70:4,6, 17,24 71:3,4, 15,22 72:2,7, 19,20,23 73:1, 10,11,12,19 74:1,8,11,13, 15,18,21 75:1, 5,13,18,21 76:7,10,18,21 77:1,11,14 78:7,12,14,18, 21 79:2,4,16, 18,23,24 80:14,19,21

M

machine
38:5 155:20 164:21
madam
32:8,21 34:6, 19 39:22
made
65:4 71:6 75:8 77:16 85:2 91:2 93:1 95:13 97:22 103:24 106:11 116:10 124:11 132:24 133:2 134:4 143:21 158:23
magistrate
2:18
mail
4:18
make
5:1 9:13 14:15 17:17 18:12 31:2 33:5 39:17 59:6 69:7,14,18,21, 23 75:10,17 93:2,8 97:20 104:9 116:12, 16 119:12 120:6,17,23, 24 121:10 134:17 136:16 139:12 141:2 142:22,23 144:5,8 162:11 163:2 169:1,9 170:17
makes

56:24
making
7:11 19:5 91:1
male
6:5 11:22 14:16 15:1,3, 13,16 19:2 24:17,24 25:3, 8 30:8,13,16 34:15,18 40:6 43:21 57:13 61:6,9 62:11 87:3 90:16 112:13,22 117:13,16,23 122:14,17 124:20 127:18,21 145:2 149:3 167:14
malfunctioned
155:7 161:17
malfunctioning
161:18 162:7 164:22
malicious
129:22 142:13 143:6
man
159:9
mandated
71:11
mandates
77:8 95:4 106:2 123:23
manipulating
90:18
March
17:12,13 40:11 43:17 54:18 74:2 83:14 98:21 113:22 125:8 152:13
marginally
40:7
mark
3:9 7:21
marked
14:1
marker
33:15
Martin
157:23
Martins
2:23 153:14 167:23
Martin's
157:20
Marvin
3:5 31:24
Maryjane
2:15 30:7 43:8 45:16 53:4
Mass
8:9 33:14 36:4 40:13,14,16 43:18
Massachusetts
2:7 33:11 42:6
matching
102:12
material
90:11 91:8,13
matter
3:4 5:5,10 7:7 8:2,22 9:3 10:8 11:14 12:19 13:11, 14,17 14:7,18, 20 15:9,18 16:9,11 17:3, 22 18:19 20:12,13 21:20 22:2,13 23:6 26:10 27:11 28:1,16 29:16 31:4,24 32:2,7 34:2 40:2 41:1,13, 19,24 42:22 43:8,23 44:11, 13,14 45:4,12 46:19,22 48:2, 14 49:3,4,8,16 50:5 51:21 52:20 53:14, 17 54:5,16,17 56:7,21 57:4,8 58:4,22 60:4,6 61:18 62:6,8 63:19 67:2,5, 10,15 68:7,24 70:8 71:8 74:5 77:13 82:11 87:2,4 88:8,20 89:1 97:7 98:19 100:8 103:18 105:18 110:9 112:10 117:24 122:13,18,21, 23 124:14,24 125:7 126:18 128:12 129:20 137:20 141:10 146:7 150:22 151:8 158:12 163:24 173:11
matters
10:16 28:9 48:10,11 59:2, 17,24 60:16, 20 61:11 64:9 137:22,24
maximum
92:16 103:16 115:23
ma'am
53:17 77:14 147:2,14 171:11
MCI
18:6 58:7
meaning
89:23 93:19 101:4 104:20 116:14 125:1
means
55:19 56:17 75:16 131:2 154:15,16
meant
109:8,9,10
measurement
33:20 36:7,8, 15
mechanical
159:2
medical
55:2 147:23, 24 148:4 150:4 169:3, 19
medication
74:23 82:3 92:6 103:6 115:14 161:20 166:1,10
medications
155:17,19 156:6,18,21, 23 161:21,23
medicine
166:7
Medina
40:2 42:4 118:1
Medina's
149:22
meet
86:20 90:14 167:22 172:3
meeting
25:15 65:21
meetings
109:6
meets
166:9
members
75:8 90:21 93:1 104:1 116:10,14
Mendoza
4:1
mental
74:16,19 81:23 92:2 103:2 115:10
mention
24:17
mentioned
24:21
Merryfield
153:22 162:19,22 168:10,12 172:3 173:13
messages
55:20
met
154:24
MGL
143:5
Michael
47:14 74:11
microphone
67:21
mid-january
89:20
Middlesex
107:2,3
Middleton
18:8
mile
33:24 36:11, 17
mile-an-hour
33:18
miles
33:20,24 34:3, 12,13 36:5,6, 9,12,14,16,19
mind
112:20 155:18
mindset
109:16
mine
71:15
Minh
32:7
minimum
36:18 38:14
minute
79:8 86:4
minutes
30:21 90:13 118:23 160:16 164:16
mischief
173:18
missed
29:12
missing
101:20 102:9, 12
Mittimus
18:10
mix
60:1
moderate
114:4
moment
45:9 117:14 144:23
moments
27:6
Monday
18:9 20:24 55:14
money
29:19 69:3

96:19 97:20
monies
132:3 133:16
monitoring
171:6
month
6:17 52:12
68:15 69:8,13
80:9 99:3,12
111:13 125:13
136:18,19,21
137:6 155:12
163:11 167:9
months
80:2,10 97:15
101:1,3
106:16 107:10
110:5,6,10,11
111:10,11
141:6,16
morning
2:9,10,11,15
3:8,9,11,12
4:2 6:9,10 8:4
9:6,8 16:13
26:13,14
28:18 33:9,16
36:3 41:17
65:4,7 68:1
81:10 87:6,7
88:18 98:17
126:21,22
127:3 128:18
168:18 172:9
mother
96:16 102:6
108:11,16
motion
9:19,21 10:1,2
59:10 67:4
88:6 149:6,10
motions
76:4
motivation
111:5
motor
27:22 39:18
90:21 113:23
131:2 137:13
138:1
move
59:13 120:8
moved
25:18,21
129:21
moving
39:15 127:5
Mt
152:5
Muntz
4:7
Murrata
67:16,22
Muscato
114:17

N

names
19:2,16 59:3
narrow
131:22
Natick
102:4,7,10
naturalization
77:5 95:1
105:23 123:20
nature
83:3 85:1
necklace
102:13
Needham
150:12
negative
170:17
Neighborhood
109:5 110:14
neutronium
156:2
Newton
2:5 8:7 33:14
36:4 40:10
41:14 55:22
56:6 60:9,12
72:12,14
89:20 90:4
101:14 102:6
107:12 111:15
113:23 119:7,
8 144:5
152:22,23
160:18 161:2,
14 172:2
Nicole
84:13
nine-month
107:18
nine-step
73:13 114:11
ninety
57:17 62:5
99:22
nobody's
31:10
nolle
42:5
North
60:9,12
note
29:7,13 86:13
noted
5:7 29:10,16
58:20 73:4,6
101:18 114:2,
8
notice
3:6 5:21 12:24
20:17 82:6
127:7 152:9,
10,16
noticed
161:14
notified
57:14 164:20
November
137:2,4
number
87:5,9 89:24
90:6,19 91:2
92:23 103:23
107:1 108:23
116:8 118:13
151:24 155:7
159:10 162:13

O

oath
44:13,20
object
78:12,14
165:14
objecting
128:5
objection
59:15 60:13,
14 85:22
111:23,24
143:5 149:6
observed
33:16 90:14,
15,22
occasion
33:13
occasions
155:7
occurred
54:18
odor
72:24 73:7
114:4
offense
29:8,13 44:15,
17 48:6 56:4,
13 57:15 62:3,
4 73:23 77:7,
24 95:3 106:1
107:24 108:2
123:22 136:9
139:13
offenses
76:14 106:20
offer
133:2
offered
68:24 160:15,
16,22 161:2
office
7:9,10 23:18
26:6,8 49:12,
16 52:8
101:20 113:9
133:13 141:3
142:4,8
143:19 155:4,
6,15 157:18
158:4,6 166:5
officer
2:3,12 14:21
15:7 23:21
30:22 31:1,7,
13,20 33:3
39:21 58:2
63:17 67:21
73:6 78:22
79:1,3,5,9,11,
15,17,19 81:2
90:21 122:4,7,
9 126:17,19
150:20
154:12,14,22,
23 163:23
officers
55:6 72:12,18,
22 73:12,15
90:13 91:7
101:13 102:10
114:2,7,11,13,
14 152:10
154:23
officer's
31:11
officials
77:9 95:5
106:3 123:24
124:3
Olstein
142:9
on-demand
160:17
one-leg
73:13 114:12
one-month
99:20
one-year
98:21 110:6
125:8
online
39:20
open
73:8
operating
28:23 80:7
90:16 125:6
operator
34:1 36:18
72:15,17,19
131:7
oppor
146:10
opportunity
33:4 42:8
46:12,16
47:24 49:6,15
50:15 51:8,17
53:1,9,18
70:7,21 76:2
88:23 97:19
100:19 107:1
122:21 127:8,
24 146:12
160:23 164:6,
17

oppose
53:10
opposed
138:10
options
89:1
order
2:1,14 9:14 30:6 43:10,14 44:6,8,13,16, 19 45:4,9,16 46:5 53:4,11, 20 54:8 55:11, 16 56:3,4,11, 12,14,16,18 57:9,23 60:10 71:9 83:15 90:7 97:20 98:1 110:11, 17 124:22 133:15 136:11 137:9 139:5 162:8 163:21 165:6 168:16 172:6,12,21, 24
ordered
55:17,18,23, 24 60:15 72:23 91:10 98:22 111:14 136:5 139:14 140:11 171:7 172:8
ordering
56:5 168:5 170:15 171:4
orders
134:18
original
29:17
originally
5:19 25:17 84:9
Ortiz-
31:24
Ortiz-castillo
3:5
OUI
77:20 125:11, 12
OUI-
74:2
OUI-DRUGS
67:11
OUI-LIQUOR
114:14
OUIS
163:8
ounce
114:16
outstanding
61:24 68:10 85:13 99:21
overcome
166:19
owe
13:13 29:19 68:11 98:15
owed
98:15 132:20, 21
owing
8:1 13:9
owned
132:22
owner
131:7 132:9
o'clock
17:1 43:2,4 128:17 150:12 165:3 166:5 168:17

P

p.m
117:23 121:6 140:1 157:13 163:16 167:12 171:1,22 172:23
p.m.
90:10,11 101:13 121:12 129:14 146:5 148:6,7 150:18,19 152:4 160:24 163:22 168:13 170:23 173:9, 10 174:6,11
P.O.
173:12
package
146:4
packet
4:24 5:1 20:16 130:21 146:3, 14 154:7
pages
46:14
paid
84:23 98:10, 11,16 99:4,6,8 132:5,24 137:6 139:22 140:20 141:8 143:23
Pamela
122:7 126:18 150:23 151:22 155:3 164:1
paperwork
28:7 118:5 154:4
parcel
109:1
Parkway
72:14
part
64:12 96:19 109:1 121:22 149:5 166:19
part-time
68:19
participate
71:10 114:10 124:16
parties
2:17 21:2 32:19,20,24 45:17 52:24 136:12 143:3
partner
83:6 157:24
party
72:16 102:2
pass
12:23 135:19 155:1
past
54:10 74:22 82:2 92:5 103:5 107:2 115:13 121:5
patience
70:6 128:16
Patrick's
24:21
patrol
33:13 36:3
Paul
164:17
pay
6:20 7:8,12 13:14,23 39:20 69:3 99:4,9,12,21, 23 133:2,5 139:20 142:4, 5 144:1 152:6
paying
141:9
payment
6:24 7:8,11 39:17,19 69:1, 7,14,18,21 137:3,13 143:18,21 144:7,17 158:23
payments
144:5
pays
131:12
PCF
118:13
penalties
92:16 103:16 115:24
pending
8:19 44:11 54:5 56:19 57:16,17 60:16,19 62:4, 5 74:6
Pennsylvania
41:15,22 42:2, 3 118:8 119:1, 15,18,20 120:1,2,3
Penta
10:9 11:15,21 13:16,17,21 14:4,6
people
97:5 122:4 127:22 147:24
Perez
40:2,5,10,18, 19 41:8,19 42:4 118:1 147:17
Perfect
12:2
perform
73:11 162:20
performing
109:14
period
71:22 77:23 98:20 111:10, 18 114:7 125:8 130:16 137:14 140:8 141:6 146:15 163:9
permanent
172:24
permissible
127:17
person
55:21 67:18 73:8 90:1 102:1 109:10 119:15,19,21, 23,24 120:5 122:3 166:22
personal
57:6
persons
2:4
Peter
14:8 80:22 81:18 126:23
phone
17:17 19:5 55:19 89:24 90:6,18,19 91:1,2,4 120:23 159:10,19
phones
2:12 31:2 63:17 150:21
phonetic
4:8 26:20 32:18 33:10 81:8 84:13 90:8 102:3 131:5 142:9 155:14 156:3 157:12 158:16

164:18 166:4
photo
118:11,24
photograph
118:15 119:2, 4,6,9,10
photographs
55:3 60:21 102:9
physical
104:24 166:18
physician
156:4
pick
11:18 21:14 58:10
picture
140:4
piece
159:2
Pike
33:14 36:4
Pineda
5:11,20 42:23 112:11,24 113:5,7,12,13, 16 114:1,2,21, 23 115:2,4,6, 8,12,15,18,21 116:3,7,19 117:4 122:19 123:1,2,7,11, 15 124:1,5,9 125:4,18,20, 22,24
place
5:7 9:14 13:23 14:3 21:22 62:2 65:21 66:13 71:8 85:9 89:4 124:14,15 131:11
plaintiff
55:18
planning
127:3
plastic
91:6
plea
8:15 40:20 43:19 50:5,20 51:12 70:5,20 76:23 77:16 80:1,2 82:24 88:10,19 89:9 95:13 98:19 100:15 105:17 106:11,13 111:9 112:16 113:8 122:19, 22 124:4,11
plead
50:6 77:13
pleading
26:18 100:16 103:17,21 105:11
PO
167:19 172:3
point
13:8 26:21 33:6 34:10 40:18 50:19 73:11,15 78:19 85:14 102:6 107:9, 15 113:12 114:14 123:1 144:13
points
110:2
police
4:15,18 8:7 31:9,10 33:3, 11,12 36:11 40:11 41:15 53:6,16 54:19, 21 55:4,6 56:6 60:2 72:12 89:20 90:5 101:14 102:6, 7,10 107:12 113:23 131:1 136:8 148:19 149:4 152:22, 23 154:12,21, 23 161:5 171:14
pop
63:10
population
166:22
portion
132:19 137:11
position
143:22
positive
91:9 152:13, 21 153:11 157:2 160:7 161:21,24 162:1 163:9 170:13,14 171:18
possess
40:14
possessed
40:16
possession
41:20 91:5 95:22 106:21 121:18,19
possibilities
63:24
postpone
148:1
potent
97:9
potential
58:7 116:1 127:6
potentially
153:20 172:23
powder
91:7
powerful
89:23
practically
77:6 95:2 105:24 123:20
predicate
153:9
predicated
83:4 152:11
prehearings
3:1
prepare
169:9
prescribed
77:20 156:2
present
2:17 9:9 31:11 81:12 94:1 131:6
presented
51:1 72:11 75:9 76:3 89:19 93:2 101:12 104:2 105:12 113:22 116:11 117:1 133:12 134:6 146:19 154:8
presenting
104:22
presentively
77:8 95:4 106:2 123:22
presiding
153:6
presumed
75:23 93:18, 19 104:17,20 116:21,22
pretrial
3:7 4:5 5:6 6:12 8:11,13 10:10,12 11:14 12:17 15:21 20:14, 20 21:3,4 49:4,9 52:21 56:20 57:5 60:18 61:19, 21 129:20 130:16 136:10 140:7,8,10,13, 19 141:5,20 142:1 143:3 146:1 147:7,8
pretrials
52:11
pretty
96:3
previously
131:11 139:1 171:7 172:8
primary
156:3
Princeton
73:2,3
prior
10:2 13:22,24 21:21 62:1 65:23 66:1,12 68:24 69:18 73:24 82:24 85:21 97:6 101:21 106:18
private
5:12 26:15 43:1 87:10 125:17
Pro
79:13
probable
153:8
probation
14:19,21,24 15:2,21 16:11, 17,18,21,22 17:1 22:20,22 24:19 25:9 28:12,14,18, 19,22,24 29:5, 7,13,14,15,21, 23 40:7,9 41:4 51:7,8,10,14, 16,19 57:20 58:3,6 65:1,2, 5,11 67:17,18 68:6,8 70:7,9, 11 71:8,22 80:9,12,20 81:1,2,9 82:7, 10,18 83:24 84:3,7,15 85:1,8,10,20 86:6,10,18 89:5 97:14,18 98:2 99:1,2,24 100:5 101:4 106:18 107:1, 5,6,7,9,22 110:8,23 111:13,16,20, 23,24 112:1,6, 7 124:14,16 125:14 126:2, 5,9,19,20 129:20 130:16 136:10 140:7, 8,11,12,13,19, 24 141:1,5,10, 11,12,20 142:1,2,23 143:4,20,22 151:7,21,23, 24 152:2,7 153:15 154:1, 5 155:4 157:9 158:7 161:6

163:10 170:3 171:11 172:3, 5 173:13,15, 22,24 174:2,4, 6
probationary 77:22 110:7
Probation's 173:15
problem 35:17 43:7 150:5,8 151:12 159:19 166:20
problems 23:9 166:18
procedurally 51:11
proceed 15:21 49:3 50:2,12 122:12,22 123:8 127:10 129:19 130:17 151:17
proceeded 73:22
proceedings 74:24 82:4 92:7 103:7
process 24:3 30:10
profession 131:18
program 71:10 80:4 83:6,15,16 84:4,6 85:21 86:7,16 124:17,23 125:10,15
programs 110:18
promise 32:13
promised 76:23 82:17 94:19 105:17 123:13
propenate 156:1
proper 119:23 139:11
properly 58:1 59:7
property 102:15 106:20 107:13,17 143:7 148:22 149:2,3,5,15, 17
pros 42:5
prosecutor 50:8
protect 97:13
prove 75:24 93:20 104:21 105:5
proves 116:23
provide 3:20 29:3 32:10,22 42:14 45:19 68:21 70:15 81:6 88:14 100:11 109:10 113:3 140:23 144:12
provided 13:1 48:22 52:8 90:6 91:12 110:4 130:19 131:9, 11 132:10,16
providing 167:22
provision 121:11
public 72:14 125:16, 18,19
pull 25:9 26:8
pulled 24:7 33:21 36:10 63:2
punching 131:2
punish 109:9
Purple 25:19
purpose 109:21
purposes 64:5 109:12 134:11
pursuant 131:8
put 11:1,11 22:5,9 26:7 30:4,18 54:9,21 56:24 79:9 88:1,3,7 101:4 154:5 169:12 170:2 173:5
puts 159:17
putting 52:4

Q

qualified 154:22,23 156:9
qualifies 40:5
qualify 26:23,24 27:8 40:5 41:5 43:20,24
question 34:11 37:2,5, 18 38:20,21 42:11 93:13 109:19 128:24 129:10 132:2 136:6 145:23 155:18 156:10 158:9 165:9 169:17
questions 33:5 34:6 38:3 47:12 54:3 72:6 81:16 89:14 101:8 113:18 123:9
quick 62:24 63:4 163:2 169:5
quickly 51:18
quote 90:7,20 91:3

R

raise 32:20 45:17 48:20 70:13 88:12 100:10 112:19 113:2 117:2
ran 144:10
random 77:22 80:6
rare 161:11
rate 138:18
re-do 159:19
re-engaged 83:14
re-probated 153:15
reached 6:16 41:15 102:6
read 46:3,9,12,16 47:22 53:7,9, 18 54:10 142:20,21
reading 33:20 36:8 46:7 110:13 131:14 136:7 152:14,19,21 153:11,12 156:8 161:22 162:1 170:13
readings 160:7 163:9 171:18
ready 16:5 23:4 30:3,18 50:2 52:24 122:12 127:8,10 128:10 147:21
real 59:9
realistic 107:16
realize 22:6 134:21
reappoint 58:15
rear 90:17,22
reason 18:24 25:10 35:14 56:17 77:23 96:3 171:13
reasonable 75:24 93:20 104:12,22 105:5 116:23
recall 9:10 53:2 158:15,17 159:1 160:3
recalling 28:15 122:18
receipt 98:16
receive 51:24 65:23
received 4:15 7:14,20 49:11 60:17 65:22 74:1 82:6 89:21 90:19 129:5 130:21 152:20 155:16
receiving 20:16 102:14
recent 119:6
recently 17:10 110:1
recess 30:5,17,19,20 63:13
recessed 30:23 63:14 122:20 150:18 173:9 174:11
recite 156:7
recited 73:17 74:5

114:22 156:6
recognizance 56:14 57:6
recognize 95:19 106:22 108:22
recommend 77:19 106:16 107:9
recommendation 6:14 22:19 71:6,7,14,20 78:9 79:7,21, 22 81:12 82:23 85:5 89:7 97:3,16 113:10 124:13 125:3
recommendations 97:22,23 98:1, 3,23,24
recommended 106:17
recommends 71:17
reconvened 30:24 63:15 150:19 173:10
record 3:24 32:17 47:13 54:9 59:7 74:9 81:16 91:20 95:20 96:9 97:13 102:19 106:18 108:23 109:23 114:24 130:8 140:9, 12 142:13 143:11,13 147:9,14 153:17 173:6
recorded 44:14,19
records 31:15 55:3 107:21
recover 148:14
Recovery 109:6
reduction 142:13
refer 70:20
referral 152:5
referred 89:22 90:3,9
reflect 7:16 59:14 140:10 141:4, 8 142:19 147:14
reflected 59:7 140:9
reflects 129:23 142:13
regard 129:9 132:7
Registry 39:18 71:12
regular 50:13
rehabilitative 109:10
related 44:16 56:21 106:20
relationship 87:14
relative 63:23
relay 128:2
relayed 128:2
release 5:6 13:22 14:2 21:21 62:1 66:13 88:4 100:5 111:15 120:2 168:5
released 56:13 57:5 165:14 171:14 172:1
releases 98:1 99:1 110:23
releasing 167:2
reluctantly 168:5
remain 5:7 13:22 14:3 21:22 62:1 66:13 76:12, 20 83:20 84:16 85:9 94:9 105:9 117:6 123:5,6 152:12 153:10
remained 101:22 108:20
remains 68:10
remarkably 109:14
remedies 133:22
remember 26:5 38:4 129:23 151:19
remind 109:7
remit 84:22 86:18
remitted 85:14
removal 67:16,24 77:8, 9 95:4,5 106:2,4 123:23,24
removed 22:4
render 104:3
rent 131:12
rental 131:11,15 134:6,23 135:4,5,8 136:17 137:3, 6,10,13 138:19
rented 136:21 137:18
renting 135:12 137:16
rents 131:8
repair 135:11 138:6
repaired 135:15
repairs 131:13,14,24 132:1 137:10, 17
repeat 37:5
report 4:15,19 10:12 12:18 21:3,4 53:6,16 54:21 55:2,4 58:2 60:2 72:14 101:14 131:1 136:8 154:9 157:11,16 163:14 165:15 171:14
reported 101:16,24 102:12 113:24 114:5 138:17 157:8 164:8, 23
reporting 72:15
reports 24:7 61:22
represent 5:20 8:22 27:11 41:4,7 43:23 44:2,24 48:13 126:24 147:3,14
representation 65:4
representatives 164:7
represented 26:19 153:5, 13 158:1,2
request 5:8,15 7:6 10:12 44:16 53:13 56:8 59:23 60:4 65:19 83:18 85:22 86:9 111:20
121:15,22 127:6 143:3,4 165:16 173:16
requested 5:13 28:8
requesting 60:7 146:17 153:19
required 94:22 105:20 123:16 125:15
requirements 78:10
requires 40:3
requiring 172:6,7
reserve 128:5
reserved 130:17
residence 55:22 90:17 125:17
resolution 57:17 62:5
resolve 146:13
resolved 29:8
respect 8:22 12:21 13:24 30:9 41:23 44:7 49:12 56:6,12 57:3 60:4,16 61:10,17 65:3, 17 74:4 78:8 80:7,10 82:21 83:2 88:24 106:14 121:15 123:9 124:23 125:5 129:1 139:9 156:5 158:20 172:20
respectfully 153:18
responded 72:13 101:14 113:23
response 164:13

responsibility
95:21 125:2
responsible
31:12,14
38:13,19
80:11 124:24
restaurant
114:6
restitution
6:18 16:1,6
68:16 107:16
128:15 129:1
130:12,18
131:10
132:17,20,21
136:5,11
139:5 140:17,
20 141:7,19
143:2 144:6,9
restitution's
143:22
restraining
2:14 30:6
43:10,14 44:6,
8,13,16,19
45:4,9,16 46:5
53:4,11,20
54:7 55:11,16
56:11,16,17
57:9,22
172:21,24
result
24:6 77:4
94:24 105:22
123:18 129:13
131:19 136:1
139:13
resulted
107:7
results
73:14 114:12
152:21 153:1
resumed
163:22
return
9:14 105:17
123:13
returned
101:17 104:12
review
24:6,9 50:15
51:9 53:1
62:20 70:22
145:17
reviewed
92:15 103:15
115:22
revocation
45:7
rheumatism
155:11
rheumatologist
166:9
Rhode
28:20
Richard
20:12
rightful
132:13
rights
45:7 70:22
75:4 92:21
95:8 100:20
103:21 106:6
116:6 123:9
124:6 128:5
133:16
ringing
91:5
Rise
30:22
Risk
124:23 125:15
Rmv.com.
39:20
road
55:22 72:21
96:15 101:14
room
159:20 166:23
171:18
Rosenthal
9:4,5,7,9 10:5
roughly
138:18
route
33:13 36:3
Rowando
164:17
rum
73:8
run
107:5
running
14:9
Ryan
2:15 43:9
45:16 53:5

S

sat
30:9
satisfied
92:12 103:12
115:19
Saturday
18:7
save
2:6
saved
97:5
scars
54:13
scene
114:9
scheduled
3:1 10:10
13:11,14,18
49:4,8,9 56:21
109:15 128:14
scheduling
52:10
Scheidemantel
30:7 43:9,16
45:16,21 46:1,
2,3,6,8,10
53:5,21 54:1
Scheidemontel
2:15
school
47:17 55:23
60:9,12 68:18
74:14 81:21
91:24 92:1
102:24 103:1
115:7
score
39:2,6,10
SCRAM
152:3,19
156:8 157:1,6
158:21,24
159:13,17
160:1 161:12,
17 162:2,4
163:3 168:19,
24 170:6
171:6,19
172:8
screens
77:22
searching
23:16
seated
2:8 31:2 63:16
150:21
Section
8:10 40:13,15,
17 43:18
143:6
seek
44:4 48:14
68:17 77:9
87:10 95:5
106:3 123:24
seeks
119:15
seemingly
26:1
select
104:1 116:11
self-defense
54:12,16
selling
89:22 90:2
96:2
send
39:18,19
65:23 144:6,
17
sending
60:22
sense
56:24
sentence
35:5,6,22 71:9
72:1 100:24
101:2,4
106:17 107:18
109:11,18,22
110:5,7,11
sentenced
80:2 111:9
sentencing
109:8,12,21
separate
131:16 157:2
separated
57:24 78:4
separately
121:20
September
33:12 36:2
111:12 141:7
sergeants
55:5
serve
80:4 109:20
152:10
served
109:13,21
service
161:16
services
109:11
serving
127:6
session
2:8 31:1 63:16
150:20 163:23
set
4:21 6:12
10:17,18
39:21 45:2
79:6 171:20
severally
139:17
severity
96:5
shake
53:24
Shannon
24:18 28:18
65:7
shared
107:21 129:8,
11 136:2
153:21
Sharon
72:9 89:17
101:10 113:20
Shea
25:5,7,11,12
sheet
39:20 47:6
49:20,24
50:20 51:4
68:23 70:8,20
110:23
Shelle
2:4

Shervin
101:15
she'd
23:8 167:3
she's
14:23 16:18
17:24 18:1,2,
4,13 28:21
41:10 46:9
84:15 92:13
103:13 108:19
145:2 146:15
155:20 158:23
166:5,13
169:9
shop
138:4
short
9:14 138:18
163:9
shots
155:12,16
shouldn't
11:10 64:18
110:9
show
106:23 118:7
119:10 135:18
143:13 147:10
170:18 172:2
showed
119:3
showing
91:13
shown
22:20 107:6
131:17
shows
119:3
shut
126:17
sic
134:24
155:21,24
156:1
side
54:14 55:5
96:13
sides
30:13 164:23
sidewalk
72:17
sighted
33:19 36:7
sign
45:3 67:7
78:16,20 79:9
80:12 86:21
98:1,5 99:1
100:5 110:21,
23 111:15
112:6 126:9
141:17,23
142:1 144:16
signature
71:1,2 79:20
88:21 98:6
100:17 111:1
113:10
signed
47:19 67:9
79:7 152:15
silent
76:13,20 94:9
105:9 117:6
123:5,6
similar
119:10
single
107:4
sir
3:11 4:2 7:6
8:6,16,21
13:13,21 20:2
21:19 26:17
27:11,14 31:5,
7,9,11,13,15,
20 37:10 38:7,
12,18 40:20
47:11,15
48:20 49:2
51:11 53:9
55:15 57:18
61:10 67:21
68:1,12 69:2,
18 70:13,19
73:17 74:4
78:15,18
79:20 80:18
81:16,19
85:12 86:6,19
91:16 92:20
97:2 99:20,23
100:15
102:16,22
103:20 109:23
111:14 112:5,
18 113:1
115:5 116:4
119:17 122:20
123:6 125:16
126:7,17
139:7,23
167:13
sit
151:5
Sitting
15:1
six-month
71:9 72:1
130:16 140:7,
8 141:6
Sixty-one
47:16 74:13
skin
119:9
slight
137:12
slightly
163:11
slow
35:5
slurred
73:7 114:8
slurring
72:17
small
133:17
smelled
72:24
snow
72:22
sober
71:16 110:8
111:5 154:13,
22 155:1
171:15
sobriety
73:12,14
114:10
Solutions
109:5
somebody's
161:13
sort
167:4
sought
133:16
Soul
72:15,19
sounds
139:2
Spanish
6:11 28:6
108:12
speak
27:5,9,14 42:9
49:6,16 58:6
88:23 92:9
95:10 103:9
106:8 115:16
122:21 124:8
127:8,24
146:12 151:3
164:17
speaking
34:7
specialized
48:9
specific
89:24
spectrometer
91:9
speech
73:7 114:8
speed
33:17,18,19
36:6,7,8,14
37:3,15
speeding
37:8,12,19
38:2,5,8,11
speeds
33:24
spoke
47:5 49:22
65:15 101:15
114:2 164:6
spoken
49:18 83:15
84:14 145:3
St
24:20
stair
90:24
stairs
91:1
Stairway
109:5
stand
30:19 52:20
73:13 114:12
151:8 165:16
standing
49:7 90:24
151:22
stands
167:11
Star
136:16
start
12:6 35:4,18,
19 108:10
140:17 165:13
169:24
started
37:13 108:8
140:13
state
31:9,10 33:11
35:23 47:13
125:11
stated
114:6
statement
33:5
States
77:3,5,9 94:23
95:1,5 105:21,
23 106:3
123:17,19,23
station
148:20
status
11:2 13:3 17:7
18:1 25:15
50:17 58:7
60:16 63:21
145:17 169:15
170:3 172:5
statute
71:24
statutory
71:6 77:20
stay
28:10 55:21,
23,24 56:10,
15,19 57:7,20
60:7,8,10,11
84:13,18

111:5 141:16
stayed
33:22
staying
96:24
stays
166:6
step
31:8,20 63:8,9 67:21 83:7 140:6 153:7
stepped
59:22
stepping
73:5
Steps
109:5
stick
96:20
Stills
155:10 165:24
stipulate
82:14
stipulated
68:16 85:7 153:14
stipulation
81:12 85:2
stolen
102:15
stop
38:10
stopped
34:1 36:17 37:8,11,23 38:1 91:4 96:13 123:3
story
54:14 55:5
Stratford
55:22
street
72:13 73:2 90:13,15 161:15
strong
72:24 73:7 96:1
struck
114:1
stuck
72:22
studied
115:8
study
115:9
stuff
171:9
subject
90:17 136:13 157:3
submit
50:20 80:6 98:22 152:6,14,18,24 153:17 154:11,16 156:11 171:5 172:7
submitted
73:23
submitting
80:1
subsequent
73:22
substance
40:16 84:9 91:9,14 97:9,21 98:22 110:12 111:18 152:2
substitute
87:13
succeed
107:1,5
successfully
83:16
suffering
74:16,19 81:23 92:2 103:2 115:10
suffers
155:10
sufficient
88:20 92:18 93:23 94:20 116:1 117:7 123:14,18 124:3 125:5 156:10
suggest
52:4 97:15 109:11 133:21 136:13 167:1
suggested
38:14
suggesting
110:4 132:19 134:13 162:8
suits
133:18
sulfate
155:24
summons
7:14,21
super
171:17
Superior
107:3
supervised
28:20 84:10
supervising
158:11
supervision
80:9 97:18 111:13,20 112:1 125:14
supplied
102:8
support
46:4 49:13 53:19 54:6,7
supposed
21:2 59:2 120:15 166:5,16
surrender
56:5 83:7 127:6 152:9,15 153:7 169:7 172:5
suspend
101:3
suspended
28:23 71:9 72:1 80:3 106:17 109:18 110:5,11 111:10
sutacasone
156:1
swap
168:24 169:2,5 170:5
swapped
163:3 168:20
swear
3:15,19 29:2 32:8,9,21 45:18 48:21 70:14 81:5 88:13 100:11 113:2 117:22
switch
165:4
switched
14:14
sworn
81:3 151:18
system
166:21
Szeto
67:3

T

table
52:3 151:5
tagging
25:20
takes
96:17 155:11,17,20,21,22,23,24 156:1,2,4,21,23 161:20
taking
37:3,9,15,18 164:13
talk
39:11,13 99:24 127:13,21 147:24 160:13
talking
2:13 15:7 31:3 63:17 166:18
task
90:20
tasks
96:18
Tatiana
14:19,24 28:14,15,16
taxes
138:22
team
167:22
technically
132:23 161:6
tells
64:12 151:15 155:4
ten
17:1 160:16
tend
173:2
tender
70:5,19 77:17 88:10,19 89:9 95:15 98:19 100:15 112:16 113:8 122:19 124:13
term
83:24 109:20
terminated
83:5 86:10,14,15
termination
85:23
terms
14:2 57:9,22 82:10,18 118:8 152:2 153:16
test
152:21 153:1 159:21 160:8,18 161:3,8 164:13,14 170:11,15,16
tested
91:8,9 110:15 152:12 153:10 157:2
testify
44:12 76:12,16 94:13,14 105:11 117:10 123:4 155:9 157:21 160:20,21
testifying
105:13
testimony
15:20 29:3 32:22 34:18,19,20 37:11 44:18 45:19 48:21 55:10

70:15 81:6 88:14 100:11 104:23 113:3
testing 78:10 80:6 110:18,19 111:14,16
tests 73:12,14 114:10,12
text 55:20 89:24 90:19
texted 90:9,12
that's 2:21 3:18 4:9, 10 7:12 9:11 10:10,17,20 11:22 12:5,15 13:11,14 19:13,14 20:13 23:15 24:24 28:5 30:1 32:3 43:9,10 45:4 47:9,20 52:6, 9,18,19 56:23 64:12 66:5 68:22 71:2 79:5 80:6,16 83:23 96:21 99:13 107:13 112:18 119:7, 8 127:18 128:7 130:10, 23 131:20 132:19 133:7 134:7 136:11, 22 137:2 138:18 140:19 143:10 144:22 145:14,16 146:21,23,24 147:1,16 148:3,4 150:9, 16 159:12,17 161:15 164:14 165:5 168:16 170:18 171:23
therapy 109:6
there'd 124:17 125:1 139:10
there's 5:20 10:9 13:9 15:10,22 23:11 43:10 44:2,11,18 52:3 56:7,18 57:11 64:19 71:1 79:14 80:5,8 84:24 87:13 95:12 97:23 106:10 109:19 119:17 124:10 125:11 128:1 132:20 133:16,17 135:8,10 138:22 139:8 141:4,15 142:16 149:6, 16 159:7,18 161:11,16,19 164:12 170:13 171:18 172:15,24
they'd 148:15
they'll 170:16,17
they're 2:17 11:5,9 19:11 23:8 107:16 109:1 140:23 148:19,22 149:14 159:16,19 161:6 167:18
they've 171:12
thing 24:5 30:10 77:21 148:12 160:12
things 4:18 54:12 77:7 95:3 106:1 118:21 123:21 148:15 158:4
thirty 33:12 138:10 146:6 169:8
thirty-six 83:17
thought 11:13 55:7 101:24 130:3, 5 137:8 171:21
thread 90:1
threatened 76:22 82:16 94:18 105:16 123:12
threats 8:8,9
three-week 42:5
THROUH 33:6
Thursday 12:6,7,8 64:15,21 66:15 69:16 85:19 141:7 155:15 165:3 167:6 168:20 169:2
Thursdays 169:18
Thuygen 32:18
tickets 9:14
till 5:5 28:10 57:4 84:23 140:10 162:16 172:4
time 6:21 36:4,12 37:8 38:4,9 50:19 51:1 52:3 55:6 58:19 69:2 77:23 78:3 87:12 89:19 90:18 92:9 95:9 99:23 102:5 103:9 106:7,24 107:8 108:19 109:7,12,20 111:22 113:14 115:16 119:14 120:6 124:8 127:11,12 134:7 137:14, 16 143:3,12 146:15 147:21,23 149:23 151:3 152:4 153:6 156:10 158:2 162:20 163:9 164:12 168:7 171:15
times 87:9 107:2 159:23 171:6 172:8
timing 169:4
Timovate 155:23
today 3:14,20 6:20 7:15 8:12 12:24 14:22 21:3,5 22:9 25:5,18,21,22, 24 26:1 27:2, 9,19 29:3 39:1 40:23 44:6,7, 24 45:19 49:4, 7,9 50:9,14,23 59:2 60:18 64:3 68:12 74:24 75:3 76:13,24 81:6, 24 82:4,14 83:8,9 84:15 87:19 92:7,18, 21 93:23 94:3, 11,16 103:7 105:3 112:14 116:5,24 117:11 119:14 120:6 121:1,8 123:14 130:11,17 139:19,21,23 140:10,20 141:9 143:2 144:15 145:17 146:11,13 150:11 152:4 155:9 156:13, 15 157:21 170:10 171:17
Todd 155:13 166:4
toe 96:20
told 18:7 37:1 43:24 97:4 112:13 153:24 158:3 161:4
tomorrow 99:11 162:17, 21 165:14,15 167:3,21 168:6,17 169:24 172:2, 9,15,17
tone 119:9
tonight 165:14
top 79:19 134:5
touch 16:15
track 97:1
transcribed 163:20
transcript 163:21
transferred 172:12
translate 32:13,21 34:7, 20,23 35:1,2,6 38:21
translated 34:16 35:10, 11
translation 3:19 32:10
translator 34:6,19
traveled 33:23
traveling 33:16,18 36:5,

19
treated
121:20
treatment
98:23 106:24
108:6,8,14,20
109:3,4,6,13
110:6,12,24
111:18,22
152:3
treatments
167:8
trespass
60:10
trial
10:13,17 11:1,
12,13 13:12,
14,18,19
25:17,19
38:23 49:9
50:13,16 51:2
72:10 73:22
75:7,15,16,20,
23 76:15
82:24 89:18
91:11 92:24
93:7,12 94:12
101:11 104:8
105:4,10
113:21 116:9,
15 117:9
129:13
triple-i
120:8,11,13,
16
trooper
33:4,8 38:13
40:1
trouble
141:16
true
3:20 29:3
32:10,22
48:22 59:6
73:18 74:7
91:17 102:17
114:22
Trunarc
91:8
truth
45:19 70:15
81:7 88:14
100:12 113:3,
4
Tuesday
4:5,9 52:18
64:6 146:24
153:20 162:18
169:12,23
170:3
Tuesdays
169:13
Tuesday's
171:2
turn
73:13 87:19
114:11
twelve
110:10
twenty
39:17 78:4
91:23 96:10
108:23
twenty-
80:9
twenty-five
78:4 114:16
twenty-four
74:22 81:20
82:2 92:5
103:5 115:13
152:4
Twenty-seven
115:6
Twenty-six
102:23
two-thirty
166:6
two-year
71:11,24
77:22 80:5
type
51:12 135:23
types
48:10
typical
66:19

U

Uber
131:9,18
unable
35:7
unagreed
22:18
unanimous
75:11 93:4
104:4 116:13
unannounced
158:23
uncontroverte
dly
95:24
undergo
97:21
underlying
136:9
underneath
78:16,23
understand
5:20 39:4
44:10,20 48:4,
8 58:10 74:24
75:2,12,17
76:6,16 77:10
82:4,9,20,24
89:3 92:7,20
93:4,9 94:2,15
95:6 100:23
103:7,20
104:5,7,12,16
105:6,13
106:4,16
114:8 116:4,
17 117:3,12
123:24 124:2
136:9 149:20
155:16 165:11
166:13,17
169:3
understanding
54:4 77:12
95:8 106:6
124:6 156:16
168:21
understands
85:1
understood
47:8 98:3
133:23
135:13,16
145:5
UNIDENTIFI
ED
6:5 11:22
14:16 15:1,3,
13,16 18:16
19:2 23:14
24:5,10,13,17,
24 25:3,8
30:8,13,16
34:15,18 40:6
43:21 57:13
61:6,9 62:11
87:3 111:7
112:13,22
117:13,16,23
120:15,18
122:14,17
124:20
127:18,21
145:2 149:3
167:14
unit
156:8 158:21
159:17 161:17
163:3 168:19
170:6 171:6,
19
United
77:3,5,8 94:23
95:1,4 105:21,
23 106:3
123:17,19,23
units
161:13 162:2
168:24
unit's
162:5
unlike
82:23
unmarked
33:22 36:11
unreasonable
97:3
update
140:12 147:9
upset
101:16
upstairs
2:17
upwards
159:21

V

vacated
56:18
vacation
101:17,22
van
33:16 36:5,7
vehicle
27:22 33:18,
19,22,23 34:1
36:9,10 37:12,
15,24 72:16,
21,22,23 73:5
90:16,21
113:23 131:2,
7,8 132:10
137:13 138:1
vehicles
39:18 114:1
verdict
75:11 93:4
104:3,4,11
116:13
verified
118:20 152:22
verify
110:24 111:16
victim
57:8,21 60:20
125:12 129:6
130:21,22
132:2,13
134:4 143:24
144:1,7
victim/witness
80:8 99:2,14,
22 111:12
125:12
victims
107:11
Vietnamese
31:22
violated
82:10,18
83:24 107:4
violation
8:9 28:12,13
29:8,13,15
39:15 40:13,
14,16 43:18
56:3 82:7,14
83:3,4,19
85:1,2,8
153:14 154:1
157:3 160:21
violations
107:8

visited
16:17
visits
128:4
vitamin
155:22
vitamins
155:21
voluntarily
77:16 85:3
95:13 106:11
124:11
voluntary
48:18

W

wages
131:18 133:15
wait
12:5 41:16
79:8 86:4,5
112:20
waiting
30:10 32:6
149:23
waive
47:7 75:14,19
97:18 112:1
waived
99:3 104:7
111:21 141:18
waiver
45:3 47:6,11,
20 48:18,19
walk
6:4 7:9 73:13
114:11 170:16
Waltham
125:24
wanted
47:7,10 65:11
94:14 135:24
142:22 149:19
164:5
warning
38:11
warrant
40:12 58:14,
19 69:24
98:12 118:12,
14 119:1,17,
20 120:1
152:22,23
173:16,21
174:9
warrants
118:9
Warrant's
174:5
wasn't
38:8,11 130:3
161:4
watch
31:20 102:13
waters
96:21
ways
72:14 96:10
97:20
weapon
54:23 95:24
Wednesday
9:11 12:6,7,8,
12 159:24
week
9:22 10:2
11:20 12:9
17:12 24:10
25:10 26:16
28:23 52:16
64:16 99:10
129:21 162:17
170:7,8
weekend
18:8
weekly
110:15
weeks
58:11 68:14,
21 83:17
136:18 167:20
weight
119:12
weird
19:13,14
Welbutrin
155:22
Wellesley
160:18 161:3
weren't
164:9
Wes
78:19
West
55:22
westbound
33:14 36:4
we'd
138:21
we'll
17:20 21:16,
22 23:2 30:20
31:23 35:14
42:5,17 69:8,
12 88:7
150:10 167:7
170:2 172:9
we're
11:12 24:3
28:7 32:6
35:4,19 45:15
120:15,19
121:8 132:18
135:20 140:22
149:23 163:13
171:20
We've
122:4 171:8
whatsoever
132:3
what's
7:23 17:7
27:17 55:11
60:16 63:21
85:15 115:3
126:4 142:11
wheels
72:21
whispering
108:3,12,15,
17 171:8
white
33:16 36:5,7
37:22 90:14
who's
27:2 33:3 41:9
48:5,11 62:14
96:10 108:3
109:2 122:6
154:23
wiggle
171:18
windows
148:15
wine
114:17,18
withdraw
5:21 82:22
87:15 88:7
89:9 122:23
145:6,8,9
withstanding
95:21
witnesses
10:21 11:2,6,9
54:13 76:3
93:22,24
104:23 105:1
113:24 155:8,
9
words
72:17
work
42:6 68:14,17,
19 96:19
97:17,19
108:5 110:2
131:9 161:13
169:4
working
28:7 37:3,24
109:6 111:22
160:1 169:1
workplace
55:24
works
51:11 157:19
worth
90:7 131:14,
24
wouldn't
107:9 161:7
write
140:22
wrote
24:19 54:16
63:1 65:2
86:12 134:12

Y

ye
2:3
year
55:11,13,17
71:23 97:16
98:20 101:4,5
124:15 125:8
135:21,22
152:5
years
33:12 71:8,17
72:1 78:4,5
80:3 96:10,16
115:8 118:13
you'd
75:16 124:24
you'll
31:11 33:4
52:22 69:4
77:24
you're
6:2 7:6 10:2
14:5 23:4
31:17 35:7
37:16 39:21
55:18,21,23
62:3 67:14
70:3 71:19
75:22 80:5
92:23 93:3
97:17 100:7
103:23 104:16
108:6 110:7,
15,19,24
112:4 116:8,
12,20 120:4
123:10,17
128:10 141:9
144:21
146:11,13
154:18 156:7,
8 163:18
165:8 170:19
174:8
you've
84:23 109:24
110:3 128:17
153:24 158:11
165:11

Z

zone
34:4 36:20

APPENDIX I

Original Audio Recordings
for April 2, 2018 hearings

APPENDIX J

Enhanced Audio Recordings
for April 2, 2018 hearings

APPENDIX K

RULE 211. RECORDING OF COURT PROCEEDINGS

A. Official Recordings.

1. When Required. In all divisions of the District Court Department and in the Boston Municipal Court Department, all courtroom proceedings, including arraignments in criminal and juvenile delinquency cases, shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; (b) proceedings that are being recorded by a court reporter appointed by the court; and (c) proceedings conducted by a magistrate other than a judge.

2. Logging. During every proceeding which is required to be recorded, the clerk shall: (a) announce clearly the name of the case and its docket number at the beginning of the proceeding; and (b) note on the case papers or in a separate log the number of the tape reel and the index numbers representing the beginning and end points of the proceeding.

3. Counsel's Responsibility. Counsel shall be responsible for assisting in the creation of an audible record by properly using the microphones provided. Counsel shall speak with sufficient clarity and in sufficient proximity to the microphones to ensure an audible record, and shall be responsible for requesting the judge, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to ensure an audible record.

4. Preservation of Tapes. The clerk-magistrate shall preserve for at least two and one-half years the original recording of. (a) any trial, evidentiary hearing, guilty plea or admission to sufficient facts in a criminal or juvenile delinquency case that was presided over by a judge; and (b) any trial or evidentiary hearing presided over by a judge in a care and protection matter. The clerk-magistrate shall preserve all other original recordings for at least one year.

When it appears to a party that an original recording should be preserved for a longer period for purposes of appeal, he or she shall be responsible for bringing a motion requesting any judge of the court to so order. Such a motion may be brought ex parte. The clerk-magistrate shall preserve an original recording for such longer period as a judge, acting upon motion or sua sponte, shall direct.

5. Access to Cassette Copies.

(a) Open Proceedings. Any person, whether or not a party, shall be permitted to obtain a cassette copy of an original recording, or any portion thereof, of any proceeding which was open to the public, unless the record of such proceeding has been sealed or impounded.

(b) Closed Proceedings. The original recording of a proceeding which was not open to the public, or of a proceeding whose record has been sealed or impounded, shall be deemed to be impounded and a cassette copy of the original recording, or any portion thereof, shall be made available only in accordance with the following provisions:

(i) Cassette Copies of Closed Proceedings for Purposes of Appeal. Counsel for any party, or any party who has entered an appearance pro se, shall be permitted to obtain a cassette copy of such a proceeding upon certifying that such cassette copy will be used solely for an appeal, or to determine whether to claim an appeal, in the same matter. Unless the judge who presided over the proceeding has ordered otherwise, the clerk-magistrate shall provide such cassette copy upon such certification without requiring a judge's approval of the request.

(ii) Cassette Copies of Closed Proceedings for Other Purposes. A cassette copy of such a proceeding may be made available to other persons or for other purposes only with the approval of the judge who presided over the proceeding or, if that judge is unavailable for an extended period or the proceeding was conducted by a magistrate other than a judge, any judge of the court. Any such request shall be accompanied by an affidavit, setting forth the reason for the request and the specific use to be made of the cassette copy, and shall be served on all parties to the proceeding. Any other party or interested person may file a statement in support of or in opposition to such a request. A judge may determine such a request with or without hearing wherever he or she is then sitting. A judge may permit access subject to appropriate restrictions upon the use and dissemination of the cassette copy of such proceeding.

(c) Ordering Cassette Copies. A request for a cassette copy shall be filed with the clerk-magistrate on a form prescribed by the Chief Justices of the District Court Department and the Boston Municipal Court Department for their respective departments. In order that multiple cassette copies may be made simultaneously whenever possible, any person making such a request regarding a proceeding that is presently pending on

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appeal shall certify that he has notified all other parties of his request.

The cost of a cassette copy shall be as established by the Chief Administrative Justice of the Trial Court pursuant to G.L. c. 262, s. 4B. The clerk-magistrate may require prepayment of all or some portion of such cost. There shall be no cost for a cassette copy produced for the use of the court, the Attorney General's office, a district attorney's office, any other agency of the Commonwealth, a police prosecutor, or a party represented by an attorney provided by the Committee for Public Counsel Services. General Laws c. 261, ss. 27A-27G shall apply to any request on behalf of an indigent party who is not represented by an attorney provided by the Committee for Public Counsel Services, and in such case the cost of a cassette copy shall be deemed an "extra cost" as defined in s. 27A.

6. Impermissible Uses. No cassette copy shall be used for a commercial purpose, for public or private entertainment or amusement, or for any other purpose detrimental to the administration of justice. No cassette copy shall be duplicated or tampered with. No cassette copy shall be erased, nor its labels removed or defaced, while the matter is pending in any court, or is subject to direct appellate review. Any cassette copy which is thereafter erased shall be erased in its entirety.

Any further dissemination of the cassette copy of a closed proceeding, or its contents, is permissible only: (a) for the purposes for which access was permitted; (b) subject to all provisions of law and court rules governing the records of such closed proceedings; and (c) subject to any additional restrictions with regard to its use which have been prescribed by the judge permitting access.

Any person requesting a cassette copy shall take all reasonable precautions to assure compliance with the requirements of this rule, including notifying anyone permitted to use the cassette copy of such requirements. Any person violating any such requirement shall be subject to appropriate sanctions, including contempt proceedings.

B. Unofficial Recordings.

1. Covert Recording Forbidden. No person shall make any electronic recording in any courtroom, hearing room, office, chambers or lobby of a judge or magistrate without prior authorization from a judge or magistrate then having immediate supervision over such place.

2. Recording by a Party. Upon application to the judge or magistrate presiding over a proceeding which is not being recorded by a sound recording device under the control of the court or by a court reporter appointed by the court, any party shall be permitted to record such proceeding electronically. Other parties to the proceedings shall be given reasonable access to review and copy any such recording.

3. Recording by the News Media. The recording by the news media of a proceeding open to the public is governed by the provisions of Supreme Judicial Court Rule 3:09, Canon 3(A)(7).

Adopted December 31, 1987, effective February 1, 1988.

SEE TEXT FOR FORM DC-AO-2. CASSETTE COPY ORDER FORM

End of Rule

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APPENDIX L

RULE 12. PLEAS AND WITHDRAWALS OF PLEAS

Amended January 29, 2015, effective May 11, 2015
Amended July 17, 2019, effective September 1, 2019 (482 Mass. 1501)
Amended July 8, 2020, effective September 1, 2020
Amended February 22, 2022, effective April 1, 2022

(a) Pleas in general

(1) Pleas that may be entered and by whom

A defendant may plead not guilty, or guilty, or with the consent of the judge, nolo contendere, to any crime with which the defendant has been charged and over which the court has jurisdiction. A plea of guilty or nolo contendere shall be received only from the defendant personally except pursuant to the provisions of Rule 18(b). Pleas shall be received in open court and the proceedings shall be recorded. If a defendant refuses to plead or if the judge refuses to accept a plea of guilty or nolo contendere, a plea of not guilty shall be entered.

(2) Admission to sufficient facts

In a District Court, a defendant may, after a plea of not guilty, admit to sufficient facts to warrant a finding of guilty.

(3) Acceptance of plea of guilty, a plea of nolo contendere, or an admission to sufficient facts

A judge may accept a plea of guilty or a plea of nolo contendere or an admission to sufficient facts only after first determining that it is made voluntarily with an understanding of the nature of the charge and the consequences of the plea or admission. A judge may refuse to accept a plea of guilty or a plea of nolo contendere or an admission to sufficient facts.

(b) (effective until April 1, 2022) Plea discussions; pleas without plea agreement and with plea agreement

(1) In general

The defendant may tender a guilty plea, a plea of nolo contendere, or an admission to sufficient facts to warrant a finding of guilty without entering into a plea agreement with the prosecutor. Alternatively, if the defendant intends to tender a plea of guilty or an admission to sufficient facts, the prosecutor and the defendant may enter into a plea agreement pursuant to Rule 12(b)(5).

(2) Plea discussions

The judge may participate in plea discussions at the request of one or both of the parties if the discussions are recorded and made part of the record.

(3) Inquiry as to the existence of a plea agreement

After being informed that a defendant intends to plead guilty or to admit to sufficient facts, the judge shall inquire as to the existence of a plea agreement.

(4) Pleas without an agreement

If the defendant intends to plead guilty or nolo contendere or to admit to sufficient facts and there is no agreement under Rule 12(b)(5), the judge shall follow the procedures set forth in Rule 12(c).

(5) Pleas conditioned upon an agreement

The defendant may enter into a plea agreement with the prosecutor if the defendant intends to plead guilty or admit to sufficient facts but not if the defendant intends to plead nolo contendere.

(A) A plea agreement may specify both that the parties agree on a specific sentence, including the length of any term of probation, and that the prosecutor will make one or more of the following charge concessions: amend an indictment or complaint; dismiss, reduce, or partially dismiss charges; not seek an indictment; or not bring other charges. The judge shall follow the procedures set forth in Rule 12(d) when the parties enter into a plea agreement that includes both an agreement to a specific sentence and a charge concession. If the judge accepts the plea agreement and the defendant's plea, Rule 12(d) requires the judge to sentence the defendant according to the terms of the plea agreement.

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(B) When the plea is conditioned on a plea agreement other than one described in Rule 12(b)(5)(A), the judge shall follow the procedures set forth in Rule 12(c).

(6) Pleas reserving appellate review
With the written agreement of the prosecutor, the defendant may tender a plea of guilty or an admission to sufficient facts while reserving the right to appeal any ruling or rulings that would, if reversed, render the Commonwealth's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges. The judge, in an exercise of discretion, may refuse to accept a plea of guilty or an admission to sufficient facts reserving the right to appeal. If the defendant prevails in whole or in part on appeal, the defendant may withdraw the guilty plea or the admission to sufficient facts on any of the specified charges. If the defendant withdraws the guilty plea or the admission to sufficient facts, the judge shall dismiss the complaint or indictment on those charges, unless the prosecutor shows good cause to do otherwise. The appeal shall be governed by the Massachusetts Rules of Appellate Procedure, provided that a notice of appeal is filed within thirty days of the acceptance of the plea.

(b) (effective April 1, 2022) Plea discussions; pleas without plea agreement and with plea agreement
(1) In general
The defendant may tender a guilty plea, a plea of nolo contendere, or an admission to sufficient facts to warrant a finding of guilty without entering into a plea agreement with the prosecutor. Alternatively, if the defendant intends to tender a plea of guilty or an admission to sufficient facts, the prosecutor and the defendant may enter into a plea agreement pursuant to Rule 12(b)(5).

(2) Plea discussions
The judge may participate in plea discussions at the request of one or both of the parties if the discussions are recorded and made part of the record.

(3) Inquiry as to the existence of a plea agreement
After being informed that a defendant intends to plead guilty or to admit to sufficient facts, the judge shall inquire as to the existence of a plea agreement.

(4) Pleas without an agreement
If the defendant intends to plead guilty or nolo contendere or to admit to sufficient facts and there is no agreement under Rule 12(b)(5), the judge shall follow the procedures set forth in Rule 12(c).

(5) Pleas conditioned upon an agreement
The defendant may enter into a plea agreement with the prosecutor if the defendant intends to plead guilty or admit to sufficient facts but not if the defendant intends to plead nolo contendere.

(A) A plea agreement may specify both that the parties agree on a specific disposition, including the length of any term of probation, and that the prosecutor will make one or more of the following charge concessions: amend an indictment or complaint; dismiss, reduce, or partially dismiss charges; not seek an indictment; or not bring other charges. The judge shall follow the procedures set forth in Rule 12(d) when the parties enter into a plea agreement that includes both an agreement to a specific disposition and a charge concession. If the judge accepts the plea agreement and the defendant's plea, Rule 12(d) requires the judge to sentence the defendant according to the terms of the plea agreement.

(B) When the plea is conditioned on a plea agreement other than one described in Rule 12(b)(5)(A), the judge shall follow the procedures set forth in Rule 12(c).

(6) Pleas reserving appellate review
With the written agreement of the prosecutor, the defendant may tender a plea of guilty or an admission to sufficient facts while reserving the right to appeal any ruling or rulings that would, if reversed, render the Commonwealth's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges. The judge, in an exercise of discretion, may

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refuse to accept a plea of guilty or an admission to sufficient facts reserving the right to appeal. If the defendant prevails in whole or in part on appeal, the defendant may withdraw the guilty plea or the admission to sufficient facts on any of the specified charges. If the defendant withdraws the guilty plea or the admission to sufficient facts, the judge shall dismiss the complaint or indictment on those charges, unless the prosecutor shows good cause to do otherwise. The appeal shall be governed by the Massachusetts Rules of Appellate Procedure, provided that a notice of appeal is filed within thirty days of the acceptance of the plea.

(c) (effective until April 1, 2022) Procedure if no plea agreement or if plea agreement does not include both a specific sentence and a charge concession
(1) Disclosure of the terms of any plea agreement
If the parties have entered into a plea described in Rule 12(b)(5)(B), the parties shall disclose the terms of that agreement on the record in open court unless the judge for good cause allows the parties to disclose the terms of the plea agreement in camera on the record.

(2) Tender of plea
The defendant's plea or admission shall be tendered to the judge.

(3) Colloquy
The judge shall:

(A) Provide notice to the defendant of the consequences of a plea
The judge shall inform the defendant:

(i)
that by a plea of guilty or nolo contendere, or an admission to sufficient facts, the defendant waives the right to trial with or without a jury, the right to confrontation of witnesses, the right to be presumed innocent until proved guilty beyond a reasonable doubt, and the privilege against self-incrimination;

(ii)
of the maximum possible sentence on the charge, and, if applicable,

(a) any different or additional punishment based upon subsequent offense provisions of the General Laws;

(b) that the defendant may be subject to adjudication as a sexually dangerous person and required to register as a sex offender;

(c) the mandatory minimum sentence on the charge; and

(d) that a conviction or plea of guilty for an offense listed in G.L. c. 279, § 25(b) implicates the habitual offender statute, and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct;

(iii)
that, if the defendant is not a citizen of the United States, the guilty plea, plea of nolo contendere, or admission may have the consequence of deportation, exclusion of admission, or denial of naturalization.

(B) Factual basis for the charge
The prosecutor shall present the factual basis of the charge.

(C) Rights of victims and witnesses of crimes
If applicable, the judge shall inquire of the prosecutor as to compliance with the requirements of G.L. c. 258B , Rights of Victims and Witnesses of Crimes. At any time prior to imposing sentence, the judge shall give any person entitled under G.L. c. 258B to make an oral and/or written victim impact statement the opportunity to do so.

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(4) Disposition requests
(A) When there is no agreed-upon recommendation as to sentence
The judge shall give both parties the opportunity to recommend a sentence to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(B) Where there is an agreed-upon recommendation as to disposition
The judge shall inform the defendant that the sentence imposed will not exceed the terms of the agreement without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(5) Findings of judge; acceptance of plea
The judge shall inquire whether the defendant still wishes to plead guilty or nolo contendere or admit to sufficient facts. If so, the judge will then make findings as to whether the plea or admission is knowing and voluntary, and whether there is an adequate factual basis for the charge. The defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea or admission. At the conclusion of the hearing, the judge shall accept or reject the tendered plea or admission.

(6) Sentencing
After acceptance of a plea of guilty or nolo contendere or an admission, the judge shall sentence the defendant.

(A) Conditions of probation
If the judge's disposition includes a term of probation, the judge, with the assistance of probation where appropriate and after considering the recommendations of the parties, shall impose appropriate conditions of probation.

(B) Intent to impose sentence exceeding requested disposition
In District Court, if the judge decides to impose a sentence that will exceed the defendant's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In Superior Court, if the judge decides to impose a sentence that will exceed the prosecutor's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In both District and Superior Court, the judge may indicate to the parties what sentence the judge would impose.

(c) (effective April 1, 2022) Procedure if no plea agreement or if plea agreement does not include both a specific disposition and a charge concession
(1) Disclosure of the terms of any plea agreement
If the parties have entered into a plea described in Rule 12(b)(5)(B), the parties shall disclose the terms of that agreement on the record in open court unless the judge for good cause allows the parties to disclose the terms of the plea agreement in camera on the record.

(2) Tender of plea
The defendant's plea or admission shall be tendered to the judge.

(3) Colloquy
The judge shall:

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(A) Provide notice to the defendant of the consequences of a plea
The judge shall inform the defendant:

(i)
that by a plea of guilty or nolo contendere, or an admission to sufficient facts, the defendant waives the right to trial with or without a jury, the right to confrontation of witnesses, the right to be presumed innocent until proved guilty beyond a reasonable doubt, and the privilege against self-incrimination;

(ii)
of the maximum possible sentence on the charge, and, if applicable,

(a) any different or additional punishment based upon subsequent offense provisions of the General Laws;

(b) that the defendant may be subject to adjudication as a sexually dangerous person and required to register as a sex offender;

(c) the mandatory minimum sentence on the charge; and

(d) that a conviction or plea of guilty for an offense listed in G.L. c. 279, § 25(b) implicates the habitual offender statute, and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct;

(iii)
that, if the defendant is not a citizen of the United States, the guilty plea, plea of nolo contendere, or admission may have the consequence of deportation, exclusion of admission, or denial of naturalization.

(B) Factual basis for the charge
The prosecutor shall present the factual basis of the charge.

(C) Rights of victims and witnesses of crimes
If applicable, the judge shall inquire of the prosecutor as to compliance with the requirements of G.L. c. 258B , Rights of Victims and Witnesses of Crimes. At any time prior to imposing sentence, the judge shall give any person entitled under G.L. c. 258B to make an oral and/or written victim impact statement the opportunity to do so.

(4) Disposition requests
(A) When there is no agreed-upon recommendation as to disposition
The judge shall give both parties the opportunity to recommend a disposition to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(B) Where there is an agreed-upon recommendation as to disposition
The judge shall inform the defendant that the disposition imposed will not exceed the terms of the agreement without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

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(5) Findings of judge; acceptance of plea
The judge shall inquire whether the defendant still wishes to plead guilty or nolo contendere or admit to sufficient facts. If so, the judge will then make findings as to whether the plea or admission is knowing and voluntary, and whether there is an adequate factual basis for the charge. The defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea or admission. At the conclusion of the hearing, the judge shall accept or reject the tendered plea or admission.

(6) Sentencing
After acceptance of a plea of guilty or nolo contendere or an admission, the judge shall sentence the defendant.

(A) Conditions of probation
If the judge's disposition includes a term of probation, the judge, with the assistance of probation where appropriate and after considering the recommendations of the parties, shall impose appropriate conditions of probation.

(B) Intent to impose sentence exceeding requested disposition
In District Court, if the judge decides to impose a sentence that will exceed the defendant's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In Superior Court, if the judge decides to impose a sentence that will exceed the prosecutor's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In both District and Superior Court, the judge may indicate to the parties what sentence the judge would impose.

(d) Procedure if plea agreement includes both a specific sentence and a charge concession
(1) Disclosure of the terms of the plea agreement
The parties shall disclose the terms of the plea agreement on the record in open court unless the judge for good cause allows the parties to disclose the terms of the plea agreement in camera on the record.

(2) Tender of plea
The defendant's plea or admission shall be tendered to the judge.

(3) Colloquy
The judge shall:

(A) Provide notice to the defendant of the consequences of a plea
The judge shall inform the defendant:

(i)
that by a plea of guilty or an admission to sufficient facts, the defendant waives the right to trial with or without a jury, the right to confrontation of witnesses, the right to be presumed innocent until proved guilty beyond a reasonable doubt, and the privilege against self-incrimination;

(ii)
of the maximum possible sentence on the charge, and, if applicable,

(a) any different or additional punishment based upon subsequent offense provisions of the General Laws;

(b) that the defendant may be subject to adjudication as a sexually dangerous person and required to register as a sex offender;

(c) the mandatory minimum sentence on the charge; and

(d) that a conviction or plea of guilty for an offense listed in G.L. c. 279, § 25(b) implicates the habitual offender statute, and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the

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defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation , parole, work release or furlough, or to receive any deduction in sentence for good conduct;

(iii)
that, if the defendant is not a citizen of the United States, the guilty plea, plea of nolo contendere, or admission may have the consequence of deportation, exclusion of admission, or denial of naturalization.

(B) Factual basis for the charge
The prosecutor shall present the factual basis of the charge.

(C) Rights of victims and witnesses of crimes
If applicable, the judge shall inquire of the prosecutor as to compliance with the requirements of G.L. c. 258B, Rights of Victims and Witnesses of Crimes. The judge shall give any person entitled under G.L. c. 258B to make an oral and/or written victim impact statement the opportunity to do so.

(4) Review; acceptance or rejection of plea agreement
The judge must accept or reject the plea agreement before the judge accepts a guilty plea or admission. The judge should not accept a plea agreement without considering whether the proposed disposition is just. At any time prior to the acceptance or rejection of the plea agreement, the judge may continue the plea hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination whether the plea agreement provides for a just disposition in the case.

(A) Accepted plea agreement
If the judge accepts the plea agreement, the judge shall inform the defendant that the judge will impose the sentence, including the length of any term of probation, provided in the plea agreement.

(B) Rejected plea agreement
If the judge rejects the plea agreement, the judge shall, on the record and in open court (or, for good cause, in camera on the record):

(i)
inform the parties that the judge rejects the plea agreement, but the judge may indicate to the parties what sentence the judge would impose or what additional information the judge will require before the judge may make this determination;

(ii)
allow either party to withdraw from the plea agreement; and

(iii)
allow the defendant to withdraw his or her plea or admission.

(5) Findings of judge as to plea agreement and plea; acceptance of plea
If the judge has accepted the plea agreement, the judge shall inquire whether the defendant still wishes to plead guilty or admit to sufficient facts. If so, the judge will then make findings as to whether the plea agreement and plea or admission are knowing, voluntary, and supported by an adequate factual basis. The defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea or admission. At the conclusion of the hearing, the judge shall accept or reject the tendered plea or admission.

(6) Sentencing
After accepting the plea agreement and the plea or admission, the judge shall impose sentence according to the terms of the plea agreement. If the plea agreement includes a term of probation, the judge, with the assistance of probation where appropriate and after considering the recommendations of the parties, shall impose appropriate conditions of probation.

(e) Availability of criminal record and presentence report

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Prior to sentencing under Rule 12(c)(6) or to the judge's decision to accept or reject a plea agreement under Rule 12(d)(4), the judge, prosecutor, and counsel for the defendant shall have an opportunity to review the defendant's criminal record and any report of the presentence investigation as described in Rule 28(d)(2) . In extraordinary cases, the judge may except from disclosure to the parties parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. If the report is not made fully available, the portions thereof which are not disclosed shall not be relied upon in determining sentence. No party may make any copy of the presentence report.

(f) Inadmissibility of pleas, offers of pleas, and related statements
Except as otherwise provided in this subdivision, evidence of a plea of guilty, or a plea of nolo contendere, or an admission, or of an offer to plead guilty or nolo contendere or an admission to the crime charged or any other crime, later withdrawn, or statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceedings against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, or a plea of nolo contendere, or an admission or an offer to plead guilty or nolo contendere or an admission to the crime charged or any other crime, is admissible in a criminal proceeding for perjury if the statement was made by the defendant under oath, on the record, and in the presence of counsel, if any.

Statement of opposition to the adoption of revised Mass. R. Crim. P. 12
LENK, J. Apart from changing the current Rule 12 of the Massachusetts Rules of Criminal Procedure to require that plea discussions with a judge be on the record, I am not persuaded that further, let alone extensive, revision to the rule is necessary or desirable . As then Justice Herbert P. Wilkins wrote in 1991, "I decline to join in the promulgation of a rule that apparently is intended to deal with a problem that is not shown to exist ." Statement of Opposition to the Adoption of Revised Supreme Judicial Court Rule 3:07, DR 7-108(D), August 26, 1991.

The key impetus for changing Rule 12 stems from our decisions in Commonwealth v . Rodriguez, 461 Mass. 256 (2012) and Commonwealth v. Dean-Ganek, 461 Mass. 305 (2012), "holding that former Rule 12 permitted a judge to impose a sentence more lenient than the sentence agreed to in a plea agreement accepted by the judge . . .[and that] jeopardy attaches when the judge accepts the plea . . . thus preventing the prosecution's withdrawal in such a case, even when the plea agreement included negotiated charge concessions." Reporter's Notes to Proposed Rule 12(b) - (e) of the Massachusetts Rules of Criminal Procedure. Apart from continuing to think both that these cases were correctly decided and that the current Rule 12 embodies highly desirable judicial discretion, I am unaware of any instance in which a judge has accepted a plea in the context of a charge concession and then imposed a sentence more lenient than that jointly recommended in a plea agreement.

The current rule has worked quite well for quite some time, and has the not inconsiderable virtue of being familiar to bench and bar. Although the rule as changed is narrower than earlier proposed versions and Rule 29 remains unchanged, it is still a solution in search of a problem. To the extent that the adopted Rule 12 seeks to circumscribe the exercise of judicial discretion, even in limited circumstances, it is misguided and most unfortunate.

Chief Justice Gants and Justice Hines have authorized me to say that they join in this statement.

Amended January 29, 2015, effective May 11, 2015
Amended July 17, 2019, effective September 1, 2019 (482 Mass. 1501)
Amended July 8, 2020, effective September 1, 2020
Amended February 22, 2022, effective April 1, 2022

Reporter's Notes-Revised, 2004

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Although analogous to Fed. R. Crim. P. 11, in its original form in 1979 this rule was drawn from a number of sources. See, e.g., A.B.A. Standards Relating to Pleas of Guilty (Approved Draft, 1968); A.L.I. Model Code of Pre-Arraignment Procedure §§ 350.1-.9 (POD 1975); National Advisory Commission on Criminal Justice Standards & Goals, Courts, Standards 3.1 et seq. (1973); President's Commission on Law Enforcement & Administration of Justice, Task. Force Report: The Courts 4-13 (1967). The rule was amended in 1987 to remove the option, contained in original subdivision (c)(2)(B), which allowed a judge to sentence a defendant more harshly than the terms of a prosecutor's sentence recommendation without giving the defendant an opportunity to withdraw the plea. In 2004, the rule was further amended, retaining its basic structure but bringing the details of the process up to date, in light of the abolition of trial de novo and other developments in the law.

As the United States Supreme Court has observed:

Whatever may be the situation in an ideal world, the fact is that the guilty plea and the often concomitant plea bargain are important components of this country's criminal justice system. Properly administered, they can benefit all concerned.

Blackledge v. Allison, 431 U.S. 63, 71 (1977). Accord, Bordenkircher v. Hayes, 434 U.S. 357, 361-62 (1978). Rule 12 is intended to guarantee the proper administration of the guilty plea and plea bargaining process.

The proffer by a defendant of a guilty plea is a significant step in the criminal process. It represents a decision by the defendant not to put the Commonwealth to the test of proving his or her guilt beyond a reasonable doubt. Plea bargaining, of course, flows from the "mutuality of advantage" to defendants and prosecutors, each with their own reasons for wanting to avoid trial, Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978), but the Commonwealth and the public have an interest in promoting fairness by insuring that each plea is an accurate reflection of guilt and a fair termination of criminal proceedings against a defendant. Rule 12 is intended to promote attainment of those goals.

Subdivision (a).

(a)(1). This subdivision is adopted from A.B A. Standards Relating to Pleas of Guilty § 1.1 (Approved Draft, 1968), which substantially accords with Fed. R. Crim. P. 11(a)-(b).

Under criminal practice prior to the adoption of rule 12, former G.L. c 227, § 47A (St 1978, c 478, § 298) provided that the defendant could plead not guilty, guilty, or nolo contendere. Rule 12 preserves these options.

The Rule does not establish the precise words a defendant must use in order to plead guilty. While the absence of the actual phrase "I plead guilty" or the word "guilty" is not sufficient by itself to invalidate a purported guilty plea, see Commonwealth v. Cavanaugh, 12 Mass. App. Ct. 543 (1981), in order to avoid confusion, a judge should clarify the intent of any defendant who does not use clear language to identify a desire to enter a guilty plea. Stipulations by the defendant to the truth of facts that are conclusive of guilt are the functional equivalent of a guilty plea and fall within the confines of Rule 12. See Commonwealth v. Hill, 20 Mass. App. Ct. 130 (1985). On the other hand, if all the defendant stipulates to is that the Commonwealth's witnesses would testify in the manner described by the prosecutor, then the defendant's act would not be the complete waiver that a guilty plea entails, see Commonwealth v. Garcia, 23 Mass App 259, 265 (1986).

The requirements of this subdivision are to insure that the fact that the plea was the informed and voluntary act of the defendant appears upon a contemporaneous record of the proceeding, thus reducing the likelihood of a post-conviction attack on the validity of a plea of guilty or nolo contendere. See, e.g., Commonwealth v Foster, 368 Mass 100 (1975).

Therefore, except where a corporation is the defendant, or where the defendant is permitted by the General Laws to pay a fine by mail or by appearing before a clerk personally or by authorized agent, the defendant personally must plead if the plea is to be guilty or nolo contendere. The defendant must also personally plead not guilty except where his or her appearance is excused pursuant to Mass. R. Crim. P. 7(a)(2) and the court enters the plea on the defendant's behalf. Mass. R. Crim. P. 7(d)(2).

The requirement that the plea be accepted in open court is based upon G.L. c. 263 § 6, and furthers the goal that it be free from the suspicion of coercion and that it is a knowing and intelligent waiver of the defendant's right to a trial. Thus, all pleas should be entered under the scrutiny of the judge in formal proceedings and be recorded, whether by stenographic or electronic means.

(a)(2). An admission to sufficient facts to warrant a finding of guilty is a procedural device that had its

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genesis in the trial de novo system. Rather than entering a guilty plea, which would have had the consequence of limiting the novo trial to the issue of the sentence, a defendant in the first tier of the de novo system could admit to sufficient facts and preserve his option of a full trial de novo. Admissions to sufficient facts have proved useful for another reason however. They offer a way to allow the defendant's case to be continued without a guilty finding, something that a traditional guilty plea is ill suited to accomplish. As the Supreme Judicial Court has recognized, a continuance without a finding (cwof) is a procedure that often serves the best interests of both the Commonwealth and the defendant. See Commonwealth v. Duquette, 386 Mass. 834, 840 (1982). Admissions to sufficient facts and cwofs were common at both levels of the trial de novo system in the District Courts. After the abolition of trial de novo, they continue to be prevalent in the District Court and Juvenile systems. See G.L. c 278 § 18 (allowing a District Court defendant to request that a case be continued without a finding and requiring that an admission to sufficient facts be treated as the equivalent of a guilty plea for purposes of the "defense capped plea" procedure discussed infra in subsection (c)(2)(B)).

If a defendant desires to admit to sufficient facts, the judge should interrogate the defendant personally to insure that the defendant understands the nature and consequences of such an admission. In the years since Rule 12 was originally promulgated, the Supreme Judicial Court has held that an offer to admit to sufficient facts triggers essentially the same safeguards required when a defendant offers to plead guilty. See Commonwealth v. Lewis, 399 Mass. 761, 763 (1987); Commonwealth v. Duquette, 386 Mass. 834, 838 (1982).

(a)(3). Requiring the permission of the court to enter a guilty plea or plea of nolo contendere accords with the practice that prevailed prior to the adoption of Rule 12. By court rule, no defendant was permitted to plead guilty or nolo contendere to a complaint for which a sentence of imprisonment may be imposed unless the judge was fully satisfied that certain conditions had been met. See District Court Initial Rules of Criminal Procedure 4 (1971); Rules of the Mun. Ct. for the City of Boston Sitting for Criminal Business 4 (1971).

A defendant does not have a constitutional right to have a guilty plea accepted by the court, see North Carolina v. Alford, 400 U.S. 25, 38 n. 11 (1970); Commonwealth v. Dilone, 385 Mass. 281 (1982); Commonwealth v. Kelliher, 28 Mass. App. Ct. 915 (1989). An admission to sufficient facts is very much like an Alford plea or a plea of nolo contendere, in that the defendant does not explicitly admit guilt. The same considerations that may inform a judge's decision to refuse to accept that latter two pleas apply equally in the case of the former.

A judge may refuse to accept a guilty plea, admission to sufficient facts, or plea of nolo contendere for a variety of reasons. So long as the judge's decision is not arbitrary or based on an impermissible factor, the sound exercise of discretion supports a decision to refuse to accept a plea. See Rossman, Guilty Pleas, 2 Criminal Law Advocacy, 8.04(3)(a). Among the common reasons to refuse to accept plea are: the plea is involuntary; the defendant does not understand the nature of the charge [c] [5] [A], infra or the consequences of the plea [c] [3], infra; there is no factual basis for the plea [c] [5] [a], infra; or there is a factual dispute that should be litigated at trial.

Subdivision (b). Section (e)(1)-(5) of Federal Rule of Criminal Procedure 11 is the prototype for this subdivision.

(b)(1). This subdivision outlines the scope of agreements as to concessions or other actions which the defendant and the prosecution may arrive at prior to plea proceedings before a judge. It must be emphasized that these negotiations are to be between defense counsel, or the defendant in an appropriate case, and the prosecution. Judges should not "participate as active negotiators in plea bargaining discussions," Commonwealth v. Gordon, 410 Mass. 498, 501 n. 3 (1991).

When a judge takes part in plea negotiations, it raises several troubling possibilities:

[it] 1) can create the impression in the mind of the defendant that he would not receive a fair trial were he to go to the trial before this judge; (2) ... makes it difficult for the judge objectively to determine the voluntariness of the plea when it is offered; (3) ... is inconsistent with the theory behind the use of the presentence investigation report; and (4) the risk of not going along with the disposition apparently desired by the judge may seem so great to the defendant that he will be induced to plead guilty even if innocent.

Commonwealth v. Damiano, 14 Mass. App. Ct. 615, 618 n.7 (1982) (quoting § 3.3(a) of the A.B.A. Standards supra). For the type of participation that a judge should avoid, see Commonwealth v. Carter 50 Mass App 902 (2000) (judge's statement at side bar that if defendant proceeded with trial and was found guilty, he would impose sentence of 18-20 years, but that if defendant pleaded guilty, sentence would be six years to six years and one day was coercive, making defendant's guilty plea involuntary).

The list of actions set out in this subsection that a prosecutor, may include in a plea agreement is not exhaustive and allows for considerable flexibility. For example, the parties may agree to a joint sentence recommendation or to present disparate positions, and may propose that the agreement either does not bind the

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judge or to one that allows the defendant to withdraw the plea if the judge does not agree. Some of the concessions a prosecutor may make in plea negotiations relate to action over which the judge has control, such as the imposition of a particular sentence. Other concessions, as in an agreement not to bring additional charges, are totally within the purview of the prosecutor. Since the doctrine of separation of powers gives the prosecutor the authority to decide what criminal charge the Commonwealth should bring against a defendant, a judge may not accept a guilty plea to a lesser included offense over the prosecutor's objection. See Commonwealth v. Gordon, 410 Mass. 498, 503 (1991).

(b)(2). Early and full disclosure of a plea arrangement reduces the risk of an unfair agreement-unfair to the public because of an unwarranted concession by an overburdened prosecutor anxious to avoid trial, or unfair to the defendant because the concession is either illusory, or so irresistible in light of the inevitable risks of trial as to induce an innocent defendant to plead guilty. E.g., Jones v. United States, 423 F.2d 252, 255 (9th Cir 1970). Disclosure of the terms of a plea agreement also will allow the court to monitor the prosecutor's performance. In addition, placing the agreement on the record will avoid disputes that may arise in an attack on the validity of the guilty plea. For these reasons and to expedite the proceedings, this subdivision requires that the court be informed at the outset of the existence of any agreement. If upon inquiry under subdivision (c)(1), infra, the defendant denies any such agreement, it is incumbent upon the prosecutor to notify the court if an agreement in fact has been made. For an example of the difficulties that can arise when the parties do not disclose the terms of a plea agreement, see Commonwealth v. Johnson, 11 Mass. App. Ct. 835 (1981).

A judge does not improperly participate in plea negotiations simply by having the parties disclose the substance of a plea arrangement pursuant to this subdivision.

Subdivision (C).

Subdivision (c)(1) is a product of Santobello v. New York, 404 U.S. 257 (1971), where it was held that:

when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Id. at 262. The Court stated further that the adjudicative element inherent in accepting a plea of guilty must be attended by safeguards to insure the defendant what is reasonably due in the circumstances and if a plea is induced by promises, their essence must in some way be known. 404 U.S. 261, 262.

If upon inquiry the defendant replies that no promises have been made, the judge should instruct the defendant that any promises relating to the imposition of sentence are in no way binding on the court. See Subdivisions (b)(1)-(2), supra. This is because defendants are often loathe to disclose such promises, although it is believed that the increased acceptability of the plea arrangement procedure of this rule will obviate such difficulties.

The effect of such an instruction will depend on the facts of each case, but in no case can it cure the prejudice resulting from a broken promise.

The words of the Supreme Court as to the binding character of defense-prosecution agreements deserve repetition:

when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled.

Santobello v. New York, 404 U.S. 257, 262 (1971). This accords with established doctrine in the Commonwealth long before the adoption of Rule 12. The Supreme Judicial Court, in 1899, stated that:

When ... promises are made by the public prosecutor or with his authority, the court will see that due regard is paid to them, and that the public faith which has been pledged by him is duly kept.

Commonwealth v. St. John, 173 Mass. 566, 569 (1899). See also, Commonwealth v. Benton, 356 Mass. 477 (1969); Commonwealth v. Harris, 364 Mass. 236, 238 (1973); Commonwealth v. Santiago, 394 Mass. 25 (1985); Commonwealth v. Parzyck, 41 Mass. App. Ct. 195 (1996).

Whether a plea bargain actually exists that obligates the prosecutor to perform a promise upon which the plea is contingent depends on an objective evaluation of the underlying circumstances that led to the plea. See Blaikie v. District Attorney for Suffolk County, 375 Mass. 613, 616 n.2 (1978) (the prosecutor's subjective

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understanding of the bargain is irrelevant); Commonwealth v. Santiago, 394 Mass. 25, 28 (1985) ("The touchstone for determining whether a defendant has been improperly denied the advantages he expected from a plea bargain is whether that defendant has reasonable grounds for reliance on his interpretation of the prosecutor's promise."); Rossman, Guilty Pleas, 2 Criminal Law Advocacy, 7.05(1) (subjective impressions alone never entitle the defendant to the benefit of an illusory agreement).

If the court determines that a plea agreement existed, and that the defendant has fulfilled his or her part of the bargain, the defendant is entitled to the benefit of the prosecutor's performance of the countervailing promise. If the Commonwealth seeks to avoid performance on the ground that the defendant has not lived up to the terms of the agreement, then the prosecutor bears the burden of proof on this issue. See Doe v. District Attorney for Plymouth Dist., 29 Mass. App. Ct. 671, 677 n.6 (1991). In the usual course of events, all the defendant need do to fulfill his or her obligation under a plea agreement is to offer a guilty plea. However, the right to enforce a plea agreement may arise beforehand, if the defendant has relied to his or her detriment on a prosecutor's promise. See id. at 674 ("concerns about fairness which underlie the requirement that the government abide by its agreements are solidly engaged once an accused person has relied to his detriment upon a plea agreement, even if it occurs before entry of a guilty plea.") Compare Blaikie v. District Attorney for Suffolk County, 375 Mass. 613, 618 (1978) (Specific performance is in no sense mandated where no guilty please has been entered, and the defendant's position has not been adversely affected).

The purpose of subdivision (c)(1) are fourfold. First, airing plea agreements in open court enhances public confidence in the administration of justice. E.g., Jones v. United States, 423 F.2d 252, 255 (9th Cir 1970). Secondly, disclosure of prosecutorial promises is the best way to test the voluntariness of the plea. By testing the strength of the inducement, the court obtains the best available evidence of its effect upon the defendant. Thirdly, this helps to implement the "factual basis" requirement of subdivision (c)(5)(A), for promises that offer unusual leniency to a defendant are suspect. Finally, this requirement will help to uncover promises that are by their nature improper and thus help to eliminate whatever incentive the prosecution might have to offer improper inducements.

Pursuant to this subdivision and subdivision (b)(2), supra, the prosecutor and defense counsel have the duty to come forward and disclose the existence and terms of a plea arrangement if the defendant balks at his opportunity to do so (even if the court does not specifically question the prosecutor or defense counsel on this issue). See Commonwealth v. Santon, 2 Mass. App. Ct. 614 (1974). This is important practically because often the defendant will not fully disclose the terms of the arrangement. It is important legally because the prosecutor and defense counsel should inform the court whenever they are aware that testimony offered in court is not in full accord with the truth as they know it. See Supreme Judicial Court Rule 3:07, MA Rules of Pro. Conduct, R. 3.3

(c)(2). Under subdivision (c)(2)(A) the judge may inform the defendant that the court is disposed to accept the prosecutor's sentence recommendation, pending the outcome of the hearing required by subdivision (c)(5), and that the judge will not exceed that recommendation without giving the defendant and opportunity to withdraw the plea. As originally promulgated, subdivision (c)(2)(b) allowed the judge an alterative course of action, indicating that the court did not intend to entertain or consider any recommendation, in which event the judge's sentencing discretion would be unrestricted. In 1987, this provision was eliminated from the Rule. The effect of the amendment was to provide defendants pleading guilty pursuant to a sentencing bargain more certainty about their fate.

Prior to the 1987 amendment, a judge could force a defendant who chose to plead guilty on the strength of a plea agreement specifying that he or she should receive a particular sentence to "plead in the dark." If the judge took advantage of option (B) of the original subsection, he or she could categorically refuse to tell a defendant who entered a negotiated plea whether the court would abide by the recommendation or not. Such a judge forced the defendant to bear the risk of waiving the right to trial and receiving nothing in return. After 1987, defendants entering plea agreements based on a joint sentence recommendation knew where they stood prior to irrevocably waiving their right to a trial.

In 2004, this subsection was amended to add new subdivision (c)(2)(B), to reflect the "defense capped plea" procedure provided for by statute in the District and Juvenile Courts. Part of the legislation that abolished the trial de novo system, G.L. c. 278 §18, gave defendants in District Court who did not reach an agreement with the prosecutor the right to offer a guilty plea or admission to sufficient facts contingent upon the judge's accepting any disposition of the case within the court's jurisdiction. The new subdivision (c)(2)(B) reflects this practice. The defense capped plea procedure applies in all District, Municipal and Juvenile courts. See G.L. ch. 119 §55B. Neither Rule 12 nor G.L. c. 278 §18 establish how many times a defendant may tender a defense capped plea. Individual judges are free to formulate their own policy on this issue as the needs of their

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particular court dictate. A District or Juvenile Court judge has the power to accept a proposed disposition under this procedure even if it entails continuing the case without a finding over the objection of the prosecutor. Although ordinarily the separation of powers doctrine prevents a judge from foreclosing the prosecution's effort to conclude a case with either a conviction or acquittal on the original charge, the legislature's specific sanction of the cwof option in the defense capped plea procedure legitimates it. Compare Commonwealth v. Pyles, 423 Mass. 717 (1996) (grant of authority by G.L. c. 278 § 18 specifically gives District Court judges authority to continue a case without a finding over the objection of the prosecutor) with Commonwealth v. Cheney, 440 Mass. 568 (2003) (Superior Court judge lacks power to dismiss case in the interest of justice over the objection of the prosecutor as this procedure is only available under G.L. c. 278 § 18 which applies only to District and Juvenile Courts); Commonwealth v. Tim T., 437 Mass. 592 (2002) (without statutory authority akin to G.L. c. 278 § 18, Juvenile Court judges lacks power to place defendant on pretrial probation over the objection of the prosecutor). However, if a judge does accept the defendant's proposal to continue a case without a finding over the prosecutor's objection, the record should reflect the reasons for the conclusion that his action is in the best interests of justice. See Pyles, supra, at 723.

If the defendant has offered a plea or admission under either subdivision (c)(2)(A) or (c)(2)(B), the judge may not impose a sentence harsher than the one upon which the defendant's action is predicted. Judges should pay careful attention to dispositions involving probationary terms or a suspended sentence to ensure that they conform to the legitimate sentence expectation of the defendant. See e.g., Commonwealth v. Glines, 40 Mass. App. Ct. 95 (1996) (where District Court judge imposed a sentence of probation with a titled term of five years, it was more severe than the defendant's request for probation with 2 ½ years suspend); Commonwealth v. Barber, 37 Mass. App. Ct. 599 (1994) ,(where pursuant to a plea agreement, prosecutor recommended the defendant receive a 12-15 year sentence concurrent with other sentences the defendant received, and the judge imposed a suspended sentence of 12-15 years, consecutive the other sentences the defendant received, and placed the defendant on probation for two years, the judge exceeded the terms of the prosecutor's recommendation).

(c)(3) This subdivision was originally patterned after Fed. R Crim P. 11(c)-(d). In addition, it drew upon District Court Initial R. Crim. P. 4 (1971); Sections 1.4 and 1.5 of the ABA Standards Relating to Pleas of Guilty (Approved Draft, 1968); A.B.A. Standards Relating to the Function of the Trial Judge § 4.2 (Approved Draft, 1972); Rules of Criminal Procedure (U.L.A.) rule 444(b) (1974); A.L.I. Model Code of Pre-Arraignment Procedure § 350.4 (POD 1975); and the National Advisory Commission on Criminal Justice Standards & Goals, Courts, standard 3.7 (1973).

In 2004, this subdivision was amended to eliminate a provision allowing defense counsel to conduct the colloquy with the defendant. The Supreme Judicial Court has disapproved of defense counsel conducting guilty plea colloquies, as far back as Commonwealth v. Morrow, 363 Mass. 601 (1973) ("the spontaneity and flexibility of the dialogue, which supports a conclusion of voluntariness, can best be achieved where the judge asks the questions. This also avoids even the appearance that the colloquy is but a prearranged script. Therefore, we think it would be better practice for the judge to ask the questions.") By statute, defense counsel cannot conduct the part of the colloquy dealing with warnings of immigration consequences, see Commonwealth v. Villalobos, 437 Mass. 797 (2002).

The responsibility for conducting a meaningful colloquy with the defendant properly rests on the judge's shoulders. This requires "a continuing effort on the part of trial judges, with the help of counsel, so to direct their questions as to make them a real probe of the defendant's mind . . . It is not to become a 'litany' but is to attempt a live evaluation of whether the plea has been sufficiently meditated by the defendant with guidance of counsel, and whether it is not being extracted from the defendant under undue pressure." Commonwealth v. Fernandes, 390 Mass. 714, 716 (1984) quoting Commonwealth v. Foster, 368 Mass. 100, 107 (1975) (emphasis added). The colloquy should include an inquiry into any mental illness from which the defendant may be suffering, and whether the defendant is under the influence of alcohol or drugs. See Commonwealth v. Correa, 43 Mass. App. Ct. 714, 717-718 (1997).

The Supreme Judicial Court has suggested the utility of using a checklist to ensure that a plea colloquy is both comprehensive in scope and meaningful in substance. See Commonwealth v Colon (2003) 439 Mass 519, 530 quoting Commonwealth v. Nolan, 19 Mass. App. Ct. 491, 501-502, (1985):

[Post conviction attacks on the validity of a plea can] be minimized if not wholly avoided, and justice better and more humanely administered in the first instance, if judges permitted themselves to be assisted by the carefully drafted and fully inclusive model questionnaires that have been long available ... We do not suggest that any model should be followed mechanically; indeed such a practice would be unwise because it could interfere with a probing exchange. Nevertheless a model can serve as a guide and checklist. We would suggest,

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as well, that a duty is cast on the lawyers on both sides to be alert and helpful if it appears that the judge through inadvertence may not be carrying out the full requirements of the rule. (Footnote omitted)

The information about the consequences of a conviction should be part of the oral dialogue between the judge and the defendant. It is not sufficient for a judge to rely on the defendant's acknowledgment of this information on a written form. See Commonwealth v. Rodriguez, 52 Mass. App. Ct. 572 (2001); Commonwealth v. Hilaire, 51 Mass. App. Ct. 818, 823 (2001) ("During a colloquy, the judge has the opportunity to observe and interact with the defendant and can communicate the warnings to the ... defendant with greater assurance than can be supplied by the preprinted ... form.")

While the judge is the one who conducts the colloquy, all the parties share the responsibility to make certain that defendants are informed of the consequences of a plea or admission. As the United States Supreme Court said, with respect to the obligation of defense attorneys in federal criminal cases:

Apart from the small class of rights that require specific advice from the court under Rule 11(c), it is the responsibility of defense counsel to inform a defendant of the advantages and disadvantages of a plea agreement and the attendant statutory and constitutional rights that a guilty plea would forgo.

Libretti v. United States, 516 U.S. 29, 50-51 (1995). The prosecutor also has a role to play in ensuring that the court is aware of any information that might bear on the legitimacy of the plea and that the colloquy covers all of the necessary topics. See State v. Rodriguez, 112 Ariz. 193, 540 P.2d 665 (1975).

Subdivision (c)(3)(A) enumerates the plea's immediate consequences of which a defendant must be specifically informed. It imposes a responsibility on the judge not only in cases where the defendant has tendered a traditional guilty plea or a nolo contendere plea, but also where a defendant has offered to admit to sufficient facts to warrant a finding of guilty. The Rule was amended in 2004 to cover this last category in recognition of the fact that in the years since Rule 12 was originally promulgated, the Supreme Judicial Court held that an offer to admit to sufficient facts triggers the essentially the same safeguards required when a defendant offers to plead guilty. See Commonwealth v. Duquette, 386 Mass. 834, 838 (1982) (an admission to sufficient facts is the functional equivalent of a guilty plea and the record must reflect the defendant waived the right to trial knowingly and voluntarily); Commonwealth v. Lewis, 399 Mass. 761, 763 (1987).

The United States Supreme Court held in Boykin v. Alabama, 395 U.S. 238, 243 (1969) not only that a defendant must understand that he or she waives the privilege against self incrimination, the right to trial by jury, and the right to confront one's accusers by entering a guilty, but also that a court could not presume a waiver of these rights from a silent record. Prior to the adoption of Rule 12 in 1979, the Supreme Judicial Court held in Commonwealth v. Morrow, 363 Mass 601, 604-05 (1973), that "it would be better practice to include specific inquiry as to the defendant's understanding waiver of the three constitutional rights."

In 2004, this subdivision was amended to require an additional warning of rights be given to the defendant, concerning the right to be presumed innocent until proved guilty beyond a reasonable doubt. Although not constitutionally required, it is sound practice to include it. The Supreme Judicial Court has recommended its use in cases where the defendant is willing to plead guilty but does not acknowledge all of the elements of the factual basis. See Commonwealth v. Earl, 393 Mass. 738, 742 (1985) ("when a judge concludes that he is satisfied that there is a factual basis for a charge to which a defendant is willing to plead guilty, but the defendant does not acknowledge all the elements of the factual basis, it would be better practice for the plea judge to advise the defendant that his guilty plea waives his right to be presumed innocent until proved guilty beyond a reasonable doubt.")

It has been recommended that the proper formulation for advising a defendant as to his, waiver of a jury trial is that "by pleading guilty he [gives] up his right to a 'trial with or without a jury,'" Commonwealth v. Hamilton, 3 Mass. App. Ct. 554, 557 n. 4 (1975). This instruction will serve to emphasize that, upon acceptance of a guilty plea, no trial will be held and all that remains is the imposition of sentence. However, the judge does not have to include information about the difference between a jury trial and a bench trial. See Commonwealth v. Gonsalves 57 Mass App 925 (2003). Nor does the colloquy have to include information about the loss of the opportunity to appeal issues, such as the court's action in denying a suppression motion. See Commonwealth v. Quinones, 414 Mass. 423, 435 (1993); Commonwealth v. Hamilton, 3 Mass App Ct 554, 558 n. 6 (1975) (if such information is given, it will "require careful formulation to avoid creating confusion as to the right to appeal to the Appellate Division of the Superior Court and the right to post-conviction remedies under special circumstances.")

Pursuant to subdivision (c)(3)(B), the defendant is to be informed of the sentencing consequences of a conviction based upon the tender of a plea or admission. The judge should inform the defendant of the maximum

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sentence of each offense to which the defendant is offering a plea or admission. In some circumstances, the maximum sentence will depend on whether the defendant has previously been convicted. The judge must take this possibility into account. General Laws c. 279, § 25, which mandates the maximum sentence for a felony defendant who has been previously convicted of two felonies and sentenced to more than three years on each, is an example of that type of provision contemplated by the "second offense" language of (c)(3)(B).

If probation is not a sentencing option, the judge must inform the defendant of any applicable mandatory minimum sentence as well. If the judge imposes a sentence of straight probation (one without a concomitant suspended term), the judge must inform the defendant of the maximum term, and any mandatory minimum term, that could be imposed if probation is revoked. See Commonwealth v. Rodriguez, 52 Mass. App. Ct. 572 (2001). In 2004, this subsection was amended to eliminate the requirement that the judge inform the defendant of the maximum sentence possible if the defendant received consecutive sentences. See United States v. Kikuyama, 109 F.3d 536 (9th Cir. 1997) (where it is not mandatory to impose consecutive sentences, defendant need not be informed of that possibility in order to enter a knowing and intelligent guilty plea); United States v. Hamilton, 568 F.2d 1302, (9th Cir.) cert. denied 436 U.S. 934 (1978) (the possibility of consecutive sentences was implicit in the separate explanation of the possible sentence on each charge).

Conviction of certain sex crimes carries with it three consequences that also must be included in the plea colloquy in a relevant case. First, if the defendant is subject commitment as a sexually dangerous person, see G.L. c. 123A, the judge must include notice of that possibility prior to accepting the plea or admission. This provision has part of Rule 12 since its adoption, changing the practice that prevailed prior to 1979. See Commonwealth v Morrow, 363 Mass 601, 606 (1973) (being subject to the "sexually dangerous person" provision "is but one of many contingent consequences of being confined" after conviction, and therefore need not be explained to a defendant). Since a 2004 amendment to G.L. c. 123A § 12 makes a defendant subject to commitment as a sexually dangerous person despite the nature of the offense to which the defendant is pleading guilty, so long as the defendant has been convicted any time in the past of a designated sex offense, a warning of the possibility of commitment under c. 123A should be included as a matter of routine unless it is clear from the defendant's prior record that it is not relevant.

Second, if the defendant is tendering a plea or admission to an offense which might subject him or her to the possibility of community parole supervision for life, a 2004 amendment to this subsection requires the judge to notify the defendant of this possibility. Because the prospect of life time parole is an additional form of punishment, it should be part of the information the defendant receives about the maximum sentence he faces. GL c. 265 § 45 specifically refers to community parole supervision for life as punishment.

Third, a 2004 amendment incorporated into this subsection the requirement of G.L. c. 6, § 178E(d), that a court accepting a plea for a sex offense inform the defendant that the plea may result in the defendant's being subject to the provisions of the sex offender registration statute. The statute states that failure to provide this information shall not be grounds to vacate or invalidate the plea, and the inclusion of this requirement in Rule 12(c)(3)(B) does not enlarge the grounds on which a defendant can invalidate a plea after the fact.

The failure to inform the defendant of the sentencing consequences of a plea may result in the conviction being set aside because the plea was not a knowing and intelligent waiver. E.g., Commonwealth v. Rodriguez, 52 Mass. App. Ct. 572 (2001) (failure to inform the defendant of the maximum sentence and mandatory minimum sentence upon revocation of probation). However, "not every omission of a particular from the protocol of the rule ... entitles a defendant at some later stage to negate his plea and claim a trial." Commonwealth v. Nolan, 19 Mass. App. Ct. 491, 494 (1984). 1 E.g., Commonwealth v. Cavanaugh, 12 Mass. App. Ct. 543, 545-546 (1981) (where defendant received the' sentence recommended by the prosecutor, the judge's failure to inform him of the maximum possible sentence was harmless beyond a reasonable doubt).

While there are consequences beyond those enumerated in this subdivision that might influence a defendant's decision to plead guilty, if they are collateral, in the sense of being contingent upon some future event or subject to discretion or under the control of the federal government or that of another state, they need not be incorporated into the plea colloquy. For example, ordinary parole consequences need not be part of the judge's warnings, see Commonwealth v. Santiago, 394 Mass. 25, 30 (1985), nor is ineligibility to receive good time deductions from a sentence being served after conviction of certain crimes, see Commonwealth v. .Brown, 6 Mass. App. Ct. 844 (1978) (rescript).

Subdivision (c)(3)(c) was added in 2004, and is based on the requirement in G.L. c. 278, § 29D, that a defendant who guilty or nolo contendere must be advised that if he or she is not a United States citizen, a conviction may have the Consequences of deportation, exclusion of admission, or denial of naturalization. This subdivision, however, is broader than the statute. The Supreme Judicial Court has held that this warning is also required when the defendant offers an admission to sufficient facts, see Commonwealth v. Mahadeo, 397 Mass.

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314 (1986), and so the Rule requires an "alien" warning in those cases as well. In addition, the Rule requires the defendant to be warned of the potential adverse impact of the plea or admission, rather than of a conviction, as the statute requires. Under current immigration law, the statute's warning may be misleading since adverse consequences can flow from an admission to sufficient facts not followed by a conviction. See Commonwealth v. Villalobos, 437 Mass. 797 (2002). By warning the defendant that a plea or admission can have adverse immigration consequences, the court necessarily conveys not only the message about the effect of an ensuring conviction but also alerts the defendant to the possibility of adverse consequences from the plea or admission itself.

(c)(4). To this point the court has been informed of the existence of and substance of a plea arrangement, has indicated a willingness to entertain that arrangement, and has informed, or caused, the defendant to be informed of the consequences of acceptance of the plea. The defendant now formally tenders a plea or admission to the court, which then conducts a hearing to determine whether it is a knowing, intelligent, and voluntary waiver.

(c)(5). By requiring an inquiry into the "voluntariness" of the plea or admission, this subdivision requires the judge to ensure two basic foundations for a valid waiver. First is that the defendant understands the consequences of his or her act. Courts often refer to this standard as requiring the plea to be a knowing and intelligent act. In addition, the defendant's decision must be free from improper influence. As the Supreme Court, in Johnson v. Zerbst, 304 U.S. 458 (1938), declared, a waiver is "an intentional relinquishment or abandonment of a known right or privilege." Id. at 464 (emphasis supplied).

In order to enter a valid guilty plea, the defendant must be competent. Under both the federal and state constitutions, the test of competence to plead is the same as that for standing trial. See Godinez v. Moran, 509 U.S. 389 (1993); Commonwealth v. Blackstone, 19 Mass. App. Ct. 209 (1985). The standard for determining competency to stand trial is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him." Commonwealth v. Russin, 420 Mass. 309, 317 (1995) quoting Dusky v. United States, 362 U.S. 402, 402 (1960). The substituted judgment doctrine, by which the court appoints a guardian to act, is not an appropriate vehicle for an incompetent defendant who offers to plead guilty. See Commonwealth v. Del Verde, 398 Mass. 288 (1986).

In Huot v. Commonwealth, 363 Mass. 91, 99-101 (1973), the court recognized that Boykin v. Alabama, 397 U.S. 238 (1969) placed the burden of establishing on review that a guilty plea is made voluntarily and intelligently is on the prosecution. The Commonwealth must meet that burden and the hearing that this subsection establishes is designed to meet that end.

The Supreme Judicial Court, in Commonwealth v. Lopez, 426 Mass. 657, 660, (1998), stated the appropriate standard:

As a general proposition of constitutional law, a guilty plea may be withdrawn or nullified if it does not appear affirmatively that the defendant entered the plea freely and voluntarily. Boykin v. Alabama, 395 U.S. 238, 242-243 (1969). See Brady v. United States, 397 U.S. 742, 748 (1970); Commonwealth v. Foster, 368 Mass. 100, 106 (1975). Rule 12 (c) (3) of the Massachusetts Rules of Criminal Procedure, requires that a defendant be informed on the record of the three constitutional rights which are waived by a guilty plea: the right to trial, the right to confront one's accusers, and the privilege against self-incrimination. See Boykin v. Alabama, supra at 243; Commonwealth v. Lewis, 399 Mass. 761, 764 (1987). Moreover, the plea record must demonstrate either that the defendant was advised of the elements of the offense or that he admitted facts constituting the unexplained elements. See Henderson v. Morgan, 426 U.S. 637, 646, (1976); Commonwealth v. Colantoni, 396 Mass. 672, 678-679 (1986). Finally, the plea record must demonstrate that the defendant pleaded guilty voluntarily and not in response to threats or undue pressure. See Commonwealth v. Foster, supra at 107.

The first distinct requirement is that the defendant understand the nature of the charge. A plea may be involuntary because the defendant has such an incomplete understanding of the charge that the plea is an unintelligent admission of guilt. Without adequate notice of the nature of the charge against him, or an indication that the defendant in fact comprehends the charge, the plea cannot stand as voluntary. See Smith v. O'Grady, 312 U.S. 329 (1941). In Henderson v. Morgan, 426 U.S. 637 (1976), the Supreme Court held that a guilty plea to a charge of second-degree murder was involuntary because the defendant was not informed that intent to cause death was an element of that crime. The Court assumed, without deciding, that notice of the true nature, or substance, of a charge does not always require a description of every element of the offense, however. Id. at 647 n. 18. The Court agreed with the government that in the usual case, the reviewing court should examine the

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totality of the circumstances and determine whether the substance of the charge, as opposed to its technical elements, was conveyed to the defendant, rather than testing the voluntariness of his plea according to whether a ritualistic litany of the formal legal elements of the offenses was read to him.

There are three ways that the record of a plea or admission can serve as satisfactory evidence that the defendant had the requisite knowledge of the elements of the charge: 1) the judge can explain the elements of the crime; 2) counsel may represent that he or she has explained them to the defendant; or, 3) the defendant may admit or stipulate to facts constituting the elements. See Commonwealth v. Colantoni, 396 Mass. 672, 679 (1986). The defendant's signature on a form that he or she is aware of the elements of the charge is not sufficient. See Commonwealth v. Jones, 60 Mass. App. Ct. 88 (2003).

While in a post-conviction context it may suffice for the record to reflect that counsel stated that the defendant was advised of the elements, or for the defendant to have admitted an act constituting the elements, the judge should not rely on these means as the primary method of establishing the requisite knowledge. See Colantoni, supra, 396 Mass. at 679 n. 5. The best way to ensure that the defendant knows the elements of the crime is for the judge to explain them as part of the colloquy. This can be fairly easily done in most cases by reading to the defendant the indictment or complaint. However, in some cases, it may require more than a simple statement of the crime itself. E.g. Commonwealth v. Jones, 60 Mass. App. Ct. 88 (2003) (simply telling the defendant that he is charged with assault and battery does not sufficiently apprise him of the elements of the crime); Commonwealth v. Pixley, 48 Mass. App. Ct. 917 (2000) (telling the defendant only that he was charged with possession of cocaine with intent to distribute did not satisfy requirement of explaining the elements as mandated by this subsection).

For an example of the scope of the examination conducted to satisfy the Boykin requirement of an affirmative showing of understanding and voluntariness, see Commonwealth v Taylor, 370 Mass 141, 144-45 n. 5 (1976). In conducting the examination, the judge is to rely on his or her own observations and discernment in concluding that the defendant understands the questions. See Commonwealth v Leate, 367 Mass 689, 696 (1975)

In order for the plea or admission to be voluntary, the defendant's decision to waive a trial must be free from the influence of factors that have no legitimate role to play in the process. See Rossman, Guilty Pleas, 2 Criminal Law Advocacy, If 2.03 (listing improper threats, such as physical abuse). Therefore, the judge should inquire whether the defendant's decision to waive a trial is a result of any threats or inducements apart from those identified in the plea agreement. See Commonwealth v. Fernandes 390 Mass. 714, 719 (1984). While no particular form of words need be used to make this inquiry, see Commonwealth v. Lewis, 399 Mass. 761, 764 (1987), a brief colloquy that does not probe the defendant's mind will not do. See Commonwealth v. Quinones, 414 Mass. 423, 434 (1992); Fernandes, supra, 390 Mass. at 717-719. It is useful, however, for the judge to include in the colloquy a question about whether the defendant has consulted with counsel about the decision to waive a trial and is satisfied with counsel's assistance. Cf. Fernandes, supra, 390 Mass. at 718.

The pressure of a plea bargain that holds out no more than the possibility of a harsher sentence if the defendant goes to trial and is convicted is not by itself an improper influence that would render a guilty plea not voluntary. See Commonwealth v Tirrell 382 Mass 502, 510 (1981):

neither this court nor the Supreme Court has required total absence of psychological or emotional pressure. In any plea bargaining situation the defendant is necessarily put to a difficult choice - the risk of a more serious sentence after trial and conviction against the probabilities of the trial judge's accepting the prosecutor's recommended leniency. The defendant's fond hopes for acquittal must be tempered by his understanding of the strength of the case against him, his prior record, and the completely unknowable reaction of the trier of fact. See Commonwealth v. Leate, 367 Mass. 689, 694 (1975). Without some showing of peculiar susceptibility, which rendered the defendant so gripped by fear of the ... penalty or hope of leniency that he ... could not ... rationally weigh the advantages of going to trial against the advantages of pleading guilty," Brady v. United States, 397 U.S. 742, 750 (1970). We cannot say that the pressure of the decision per se destroys voluntariness. Contrast Pate v. Robinson, 383 U.S. 375, 385-386 (1966) (record of irrational conduct required hearing on defendant's incompetency to stand trial).

(c)(5)(A). This subdivision is based upon A.B.A. Standards Relating to Pleas of Guilty § 1.6 (Approved Draft, 1968) and accords with District Court Initial R. Crim. P. 5 (1971). See Fed. R. Crim. P. 11(f).

The "factual basis" standard can be met by having th prosecutor state for the record the evidence that the Commonwealth would have presented had the case gone to trial; In addition, the court may require sworn testimony from a prosecution witness or of the defendant. See 8 J. Moore, Federal Practice 11.03 [3] at 11-75

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(1978); A.B.A. Standards Relating to Pleas of Guilty § 1.6, comment at 32 (Approved Draft, 1968).

North Carolina v. Alford, 400 U.S. 25 (1970), establishes that the United States Constitution does not prohibit the court from accepting a guilty plea from a defendant who nevertheless asserts his or her innocence. An Alford plea is a permissible way to establish a defendant's guilt without a trial. See Commonwealth v. Nikas, 431 Mass. 453 (2000); Hout v. Commonwealth, 363 Mass. 91 (1973). "Under Alford, a defendant who professes innocence may nevertheless plead guilty and 'voluntarily, knowingly and understandingly consent to the imposition of a prison sentence,' if the State can demonstrate a 'strong factual basis' for the plea." Commonwealth v. DelVerde, 398 Mass. 288, 297(1986), quoting North Carolina v. Alford, 400 U.S. 25, 38 (1970). If a factual basis for such a plea exists, it is only fair to allow a defendant who is aware of the law, the facts, and the consequences of his plea, to attempt to reduce the severity of his or her punishment by pleading guilty. See Commonwealth v Hubbard, 371 Mass. 160 (1976). The defendant is free to weigh the strength of the Commonwealth's evidence and on this basis to waive the right to trial. If the waiver is voluntary and intelligent it should be upheld.

Subdivision (c)(5)(A) is not made applicable to nolo pleas. The purpose of permitting a nolo plea is to relieve the defendant of the adverse repercussions that can result from the introduction of evidence from the present criminal proceedings. This purpose would be undermined to the extent that disclosures led to subsequent civil proceedings or evidence to be used at such proceedings, notwithstanding the fact that the disclosures themselves could not be used in evidence. The Federal Rules Advisory Committee stated in its note to Fed. R. Crim. P. 11: "it is desirable in some cases to permit entry of judgment upon a plea of nolo contendere without inquiry into the factual basis for the plea."

(c)(5)(B). At the conclusion of the hearing, if the judge finds that the plea "is the defendant's own, guided by reasonable advice of his counsel, his own knowledge of what he has done, and a fair understanding of the alternatives," it will be considered voluntary. Commonwealth v Manning, 367 Mass 699, 706 (1975). The judge may then accept the plea or, notwithstanding the fact that it is voluntary, reject it. See subdivision (c)(6), infra.

(c)(5)(C). If the plea or admission is accepted, the judge shall proceed with sentencing as after a verdict or finding of guilty under Mass. R. Crim. P. 28(b).

(c)(6). This subdivision is drawn in part from Fed. R. Crim. P. 11(e)(3)-(4) and from A.B.A. Standards Relating to Pleas of Guilty § 2.1 (Approved Draft, 1968). See Rules of Criminal Procedure (U.L.A.) rule 444(e) (1974). Compare Fed. R. Crim. P. 32(d) (plea may be withdrawn after sentence only to correct manifest injustice") with A.L.I. Model Code of Pre-Arraignment Procedure § 350.6 (POD 1975) (defendant may withdraw plea if sentence to be imposed is more severe than that provided in plea agreement).

Previously existing statutes relative to the withdrawal of pleas after imposition of sentence are intended to be unaffected by this rule. General Laws c. 278 §§ 29A (St 1962, c 310 § 2 and 29C (St 1959, c 167, § 1) permitted the retraction of any sentence and the withdrawal of any plea the sentence was imposed within sixty days of sentencing if justice has not been done. Now see Mass. R. Crim P. 29. In a case where the defendant has the right to counsel and is neither represented nor validly waived counsel, General Laws c. 278, § 29B grants the defendant an absolute right to withdraw a plea prior to sentencing.

The subdivision addresses two classes of cases. One is where the defendant's plea or admission is contingent upon a prosecutor's sentence recommendation. The other, referred to in language added in 2004, occurs where the defendant has tendered a defense capped plea. In either case, the judge has many available options. After reviewing the arrangement and, if desired, the probation report, the judge may concur in the disposition; concur in the disposition, but condition the concurrence upon facts being found consistent with representations made by the parties; refuse to accept the disposition; or propose an alternative disposition, giving the defendant a reasonable opportunity to consider the alternative before deciding whether to persist in the plea or admission or proceed to trial. If the judge intends to vary from the recommended or tendered disposition in a manner which is detrimental or prejudicial to the interests of the defendant, the defendant has an absolute right to withdraw the plea or admission.

It should be noted that where a plea or admission is predicated on a promise by the prosecutor to take unilateral action over which the judge has no control, such as entering a nolle prosequi to certain charges, this subsection is not applicable. The "[p]ower to enter a nolle prosequi is absolute in the prosecuting officer ... except possibly in instances of scandalous abuse of the authority." Commonwealth v. Dascalakis, 246 Mass. 12, 18 (1923). See. Mass. R. Crim. P. 16. In a case such as this, disclosure to the court prior to the tender of the plea serves no purpose other than determining whether the plea is knowingly and voluntarily made.

While this subdivision is the only provision in Rule 12 that explicitly addresses the issue of a defendant's withdrawing a plea, a judge has authority to entertain such a motion on other grounds. Prior to its amendment in

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1987, Rule (c)(2)(B) contained an explicit statement that if the defendant persisted in pleading guilty despite notice of the judge's intention to exceed the prosecutor's recommended sentence, the defendant could not thereafter withdraw the plea except "in the discretion of the judge." This provision was eliminated in 1987. The former subsection (c)(2)(B) gave the judge "broad discretion to allow a defendant to withdraw [a] plea before ... sentence [has been] imposed." Commonwealth v. DeMarco, 387 Mass. 481, 484 (1982); see also Commonwealth v. Clerico, 35 Mass. App. Ct. 407, 413 n. 7(1991). The removal from Rule 12 of the reference to a judge's discretion to allow the defendant to withdraw a plea does not alter the law that otherwise controls in this situation. If the defendant can show that the plea was not voluntary or tendered knowingly, then a motion for withdrawal should be granted, for these requirements are constitutional prerequisites to the validity of the plea. If, on the other hand, the defendant seeks to withdraw a plea prior to sentencing despite its being knowing and voluntary, the judge should balance the reason put forward by the defendant against any prejudice to the Commonwealth. Cf. Commonwealth v. Nolan, 19 Mass. App. Ct. 491, 494 (1984). After sentencing, however, the proper vehicle to seek to withdraw a guilty plea is a motion under Rule 30 (b).

The 2004 revision of Rule 12 deleted subdivision (d), which was designed to discourage the practice of "judge shopping' by tendering, withdrawing, and retendering a guilty plea until a judge is found who will agree to the disposition favored, by the defendant. A uniform policy on whether a defendant may ask more than one judge to accept a sentence recommendation or defense capped plea is unnecessary. Individual judges still retain the discretion to refuse to entertain such requests.

(e). The conditions governing the availability to the defendant of the probation report are the same as those which control under Mass. R. Crim. P. 28(d)(3). It is important for the defendant to have access to this information so that he or she can more effectively bargain with the prosecutor and more accurately predict how the court will react to proposed dispositions. The judge need not always view the probation report to properly decide whether it should be released to the defendant. The judge can rely on representations made by the probation department or by the prosecutor in reaching this decision. The judge may examine the defendant's criminal record before accepting a plea or admission. See Commonwealth v. Whitford, 16 Mass. App. Ct. 448, 453 (1983).

Subdivision (f). In its original form, this subdivision changed the prior rule in Massachusetts that a plea that has been withdrawn may be introduced in subsequent proceedings as an admission by the defendant. See Morrisey v. Powell, 304 Mass. 268 (1939). The current position reflected in this subdivision is consistent with the modern trend and with the rule in federal courts. See A.B.A. Standards Relating to Pleas of Guilty, §§ 2.2, 3.4 (Approved Draft, 1968); Rules of Criminal Procedure (U.L.A.) rule 444(f) (1974); A.L.I. Model Code of Pre-Arraignment Procedure § 350.7 (POD 1975). It is drawn from Fed. Cr. Crim. P. 11(e)(6), although it is broader in scope, since unlike the federal rule, its application to statements made in the course of plea negotiations is not limited only to circumstances where the defendant is negotiating with a government attorney. See Commonwealth v. Wilson, 430 Mass. 440, 443 (1999). However, simply expressing a desire to plead guilty to a police officer who does not have any authority to bind the Commonwealth does not bring a defendant's statement within the scope of this subdivision. Id.

In 2004, the subdivision was amended to include admissions to sufficient facts among the category of actions by the defendant that are not admissible if later withdrawn.

Permitting a prosecutor to offer evidence that a defendant unsuccessfully tendered a plea or admission undermines the rationale behind the decision allowing the plea or admission to be withdrawn in the first place. See Kercheval v. United States, 274 U.S. 220 (1927). Additionally, juries tend to give undue weight to the introduction of prior pleas. Of course, if the reason why the plea or admission was withdrawn was that it was not knowing and voluntary, then the federal Constitution prohibits its use in a subsequent proceeding. Cf. White v. Maryland, 373 U.S. 59 (1963) (barring use of evidence that the defendant had entered a guilty plea without the assistance of counsel, where the defendant did not validly waive the right to counsel).

While an offer to plead guilty is inadmissible pursuant to this subdivision, the fact that a defendant refused to enter a guilty plea or rejected a plea agreement is not, conversely, admissible by implication. See Commonwealth v. DoVale, 57 Mass. App. Ct. 657 (2003).

Reporter's Notes-January 2015

Rule 12 Pleas and Plea Agreements

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As the title of Rule 12 suggests, the 2015 revision of the rule resulted in a more carefully delineated and somewhat expanded role for plea agreements in the process of a judge's consideration and acceptance of a proffered guilty plea. The rule's amendment was in response to the Supreme Judicial Court's interpretation of Rule 12 in Commonwealth v. Rodriguez, 461 Mass. 256 (2012), and Commonwealth v. DeanGanek, 461 Mass. 305 (2012), holding that former Rule 12 permitted a judge to impose a sentence more lenient than the sentence agreed to in a plea agreement accepted by the judge. The Court further held that jeopardy attaches when the judge accepts a plea, see Dean-Ganek, 461 Mass. at 312-313, thus preventing the prosecution's withdrawal in such a case, even when the plea agreement included negotiated charge concessions.

As amended, Rule 12 provides that, if (1) the parties enter a plea agreement which includes both a specific, agreed sentence and a prosecutorial charge concession and (2) the judge accepts that agreement, then the judge is bound to impose the agreed sentence. If, on the other hand, the judge rejects such an agreement, either party may withdraw. In all other pleas or admissions, whether conditioned on a plea agreement or not, the amended rule provides that the judge is not bound by the sentencing recommendations of the parties. However, in such cases, the amended rule permits the defendant to withdraw the plea if the judge indicates an intent to impose a sentence more severe than (1) an agreed recommendation (but without charge concessions), (2) the prosecutor's recommendation if there is no agreed sentencing recommendation, or (3) in District Court, the disposition requested by the defendant. Finally, in order to promote fair and efficient plea bargaining and to establish rules to govern the previously unregulated and widely varying practice of lobby conferences, amended Rule 12 provides for judicial participation in plea negotiations at the request of a party and requires that plea discussions with judicial participation be recorded.

Rule 12(a) Pleas in General

The 2015 amendments made no substantive changes to Rule 12(a). The only changes were stylistic, designed to make the rule more specific and clear.

Rule 12(b) Plea Discussions; Pleas Without Plea Agreement and With Plea Agreement

Rule 12(b)(1) In General

Rule 12(b)(1) makes it clear that the defendant may tender a guilty plea, a nolo contendere plea, or, in District Court, an admission to sufficient facts, without entering into a plea agreement. See Rule 2(b)(7) (defining "District Court" to include all divisions of the District Court, Boston Municipal Court, and Juvenile Court). However, the rule also provides that the parties may condition a guilty plea (or, in District Court, an admission to sufficient facts) on a plea agreement under Rule 12(b)(5), discussed below. Rule 12(b)(1) omits nolo contendere pleas from those that can be conditioned on a plea agreement, an omission that Rule 12(b)(5) makes explicit, thus limiting the benefits of a plea agreement to those defendants who take responsibility for the crimes to which they are pleading.

Rule 12(b)(2) Plea Discussions

Rule 12(b)(2) provides that the judge may participate in plea discussions at the request of either party provided any such discussions are recorded and made part of the record. Such limited judicial participation in plea negotiations facilitates fair and efficient case management, particularly in courts with crowded dockets, and it has been a longstanding though largely unregulated practice in many courts. The rule maintains the recognized benefits of this practice while providing important safeguards to curb potential for abuse.

Recognizing that judicial participation in plea negotiation can be coercive and leave the impression of unfairness, this provision addresses these concerns by conditioning such participation on the request of one or both parties and further requiring that these discussions be recorded and made a part of the record. See Murphy v. Boston Herald, Inc., 449 Mass. 42, 57 n. 15 (2007) (stressing the importance of recording lobby conferences). The rule does not, however, preclude a judge's uninvited announcement that he or she is willing to participate in plea discussions if invited to do so by either party. The rule's requirement that the discussions be recorded and made part of the record is not meant to require that they invariably be conducted in open court. As with other potentially sensitive matters, judges have discretion under the appropriate circumstances to conduct plea discussions in a manner that restricts immediate public access, most likely at sidebar, provided they are recorded. Judges are experienced in determining when sidebars or other such restrictions are appropriate, and the rule anticipates that they will continue to apply that experience injudiciously exercising this discretion.

Rule 12(b)(3) Inquiry as to the Existence of a Plea Agreement

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Rule 12(b)(3) provides that, when a defendant indicates an intent to plead guilty or to admit to sufficient facts, the judge shall inquire if there is a plea agreement. Because plea procedures vary depending on whether there is an agreement that will bind the judge if accepted, such an inquiry is necessary in order to determine which procedure is applicable. Because Rule 12 does not permit a nolo contendere plea to be conditioned on a plea agreement, the rule does not require the judge to ask if there is a plea agreement in such a case. However, it may make sense for the judge nevertheless to make this preliminary inquiry in the case of a nolo plea, if only to ensure that the parties understand that any such plea agreement is outside the rule, constituting at best a joint recommendation that the judge is free to disregard.

Rule 12(b)(4) Pleas Without an Agreement

If there is no plea agreement under Rule 12(b)(5), Rule 12(b)(4) provides that the procedure for taking a plea or admission set forth in Rule 12(c) applies. In such a case, the parties are each free to make any dispositional request permitted by law.

Rule 12(b)(5) Pleas Conditioned Upon an Agreement

Rule 12(b)(5) provides that a defendant may condition an intended guilty plea or admission on a plea agreement with the prosecutor. As noted, the rule explicitly precludes a plea agreement if the intended plea is nolo contendere. The rule divides plea agreements into two categories. Rule 12(b)(5)(A) provides for a type of plea agreement that, if accepted by the judge, binds the judge to sentence in accordance with the agreement, and Rule 12(b)(5)(B) provides, in effect, that no other plea agreement binds the judge to impose a particular sentence.

Under Rule 12(b)(5)(A), an accepted plea agreement will bind the judge if the parties have agreed both to a particular charge concession(s) by the prosecutor and to a specific sentence, including the length of any probationary term. Rule 12(b)(5)(A)'s reach is intentionally narrow. The rule carves out an exception to judicial sentencing discretion, an exception applicable only to a plea bargain that expressly includes both a prosecutorial charge concession and an agreed sentence to a specific term of incarceration, to a specific period of probation, or to a specific term of incarceration coupled with a specific period of probation (e.g., a term of probation to be served in lieu of a suspended sentence of incarceration, or a term of probation to be served on and after a term of incarceration). If the parties enter into such an agreement, the rule requires the judge to follow the plea procedures set forth in Rule .12(d), noting that those procedures mandate imposition of the agreed sentence if the judge accepts the plea agreement and the plea. See Rule 12(d)(4)(A) and (6), discussed below. As discussed below, Rule 12(d) further provides that, if the judge rejects such a plea agreement, either party may withdraw from the agreement and thus from the plea. See Rule 12(d)(4)(B).

Even though Rule 12(b)(5)(A) permits the parties to include a specific period of probation within a binding plea agreement, the rule does not permit the parties to bind the judge to impose specific conditions of probation. Any agreement by the parties concerning conditions of probation is treated as a non-binding recommendation for the judge to consider, with the assistance of probation, in deciding what probationary conditions are appropriate in the case. See Rule 12(d)(6), discussed below. Finally, nothing in Rule 12 is intended to limit a judge's lawful discretion to modify probationary conditions during the course of probation or to adjust the probationary term upon a finding of a probation violation. In short, a plea agreement containing a charge concession and an agreed-upon period of probation will bind a judge who accepts that agreement to impose the agreed term of probation, but the parties may not by agreement trench upon the longstanding prerogative of the judge to determine and Subsequently to modify any conditions of probation during that probationary term. See Commonwealth v. Goodwin, .458 Mass. 11,17-19(2010).

Under Rule 12(b)(5)(B), pleas conditioned on plea agreements other than those described in Rule 12(b)(5)(A) are governed by the procedures set forth in Rule 12(c), the procedures that also govern pleas in which there is no plea agreement. As discussed below, Rule 12(c) treats any agree-Merit contained in a Rule 12(b)(5)(B) plea agreement as a non-binding, joint recommendation. For example, if the parties agree to a specific sentence unaccompanied by a charge concession, to a charge concession unaccompanied by an agreement to a specific sentence, or to some other dispositional alternative such as incarceration in a particular facility, that agreement would not bind the judge in imposing sentence. As was true under former Rule 12(b), the parties are free to enter into an agreement to recommend any disposition, or kind of disposition, permitted by law in the case in question. However, unless the agreement provides for both a charge concession and a specific sentence, the judge cannot be bound to follow that recommendation.

Rule 12(c) Procedure If No Plea Agreement or If Plea Agreement Does Not Include Both a Specific Sentence

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and a Charge Concession

Rule 12(c) provides for the plea procedure in cases in which the parties have not entered a binding plea agreement under Rule 12(b)(5)(A). Rule 12(c)'s procedure is parallel to that set forth in Rule 12(d), which is applicable to pleas and admissions when there is a Rule 12(b)(5)(A) binding plea agreement. The two sections diverge in their respective timing of receipt of victim impact statements, compare Rule 12(c)(3)(C) with Rule 12(d)(3)(C), treatment of the parties' sentencing recommendations, compare Rule 12(c)(4) with Rule 12(d)(4), and sentencing, compare Rule 12(c)(6) with Rule 12(d)(6). Otherwise, the two plea procedures are substantively identical.

Rule 12(c)(1) Disclosure of Terms of Plea Agreement

As discussed above, if the plea is conditioned on a plea agreement, the applicability of Rule 12(c)'s procedures depends on the provisions of that agreement. If the agreement provides for both a prosecutorial charge concession and an agreed specific sentence, the procedures under Rule 12(d) apply; if not, Rule 12(c) applies. It is thus important for the parties and the judge to be clear about the terms of any agreement before the plea procedure begins.

Rule 12(c)(2) Tender of Plea

Because Rule 12(c) applies to pleas in which there is no agreement as well as to pleas conditioned on an agreement, Rule 12(c)(2) moves the tender of plea or admission to the beginning of the plea procedure so that from the outset the terms of the plea or admission are clear even if there is no agreement. Although the plea tender precedes Rule 12(c)(3)'s colloquy, which includes the notice of the consequences of the plea, Rule 12(c)(5) permits the defendant to withdraw the tendered plea or admission subsequent to the colloquy but prior to the judge's acceptance of the plea or admission. In a District-Court plea in which there will be a recommendation of probation, whether unagreed or agreed, the party(ies) must consult with the probation department before tendering the plea so that probation will be in a position to provide any assistance that the judge may require in sentencing. See Dist./Mun. Ct. R. Crim. P. 4(c).

Rule 12(c)(3) Colloquy

Rule 12(c)(3)(A) requires the judge to begin the plea colloquy by notifying the defendant of the consequences of the tendered plea or admission. The notice of consequences is substantively identical to former Rule 12(c)(3)'s required notice of consequences with two exceptions. First, unlike its predecessor, Rule 12(c)(3)(A)(ii)(d) requires the notice mandated by the 2012 amendments to the habitual-offender statute. See G.L. c. 279, § 25(d) (requiring notice of potential habitual-offender consequences "prior to accepting a guilty plea for any qualifying offense listed in subsection (b) [of the statute]" but further providing that the failure to give such notice is not a basis to vacate an otherwise valid plea or conviction).

Second, Rule 12(c)(3)(A)(iii) expands former Rule 12(c)(3)(C)'s required noncitizen warning. As did former Rule 12(c)(3)(C), Rule 12(c)(3)(A)(ili)(a) requires the warning mandated by G.L. c. 278, § 29D, advising a defendant that, if he or she is a noncitizen, his or her plea or admission may result in deportation, exclusion from admission, or denial of naturalization. Rule 12(c)(3)(A)(iii)(b) advises further that, if (1) the offense to which the defendant is pleading is under federal law one that "presumptively mandates removal from the United States" (a so-called "removable offense," see Padilla v. Kentucky, 559 U.S. 356, 363-364 (2010)) and (2) federal officials seek removal, it is "practically inevitable that [defendant's] conviction would result in deportation, exclusion from admission, or denial of naturalization."

This additional warning recognizes that under federal immigration law there are a substantial number of crimes-including "all controlled substances convictions except for the most trivial of marijuana possession offenses," see Padilla, 559 U.S. at 368; 8 U.S.C. § 1227(a)(2)(B)(i) (2008)-the conviction for which make "deportation practically inevitable" if federal officials seek the defendant's removal. See Commonwealth v. DeJesus, 468 Mass. 174, 181 & n. 5 (2014). See also Moncrieffe v. Holder, 133 S. Ct. 1678, 1682 (2013) (cited in DeJesus, noting that the federal Immigration and Nationality Act prohibits discretionary relief for deportations based on convictions for a wide range of crimes no matter how compelling the circumstances). Further, as the warning states, once deported due to such a conviction, a defendant would almost certainly be denied both re-admission to the United States and naturalization. See, e.g., L. Rosenberg, D. Kanstroom & J. Smith, Immigration Consequences of Criminal Proceedings, Massachusetts Criminal Practice § 422 (E. Blumenson & A. Leavens eds., 4th ed. 2012). It is important to appreciate that Rule 12(c)(3)(A)(lii)(b)'s warning is limited to the consequences of a conviction for a "removable offense." The narrow focus of this enhanced warning is purposeful and should not be read to suggest that convictions for other crimes would have

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no serious immigration consequences. Under federal law, conviction for-or even an admission to conduct constituting-a broader range of crimes than those presumptively mandating removal can also result in denial of re-admission and of naturalization. Id. §§ 42.2-42.3.

Finally, as Rule 12(c)(3)(A)(iii)'s warning provides, under federal immigration law, "convictions" include admissions to sufficient facts even when the result is a continuance without a finding (CWOF), if the continuance is conditioned on "some form of punishment, penalty or restraint" such as payment of costs or restitution. See DeVaga v. Gonzalez, 503 F.3d 45, 49 (1st Cir. 2007) (holding that a CWOF conditioned on payment of restitution satisfies 8 U.S.C. § 1101(a)(48)(A)(ii)'s provision that an admission to sufficient facts constitutes a "conviction" if the admission results in "some form of punishment, penalty or restraint"); Matter of Cabrera, 24 I. & N. Dec. 459, 462 (BIA 2008) (holding that imposition of costs and surcharges following a plea is a "penalty" or "punishment" for purposes of § 1101(a)(48)(A)(ii)).

This noncitizen warning is not meant to displace the critical role of counsel in providing more particular advice concerning the immigration consequences of a particular plea. Quite the contrary, the warning is meant to trigger that advice if, under circumstances best known by counsel, a defendant is risking serious immigration consequences by pleading guilty or admitting to sufficient facts. See Padilla v. Kentucky, 559 U.S. 356, 368-369 (2010); Commonwealth v. Clarke, 460 Mass. 30, 45-46, 48-49 & n. 20 (2011) (noting that then-Rule 12's requirement of "[immigration] warnings is not an adequate substitute for defense counsel's professional obligation to advise her client of the likelihood of specific and dire immigration consequences that might arise from such a plea"), partially abrogated on other grounds, Chaidez v. United States, 133 S. Ct. 1103 (2013); DeJesus, 468 Mass. at 182 (holding that counsel's advice to a noncitizen defendant that he would be "eligible for deportation" and would "face deportation" if he pled guilty to possession of cocaine with intent to distribute (a removable offense under the immigration statute) was constitutionally inadequate).

Rule 12(c)(3)(B) requires the prosecutor to present the factual basis of the charge. Unlike former Rule 12(c)(5)(A), Rule 12(c)(3)(B) does not exclude nolo contendere pleas from the requirement that the prosecutor present a factual basis for the tendered plea or admission. The factual basis of a nolo plea provides information essential to crafting an appropriate sentence, but, because the defendant is not called upon to acknowledge or admit those facts, they will not be admissible in any subsequent proceeding against the defendant. See, e.g., Mass. Guide to Evidence § 803(22) (2014) (explicitly excluding judgments based on nolo contendere pleas from the hearsay exception generally applicable to judgments of conviction).

The prosecutor can present the factual basis in the traditional manner, stating the facts that he or she expects to prove if the case goes to trial, but the rule also permits presenting sworn testimony, at the request of the judge or otherwise, as a way to satisfy this requirement. If the plea is an Alford plea, i.e., one in which the defendant declines to admit one or more elements of the offense to which he or she is nevertheless pleading guilty, the Supreme Court requires "strong evidence of [the defendant's] guilt." See North Carolina v. Alford, 400 U.S. 25, 37-38 (1970). In such a case; the prosecutor should give particular attention to this testimonial option. See E. Cypher, Procedure if Defendant pleads Guilty or Nolo Contendere but does not admit Participation in Crime, 30A Mass. Prac., Criminal Practice & Procedure, § 24:78 n. 4 (2014) ("[I]f an Alford plea is offered, the Commonwealth should ... [offer] sworn testimony to show the case is strong against the defendant, his defense is non-existent, and the defendant has presented reasons why the plea should be accepted").

As the final part of the colloquy, Rule 12(c)(3)(C) requires the judge to inquire of the prosecutor as to compliance with G.L. c. 258B. However, the judge is granted discretion concerning when to hear any victim-impact statements. The judge does not need this input until deciding whether to accept or reject the plea and then to impose sentence. However, hearing victim-impact statements at this stage of the proceeding-just before hearing the parties' respective sentencing recommendations and arguments-may provide the judge with the proper perspective for considering those recommendations and deciding what is a just disposition in the case.

Rule 12(c)(4) Disposition Requests

Rule 12(c)(4) gives the parties the opportunity to make their respective sentencing recommendations. This section has two subdivisions: Rule 12(c)(4)(A) applies to cases in which there is no agreed-upon sentence recommendation, and Rule 12(c)(4)(B) applies to cases in which there is. Rule 12(c)(4)(A) requires a District Court judge to inform a defendant of the statutory right to withdraw the plea if the judge imposes a sentence that exceeds the defendant's request, see G.L. c. 278, § 18, and a Superior Court judge to inform a defendant of the right to withdraw the plea if the disposition imposed exceeds the prosecutor's recommendation. If the parties have agreed on a sentence recommendation, Rule 12(c)(4)(B) requires the judge to inform the defendant that the plea may be withdrawn if the sentence imposed exceeds the agreed-upon

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recommendation. However, unlike Rule 12(d)(4)(B)(ii), which applies to binding plea agreements, Rule 12(c)(4)(B) does not give the prosecution the right to withdraw from the plea agreement and the plea if the judge announces an intent to impose a sentence more lenient than the sentence jointly recommended.

If in considering the parties' joint or respective recommendations the judge decides that he or she needs more information or time to determine a just disposition in the case, both subsections of Rule 12(c)(4) allow the judge to continue the plea hearing for that purpose. Among the factors pertinent to the judge's sentencing decision are the nature of the offense committed, the manner in which it was committed, the impact that the offense had on any victims, the defendant's criminal history, and the defendant's circumstances (e.g., his or her mental health, substance abuse, and/or psychological issues). The judge, in consultation with probation where appropriate, should take the time and consider that facts necessary to craft a sentence, including any term and conditions of probation, that is fair, appropriate to the crime, and designed to diminish the risk of recidivism.

Rule 12(c)(5) Findings of Judge; Acceptance of Plea

Rule 12(c)(5) requires the judge to inquire if the defendant still wishes to plead guilty or admit to sufficient facts. At this point, the defendant has received the notice of consequences of the plea or admission, has heard the factual basis for the charged offense(s), and is aware of the respective sentencing recommendations of the parties. The defendant may have also heard the victim-impact statement(s), if any. The defendant must now elect to go forward with his or her tendered plea or admission, or choose to withdraw it and go to trial. If the defendant elects to go forward, the judge then makes the necessary inquiries to ensure that the plea or admission is knowing and voluntary. The amended rule is intended to make no change to former Rule 12(c)(5)'s provision for this voluntariness hearing, either in its form or substance.

The rule also requires the judge to find that there is an adequate factual basis for the plea or admission. As did its predecessor, Rule 12(c)(5) provides that the defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea. The rule is not intended to work any change to former Rule 12(c)(5)(A) in this regard.

If the judge is satisfied that the plea or admission is knowing, voluntary, and supported by an adequate factual basis, the judge is then in a position to accept the tendered plea or admission. Of course, if the judge is not satisfied in this regard, or, if for some other reason the judge determines that the plea or admission would not result in a just disposition of the case, the judge is permitted to reject the plea or admission. Nothing in the rule is meant to deprive the judge of this longstanding discretion. See Commonwealth v. Dilone, 385 Mass. 281, 285 (1982) (acceptance of a guilty plea is "wholly discretionary with the judge"), citing Santobello v. New York, 404 U.S. 257 (1971); E. Cypher, 30A Mass. Prac., Criminal Practice & Procedure, Judge may refuse to accept guilty plea, plea of nolo contendere or admission to sufficient facts, § 24:60 (4th ed. 2014).

Rule 12(c)(6) Sentencing

If the judge accepts the plea or admission, the judge then imposes sentence under Rule 12(c)(6). As required by G.L. c. 278, § 18, Rule 12(c)(6)(B) explicitly permits a District Court defendant to withdraw his or her tendered plea or admission if the intended sentence exceeds the defendant's requested disposition. Similarly, in Superior Court a defendant may withdraw his or her plea if the intended sentence exceeds the parties' agreed-upon recommendation or, if there is no agreed-upon recommendation, the recommendation of the prosecutor. In either event, the judge may indicate to the parties what sentence the judge would impose if the plea were to go forward.

Rule 12(d) Procedure If Plea Agreement Includes Both a Specific Sentence and a Charge Concession

The procedure set out in Rule 12(d) applies to pleas and admissions conditioned on a plea agreement that includes both an agreed charge concession by the prosecutor and an agreement to a specific sentence. See Rule 12(b)(5)(A), discussed above. Under Rule 12(d)(6), discussed below, if the judge accepts such a plea agreement, the judge is bound to impose the agreed sentence. If, however, the judge rejects the plea agreement, either party may withdraw from the agreement. See Rule 12(d)(4)(B), discussed below. Because jeopardy attaches when the judge accepts a tendered plea or admission, at that point foreclosing the prosecutor's withdrawal from any plea agreement, see Commonwealth v. Dean-Ganek, 461 Mass. 305, 312-313 (2012), the rule requires that the judge accept or reject a Rule 12(b)(5)(A) plea agreement prior to accepting the plea or admission. And, because such a plea agreement binds the judge if accepted, Rule 12(d) is structured to ensure that, at the time the judge must accept or reject the agreement, the judge has the necessary information to determine if the agreed disposition would be just and appropriate for the case.

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Rule 12(d)(1) Disclosure of the Terms of the Plea Agreement

Rule 12(d)(1) requires disclosure of the plea agreement at the beginning of the plea hearing. Because acceptance of the agreement binds the judge to sentence according to its terms, it is essential that this disclosure include a clear explanation on the record of those terms.

Rule 12(d)(2) Tender of Plea

Rule 12(d)(2) moves the tender of plea to the beginning of the plea procedure so that the terms of the plea or admission are clear at the outset. In District Court, if the plea agreement includes any probationary terms or conditions, the parties must consult with the probation department before tendering the plea so that probation will be in a position to provide any assistance that the judge may require in considering the plea or the plea agreement. See Dist./ Mun. Ct. R. Crim. P. 4(c). The plea tender precedes Rule 12(d)(3)'s colloquy, which includes the notice of the consequences of the plea or admission, but Rule 12(d)(5) permits the defendant to withdraw the tendered plea or admission subsequent to being informed of its consequences and prior to the judge's acceptance of it.

Rule 12(d)(3) Colloquy

Rule 12(d)(3)(A) provides for the notice of consequences in terms substantively identical to those of 12(c)(3)(A). The above discussion of Rule 12(c)(3)(A) thus applies here with equal force.

Rule 12(d)(3)(B) and (C) respectively require the prosecutor's presentation of the factual basis for the charge and any victim-impact statements mandated by G.L. c. 258B. As with Rule 12(c)(3)(B), the prosecutor can satisfy this obligation to inform the judge of the factual basis of the charge in the traditional manner, stating the facts that he or she expects to prove if the case goes to trial, but the rule also permits presenting sworn testimony, at the request of the judge or otherwise. Rule 12(d)(3)(C) provides for the receipt of any victim-impact statements at this time. While in some instances it may not be necessary for the judge to hear the victim-impact statements before deciding whether to accept the plea agreement, the judge should not defer hearing from the victims absent the most unusual circumstances. Victim-impact statements delivered after the judge accepts the plea agreement can have no effect on the sentence.

Rule 12(d)'s placement of the facts describing the offense and its impact on the victims at this point in the procedure is necessary because, as noted, the rule requires that the judge accept or reject the plea agreement prior to accepting the plea itself, and that, if accepted, the plea agreement binds the judge to sentence according to the agreement. It is thus essential that a judge have access to all of the facts pertinent to a just and appropriate disposition in the case prior to deciding whether to accept or reject the plea agreement under Rule 12(d)(4).

Rule 12(d)(4) Review; Acceptance or Rejection of Plea Agreement

As noted, to avoid the double-jeopardy bar to the prosecutor's withdrawal from a rejected plea agreement, the judge must accept or reject the plea agreement before accepting the plea or admission. See Dean-Ganek, 461 Mass. at 312-313. Rule 12(d)(4) imposes that timing requirement. At this point in the procedure, the judge has heard the facts of the charged offense and its impact on any victims. Moreover, in reviewing the plea agreement, the judge will hear from the parties concerning the agreed disposition and will have access to the probation department concerning the defendant, including any criminal history. See Rule 12(e), discussed below. However, if the judge believes that there might be other information pertinent to a just disposition in the case, the rule permits the judge sua sponte to continue the plea hearing in order to obtain and consider that information. Once the judge accepts the agreement, he or she is bound by its terms, and it is therefore essential that at this point the judge be fully satisfied that the agreed-upon sentence is fair, appropriate to the crime, and designed to diminish the risk of recidivism. The only timing requirement imposed by Rule 12(d)(4) is that the judge accept or reject such a plea agreement prior to accepting the guilty plea.

If the judge accepts the plea agreement, Rule 12(d)(4)(A) requires the judge to inform the defendant that the judge will impose the sentence provided in the agreement. If the judge rejects the agreement, Rule 12(d)(4)(B) requires that the judge so inform the parties and permit either party to withdraw from the plea agreement and further permit the defendant to withdraw the tendered plea. Rule 12(d)(4)(B)(i) here gives the judge discretion to inform the parties what sentence he or she would impose if the plea were to go forward. The judge's doing so gives the parties the opportunity to proceed on that basis without agreement under Rule 12(c), to refashion their plea agreement to conform to the judge's suggestion (thus binding the judge if the judge accepts that amended agreement), or to forego the plea and try the case. If the judge has doubts concerning the wisdom or fairness of the agreed disposition and believes that additional information might help to resolve those doubts, Rule 12(d)(4)(B)(i) permits the judge so to inform the parties. This gives the parties the

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opportunity, if one or the other has the requested information and is in a position to divulge it, to do so before the judge decides whether to accept or reject the agreement.

Rule 12(d)(5) Findings of Judge as to Plea Agreement and Plea; Acceptance of Plea

If the judge accepts the plea agreement, Rule 12(d)(5) provides that the judge ask the defendant if the defendant wishes to go forward with the tendered plea or admission. At this point, the judge has informed the defendant of the consequences of the plea, including what the sentence will be and the defendant has heard the factual basis of the charged offense and any victim statements as to its impact. If the defendant elects to go forward with the plea, the judge must then make the necessary inquiries to satisfy the judge that the plea agreement and the plea or admission are knowing and voluntary. Rule 12(d)(5) is intended to make no change to former Rule 12(c)(5)'s provision for a voluntariness hearing except that the hearing also applies to the plea agreement on which the plea or admission is conditioned.

Rule 12(d)(5) requires the judge to find that there is an adequate factual basis for the plea or admission. Rule 12(d)(5) preserves the former Rule 12(c)(5)(A)'s provision that the defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea, and the rule is not intended to work any change on its predecessor in this regard.

Once satisfied that the plea agreement and the plea or admission are knowing and voluntary, and that the plea or admission is supported by an adequate factual basis, the judge is in a position to accept the tendered plea or admission. Of course, if the judge is not satisfied in this regard, or, if for some other reason the judge determines that the plea or admission is not just, the judge is permitted to reject the plea or admission. Rule 12(d)(5) is not intended to deprive the judge of this longstanding discretion, even if the judge has accepted the plea agreement on which the plea or admission is conditioned. See Commonwealth v. Dilone, 385 Mass. 281, 285 (1982) (acceptance of a guilty plea is "wholly discretionary with the judge"), citing Santobello v. New York 404 U.S. 257 (1971); E. Cypher, 30A Mass. Prac., Criminal. Practice & Procedure, Judge may refuse to accept guilty plea, plea of nolo contendere or admission to sufficient facts, § 24:60 (4th ed. 2014).

Rule 12(d)(6) Sentencing

If the judge accepts the plea or admission, the judge must impose a sentence according to the terms of the plea agreement, including any agreed-upon probationary term. It lies with the judge, however, in consultation with probation where appropriate, to decide what conditions of probation are appropriate. To the extent that the plea agreement contains agreed-upon recommended conditions of probation, they are not binding on the judge; rather, they are to be considered as joint recommendations for the judge to consider, and neither party has the right to withdraw the plea or from the agreement if the judge declines to follow such recommendations. Unlike Rule 12(c)(6), Rule 12(d)(6) does not provide for the defendant's right to withdraw his or her plea in District Court. That right, afforded by G.L. c. 278, § 18, does not here apply. Under Rule 12(b)(5), the defendant agreed to and thus requested the sentence set forth in the plea agreement. A sentence that comports with that agreement therefore cannot exceed the defendant's requested disposition.

Rule 12(e) Availability of Criminal Record and Presentence Report

Rule 12(e) is amended to recognize an admission to sufficient facts in District Court as the equivalent of a guilty plea, see, e.g., Rule 12(a)(2), and to omit the requirement that the parties must file a written motion to obtain a presentence report. The former amendment conforms Rule 12(e) to Rule 12(a)(2) as it was amended in 2004, and the latter amendment achieves consistency between Rule 12(e) and Rule 28(d)(2). Further, the rule is amended to ensure that a judge considering whether to accept a binding plea agreement under Rule 12(d)(4) has both an updated record of the defendant's criminal record and any presentence report prepared by probation under Rule 28(d)(2).

Rule 12(f) Inadmissibility of Pleas, Offers of Pleas, and Related Statements

The 2015 amendments made no changes to Rule 12(f).

Subdivision (a).

Reporter's Notes to Rule 12(b)(6)

Notes to Subdivision (b)(6)This new subdivision, modeled on Fed. R. Crim. P. 11(a)(2) and the rules of many

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states, enables a defendant to enter a plea reserving a right to appeal (commonly called a "conditional plea"). Under this rule, a defendant may, with the prosecutor's agreement, plead guilty, appeal a ruling the defendant believes is erroneous,and, if successful on appeal, withdraw the plea and presumptively obtain dismissal of the charge.This new subdivision is not applicable to nolo contendere pleas. A guilty plea, voluntarily and intelligently made, ordinarily "waives all nonjurisdictional defects." Commonwealth v. Cabrera,449 Mass. 825, 830 (2007) (citing Garvin v. Commonwealth, 351Mass. 661, 663-664 (1967)), Adverse rulings thus cannot be appealed, even by a defendant who might otherwise plead guilty, without the time and expense of a trial. As the Supreme Judicial Court recognized in Commonwealth v. Gomez,480 Mass. 240 (2018), the Federal Rules of Criminal Procedure and the law of most states permit defendants to enter a guilty plea conditioned on the right to appeal a specified ruling of the court. See, e.g., Fed. R. Crim. P. 11(a)(2). In Gomez,the Court exercised its superintendence authority under G.L. c. 211, § 3 to authorize conditional guilty pleas provided the Commonwealth and the court agreed, and the defendant specified the ruling on which appellate review was sought. Gomez, supra at 252. This subdivision implements Gomezby permitting guilty pleas in which the defendant reserves for appellate review one ormore rulings.This procedure facilitates plea bargaining and conserves judicial resources. These savings are greatest when the rulings reserved for appeal effectively dispose of the case; thus, the procedure requires that the Commonwealth agree that reversal of the ruling subject to appeal would render its case on the specified charge or charges not viable. The viability of a case or a
charge includes situations in which, should the reserved ruling be reversed, the Commonwealth would choose not to proceed. The viability standard also appears in S.J.C. Order regarding Applications to a Single Justice Pursuant to Mass. R. Crim. P. 15(a)(2)(June 8, 2016) (applications for interlocutory appeal by the Commonwealth must include a "statement whether the Commonwealth has a viable case without the suppressed evidence, and the strength of that case, if viable").This rule requires the parties to specify, by written agreement, the ruling or rulings reserved for appeal and the charge or charges that would presumptively be dismissed if the defendant prevails on appeal and chooses to withdraw the guilty plea. The ruling or rulings should be identified by stating the name of the motion or pleading ruled upon, the date of the ruling or rulings, and the judge who issuedthe ruling. The charge or charges should be identified by reference to the complaint and offense or count of the indictment. The written agreement should be filed with the court and become part of the record for appeal. A guilty plea reserving appellate review of a specified ruling or rulings may be tendered under either Mass. R. Crim. P, 12(d)(2) or 12(c)(2). As with any guilty plea, the judge has discretion to refuse to accept a plea reserving appellate review. See Mass. R. Crim. P. 12(a)(3).If the defendant prevails in whole or in part on appeal, the defendant may withdraw the guilty plea on the specified charge or charges, and that charge or thosecharges shall be dismissed without prejudice, unless the judge determines otherwise. Such an exercise of judicial discretion could be appropriate in circumstances in which the defendant prevails in part or in which further proceedings are required. If the judge does not intend to dismiss the specified charge or charges, the judge should indicate that intentionto the defendant before the defendant withdraws the guilty plea.

Reporter's notes -2019

Subdivision (b)(6) is added in response to a referral in Commonwealth v. Gomez, 480 Mass. 240 (2018), requesting that the Committee propose a rule providing for conditional guilty pleas in Massachusetts. Like the federal rules and the rules of many states, it enables a defendant to enter a plea reserving a right to appeal (commonly called a “conditional plea”). Under this rule, a defendant may, with the prosecutor’s agreement, plead guilty (or in District or Juvenile Courts admit to sufficient facts), appeal a ruling the defendant believes is erroneous and, if successful on appeal, withdraw the plea (or the admission to sufficient facts) and presumptively obtain dismissal of the charge. A guilty plea or admission to sufficient facts reserving appellate review of a specified ruling or rulings may be tendered under either Mass. R. Crim. P. 12(c) or 12(d). In all respects other than reserving the right to appeal, this subdivision works no change in existing rules governing pleas, sentencing, or appeal.

A guilty plea, voluntarily and intelligently made, ordinarily “waives all nonjurisdictional defects.” Commonwealth v. Cabrera, 449 Mass. 825, 830 (2007) (citing Garvin v. Commonwealth, 351 Mass. 661, 663-664 (1967)). Adverse rulings thus cannot be appealed, even by a defendant who might otherwise plead guilty,

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without the time and expense of a trial. As the Supreme Judicial Court recognized in Commonwealth v. Gomez, 480 Mass. 240 (2018), the Federal Rules of Criminal Procedure and the law of most states permit defendants to enter a guilty plea conditioned on the right to appeal a specified ruling of the court. See, e.g., Fed. R. Crim. P. 11(a)(2). In Gomez, the Court exercised its superintendence authority under G.L. c. 211, § 3 to authorize conditional guilty pleas provided the Commonwealth and the court agreed, and the defendant specified the ruling on which appellate review was sought. Gomez, supra at 252. This subdivision implements Gomez by permitting guilty pleas or admissions to sufficient facts in which the defendant reserves for appellate review one or more rulings.

This procedure facilitates plea bargaining and conserves judicial resources. These savings are greatest when the rulings reserved for appeal effectively dispose of the case; thus, the procedure requires that the Commonwealth agree that reversal of the ruling subject to appeal would render its case on the specified charge or charges not viable. While most conditional pleas involve legally dispositive rulings, even certain non-dispositive rulings can be subject to conditional pleas. See Gomez, 480 Mass. at 252. The rule thus extends to situations in which, should the reserved ruling be reversed, the Commonwealth would choose not to proceed because the case would no longer be viable for prosecution. The viability standard also appears in S.J.C. Order regarding Applications to a Single Justice Pursuant to Mass. R. Crim. P. 15(a)(2) (June 8, 2016) (applications for interlocutory appeal by the Commonwealth must include a "statement whether the Commonwealth has a viable case without the suppressed evidence, and the strength of that case, if viable").

This rule requires the parties to specify, by written agreement, the ruling or rulings reserved for appeal, and the charge or charges that would presumptively be dismissed if the defendant prevails on appeal and chooses to withdraw the guilty plea or admission to sufficient facts. The ruling or rulings should be identified by stating the name of the motion or pleading ruled upon, the date of the ruling or rulings, and the judge who issued the ruling. The charge or charges should be identified by reference to the complaint and offense or count of the indictment. The written agreement should be filed with the court and become part of the record for appeal. A guilty plea or admission to sufficient facts reserving appellate review of a specified ruling or rulings may be tendered under either Mass. R. Crim. P. 12(c) or 12(d). As with any guilty plea, the judge has discretion to refuse to accept a plea reserving appellate review. See Mass. R. Crim. P. 12(a)(3). While a plea that does not result in a conviction would ordinarily not merit appeal, in special circumstances the collateral consequences of even a continuance without a finding may warrant a defendant pursuing an appeal. See, e.g., Commonwealth v. Henry, 88 Mass. App. Ct. 446 (2015) (admission to sufficient facts and continuance without a finding equivalent to a guilty plea in evaluating immigration consequences, citing Commonwealth v. Grannum, 457 Mass. 128, 130 n. 4 (2010)); Burke v. Bd. of Appeal on Motor Vehicle Liability Policies and Bonds, 90 Mass. App. Ct. 203, rev. denied 476 Mass. 1101 (2016) (admission to sufficient facts in connection with continuance without a finding on first offense operating under the influence could qualify as a conviction for purposes of lifetime revocation of driver's license pursuant to G.L. c. 90 § 24(1)(d)). The process for taking appellate review of the specified ruling or rulings is governed by the Massachusetts Rules of Appellate Procedure, provided that the notice of appeal is filed within thirty days of the acceptance of the plea.

If the defendant prevails in whole or in part on appeal, the defendant has the choice whether to withdraw the guilty plea, or the admission to sufficient facts, on the specified charge or charges. If the defendant elects to withdraw the plea or admission, dismissal of the specified charge or charges, which the Commonwealth previously agreed would not be viable should the defendant prevail on appeal, is presumptively appropriate. In cases in which, for example, the defendant prevails on appeal in part (e.g., the appellate court suppresses some but not all the evidence which the defendant sought to exclude), the Commonwealth has an opportunity to show good cause that the court should not dismiss the charge or charges. If the judge does not intend to dismiss the specified charge or charges, the judge should indicate that intention to the defendant before the defendant withdraws the guilty plea or admission to sufficient facts.

Appellate relief for the defendant may necessitate re-sentencing. As when a conviction or sentencing provision is vacated, in the normal course the trial judge has an opportunity to reassess the sentence given the remaining convictions and sentencing options. Commonwealth v. Sallop, 472 Mass. 568, 570 (2015); Commonwealth v. Kruah, 47 Mass. App. Ct. 341, 348 (1999); Commonwealth v. Clermy, 37 Mass. App. Ct. 774, 779, aff'd, 421 Mass. 325 (1995).

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Reporter's notes - 2022

These amendments to Rule 12(b)(5)(A), Rule 12(c)(4), and to the heading of Rule 12(c), implement the terminological change from "sentence" to "disposition" required by Commonwealth v. Beverly, 485 Mass. 1 (2020), to reflect more accurately that potential outcomes in criminal cases may include continuances without a finding or other non-conviction dispositions. Id., 485 Mass. at 8-9 (noting uses of both "sentence" and "disposition" in the rule).

Reporter's notes - 2020

In Commonwealth v. Petit-Homme, 482 Mass. 775 (2019) the SJC referred to the Committee for review and reconsideration the immigration warning judges are required to give as part of plea colloquies or admissions to sufficient facts by Mass. R. Crim. P. 12(c)(3)(A)(iii)(b) and 12(d)(3)(A)(iii)(b) (the "rule [b] warning"). This warning (which is identical in both sections of the rule) is one of two that judges must give concerning potential immigration consequences of a guilty plea or admission.

The other warning, prescribed by General Laws c. 278, § 29D, is set forth in Mass. R. Crim. P. 12(c)(3)(A)(iii)(a) and 12(d)(3)(A)(iii)(a) (the "rule (a) warning"). It provides a general advisory that persons who are not citizens of the United States may face consequences under federal law of deportation, exclusion from admission or denial of naturalization, by the court's acceptance of their guilty plea, plea of nolo contendere or admission to sufficient facts.

In contrast to the general advisory in the rule (a) warning, the rule (b) warning provides a more specific advisory about the likelihood of the immigration consequences described in the rule (a) warning based on treatment under federal law of the offenses to which a defendant pleads guilty or makes an admission. Unlike the general advisory in the rule (a) warning, the accuracy of this warning depends on "a thorough, nuanced understanding of Federal immigration law," as well as detailed information concerning "the defendant's immigration history and status, criminal record, and the nature and circumstances of the pending charges." Petit-Homme, 482 Mass. at 786.

Without this detailed understanding of Federal immigration law, and the defendant's immigration and criminal history, this more specific warning may create a misimpression or misunderstanding among defendants, and when paired with the more general advisory creates a significant risk of confusion. For these reasons, the rule (b) warning was eliminated in this amendment.

Eliminating this warning in no way reduces counsel's obligation to assess the potential collateral consequences for a non-citizen defendant of a guilty plea, plea of nolo contendere or admission to sufficient facts. See Padilla v. Kentucky, 559 U.S. 356, 363-364 (2010); Commonwealth v. DeJesus, 468 Mass. 174, 182 (2014); Commonwealth v. Clarke, 460 Mass. 30, 48 n. 20 (2011), partially abrogated on other grounds by, Chaidez v. United States, 568 U.S. 342 (2013) ("receipt of such warnings is not an adequate substitute for defense counsel's professional obligation to advise her client of the likelihood of specific and dire immigration consequences that might arise from such a plea").

Standards of practice for representation require counsel to consider potential immigration consequences for a client throughout a case. Committee for Public Counsel Services, Performance Standards Governing Representation of Indigents in Criminal Cases §2.a.v. (Preliminary Proceedings & Preparation – Arraignment) (in rare circumstances when it may be appropriate to take advantage of an early disposition, especially one not involving a criminal record, counsel should be aware of potential immigration consequences of a continuance without a finding); §§5.d.vi. and xiii. (Dispositions by Plea or Admission – Consequences of Conviction) ("Counsel must advise client, prior to any change of plea, of the consequences of conviction, including: . . . consequences for non-citizens; and possible immigration consequences including but not limited to deportation, denial of naturalization or refusal of reentry into the United States."); §7.a.vii. (Sentencing – Preparation)

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("Defense counsel should be familiar with and consider: . . . collateral consequences of any sentence, including immigration consequences"). These standards apply equally to representation of juveniles. Performance Standards Governing Representation of Juveniles in Delinquency and Youthful Offender Cases §2.a.vi.(a) (Preliminary Proceedings – Arraignment); §§6.d.vi. and xviii. (Disposition by Plea or Admission); and §8.a.vi. (Sentencing), January 1, 2019, version 1.9, https://www.publiccounsel.net/wp-content/uploads/Assigned-Counsel-Manual.pdf. See also, Jennifer Klein, Consequences of Criminal Convictions for the Noncitizen, Immigration Practice Manual, 3d Ed. § 19-1 (2017) ("A criminal defense lawyer must determine the immigration status of the defendant at the beginning of representation.").

End of Rule

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APPENDIX M

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
v.	)	Criminal No. 19-cr-10141-LTS
SHELLEY M. RICHMOND JOSEPH, and WESLEY MACGREGOR,	)	
Defendants	)	

MOTION TO DISMISS COUNTS 1-3 AND DEFER PROSECUTION AS TO COUNT 4

The United States of America, by and through its undersigned counsel, hereby moves, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, to dismiss Counts 1-3 of the Indictment in this case in accordance with an agreement reached with Massachusetts state District Court Judge Shelley Richmond Joseph under which she has attested to a statement of relevant facts and agreed to refer herself to the Massachusetts Commission on Judicial Conduct: the forum that is designed to investigate and address alleged misconduct by state judicial officers and to make final recommendations on discipline to the Supreme Judicial Court of Massachusetts. A separate agreement has been reached to defer prosecution against retired Massachusetts Court Officer Wesley MacGregor on Count 4 of the Indictment. Those agreements, which resolve the pending federal criminal charges against both defendants, are attached hereto as Exhibit A (as to Joseph) and Exhibit B (as to MacGregor). An affidavit attesting to the fact that Judge Joseph has referred herself to the Massachusetts Commission on Judicial Conduct is attached as Exhibit C. Both defendants, through counsel, consent to the requested dismissals.

The government has conducted a full review of the evidence, the applicable law, and all relevant equitable and prudential factors pertinent to this matter. Based on this review, the United

States has concluded that dismissal of the above-referenced counts is in the interests of justice, consistent with the Principles of Federal Prosecution set forth in Justice Manual § 9-27.22. Among other factors, respect for comity and federalism as between the state and federal judicial systems, as well as the availability of an alternative forum capable of adequately and proportionately addressing the alleged conduct, strongly favors dismissal.

Judge Joseph's actions on April 2, 2018, needlessly obscured the events surrounding the release of a Massachusetts state court defendant who was also the subject of an ICE civil detainer. *See United States v. Joseph*, 26 F.4th 528, 531-32 (1st Cir. 2022). Those actions contributed to the ambiguity of the factual record. But that ambiguity, any potential violations of Massachusetts state court policies, and the question of whether Judge Joseph's actions potentially undermined public confidence in the integrity and impartiality of a state court proceeding, are, in this case, best addressed by state judicial oversight, rather than federal criminal prosecution. Judge Joseph's agreement to refer herself to the Judicial Conduct Commission will allow for that oversight, as the Commission will have the ability to fully consider Judge Joseph's recent factual admissions as part of its review, along with the public allegations and filings made in this case.

Mr. MacGregor, who has already been subject to discipline for his conduct, has resigned his position as a Court Officer and is no longer employed by the Massachusetts state court system, has entered into a deferred prosecution agreement with respect to Count 4: the single count of perjury with which he is charged. The United States has determined that the deferred prosecution agreement entered with Mr. MacGregor represents a fair and balanced resolution of this matter and is likewise in the interest of justice.

For all of the foregoing reasons, the United States respectfully requests that the Court grant its motion to dismiss Counts 1-3 of the Indictment and defer prosecution as to Count 4.

Respectfully submitted,

ZACHARY A. CUNHA
UNITED STATES ATTORNEY
Acting Under Authority
Conferred by 28 U.S.C. § 515

By: /s/ William Abely
WILLIAM ABELY
Criminal Chief
AMANDA STRACHAN
Deputy Criminal Chief
U.S. Attorney's Office
for the District of Massachusetts

September 22, 2022

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
v.	)	Criminal No. 19-cr-10141-LTS
SHELLEY M. RICHMOND JOSEPH,	)	
Defendant	)	

AGREEMENT

This Agreement (the "Agreement") is made between the United States Attorney's Office for the District of Massachusetts (the "USAO") and the defendant, Shelley M. Richmond Joseph ("Joseph").

Joseph acknowledges that the USAO has independently developed evidence during its investigation and that a Grand Jury sitting in the District of Massachusetts returned an indictment in this case; Joseph does not challenge the validity of the Grand Jury's action.

Term of the Agreement

1. This Agreement is effective for a period, running from the date on which it is signed until the date the conditions below are satisfied (the "Term").

Cooperation with Massachusetts Commission on Judicial Conduct

2. Joseph agrees that within thirty days of the effective date of this agreement, she will formally refer herself to the Massachusetts Commission on Judicial Conduct and will thereafter cooperate fully in any investigation or proceeding into her conduct that has been or may be initiated or conducted by the Massachusetts Commission on Judicial Conduct, until any such investigation or proceeding is closed or concluded. Such referral shall include a stipulation by Joseph to the accuracy of the facts set forth in the attached Statement of Facts ("Statement"). The parties agree

that the attached agreed-upon statement of facts may not represent all relevant facts. Joseph agrees that she will: (1) not contest the accuracy of the Statement; (2) not object to the consideration, or admissibility into evidence, of the Statement in any investigation or proceeding that has been or may be initiated or conducted by the Massachusetts Commission on Judicial Conduct; and (3) attest in writing, under penalty of perjury, to her compliance with the conditions of this Paragraph at the time of her submission to the Massachusetts Commission on Judicial Conduct. Joseph further agrees that the Indictment, and any other public filings on the docket in this case shall be available to the Massachusetts Commission on Judicial Conduct. Except as expressly provided herein, nothing in this paragraph shall be read to impair Joseph's ability to otherwise defend or contest any proceeding before, or sanction imposed by, the Massachusetts Commission on Judicial Conduct, including any appeals.

Dismissal of Prosecution

3. If Joseph complies with her obligation under Paragraph 2 of this Agreement to refer herself to the Massachusetts Commission on Judicial Conduct, and provides sworn attestation of her self-referral, the USAO will file an assented-to motion for dismissal of the Indictment no later than thirty days after receiving the attestation; such dismissal shall be without prejudice to the United States ability to re-present the indictment in the event of a material breach of Joseph's obligations under Paragraph 2.

4. The USAO and Joseph understand that the Court must approve the dismissal of the charges in the Indictment.

Agreement Binding Only on Joseph and USAO

5. This Agreement is binding only on Joseph and the USAO and does not bind any other component of the U.S. Department of Justice, any federal agency, or any state or local law enforcement or administrative authority, including, but not limited to, the Massachusetts

Commission on Judicial Conduct and the Massachusetts Supreme Judicial Court. Further, the waivers and other agreements made by Joseph herein shall not be binding on Joseph in any civil or criminal proceeding initiated by any person or entity other than the USAO or Joseph.

6. Nothing in this Agreement restricts in any way the ability of the USAO to proceed against any individual or entity not a party to this Agreement.

Miscellaneous

7. Joseph and the USAO agree that this Agreement, including the Statement, shall be made available to the public.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. Signatures transmitted by facsimile or email shall be deemed to be original signatures for all purposes.

9. This Agreement, including the Statement, constitutes the entire agreement between the parties, and supersedes any prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations, or agreements have been made other than those set forth in this Agreement. This Agreement may be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

10. Joseph is aware that 18 U.S.C. § 3006A, the so-called "Hyde Amendment," authorizes courts in criminal cases to award to certain prevailing defendants' attorneys' fees and other litigation expenses. In executing this agreement, Joseph voluntarily and knowingly waives any claim Joseph might assert under this statute.

Advice of Counsel

11. Joseph acknowledges the following: she has read and understands the terms and provisions of this Agreement; she has had a full and complete opportunity to consult with legal

counsel and to ask any questions about the terms and provisions of this Agreement and her agreements and waivers stated herein are knowing and voluntary and are made with the advice of counsel; and she is satisfied with the legal representation provided by her legal counsel.

AGREED.

ZACHARY A. CUNHA
UNITED STATES ATTORNEY
Acting Under Authority Conferred by 28 U.S.C. § 515

By: _____
WILLIAM ABELY
Criminal Chief
AMANDA STRACHAN
Deputy Criminal Chief
U.S. Attorney's Office
for the District of Massachusetts

Date: 9-20-22

_____
SHELLEY M. RICHMOND JOSEPH

Date: 9-13-22

_____
THOMAS M. HOOPES, ESQ.
ELIZABETH N. MULVEY, ESQ.
DOUGLAS S. BROOKS, ESQ.

Date: 9-15-22

Statement of Facts

1. Shelley Richmond Joseph ("Joseph") was appointed as a Massachusetts District Court Judge on November 2, 2017, and thereafter was assigned to sit at various district courts, including Newton District Court, in accordance with a monthly assignment schedule.

2. Joseph was the only judge sitting at Newton District Court on April 2, 2018.

3. Joseph knew that criminal defendants in Newton District Court custody were kept in the lockup area in the basement of the courthouse and were brought upstairs by a court officer to the courtroom for their court appearances. The normal custom and practice in Newton District Court, subject to certain exceptions, was that a defendant would be released from custody into the courtroom. This courtroom had only one public entry/exit, which led to the courthouse lobby.

4. The Massachusetts Rules of Court, which prescribe rules for all state district courts, including the Newton District Court, provided, in pertinent part, that "all courtroom proceedings," which includes sidebar conferences, were required to be electronically recorded.

5. On or about November 10, 2017, the Executive Office of the Massachusetts Trial court issued guidance to all Massachusetts state judges, clerks and other courthouse personnel titled, "Policy and Procedures Regarding Interactions with the U.S. Department of Homeland Security," ("DHS Policy"). The DHS Policy instructed, in pertinent part, that (1) "Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees;" (2) "DHS officials may enter a courthouse and perform their official duties;" (3) "pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel's custody; and (4) "[t]o the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse."

6. One of the cases that Joseph heard on April 2 was Commonwealth v. A.S. Joseph knew that A.S. was initially being held on a warrant as a fugitive from Pennsylvania and had been charged with two counts of narcotics possession in violation of Massachusetts law. She also knew that A.S. was being held in the downstairs lockup area of the courthouse.

7. Joseph also knew that Immigration and Customs Enforcement ("ICE"), which is part of the U.S. Department of Homeland Security, intended to take custody of A.S. pursuant to a civil immigration detainer. The detainer stated that ICE had probable cause to believe that A.S. was a deportable alien based on a final order of removal previously issued against him.

8. Joseph knew that an ICE officer was present in the courthouse waiting to take

custody of A.S. if he was released from state custody. Joseph directed a court clerk to request that the ICE officer remain outside the courtroom in accordance with the practice of the presiding justice in Newton District Court. This direction was contrary to the DHS policy, which reflects, consistent with Supreme Court precedent and constitutional guarantees, that courthouses and courtrooms are public spaces and open to the public absent extraordinary circumstances not present here.

9. When A.S.'s case was recalled that afternoon, his defense attorney asked for a sidebar. At sidebar, the prosecutor stated that she no longer believed that this defendant was the same person subject to the Pennsylvania charge and thus that she was dismissing the fugitive warrant and not seeking to detain the defendant on the remaining Massachusetts narcotics charges. The defense attorney stated that an ICE officer was waiting outside the courtroom with an immigration detainer for A.S. and would pick up A.S. if Joseph released A.S. After hearing this information, Joseph stated, among other things, "ICE is gonna get him? …. What if we detain him?" The defense attorney asked if the sidebar was being recorded and asked to go off the record. Contrary to Massachusetts Rules of Court, Joseph directed the court clerk to turn off the recording device.

10. After the recorder was turned off, there was a 52 second off-the record sidebar conference with Joseph, the defense attorney and the prosecutor present. In the course of this conference, the defense attorney asked Joseph to allow A.S., who had been escorted up to the courtroom by a court officer, to go back downstairs.

11. After the off-the record portion of the sidebar, the defense attorney asked, on the record, if he could go downstairs with A.S. and an interpreter so that they could speak. The defense attorney also stated that his client had property downstairs. Joseph stated on the record that she was granting the defense attorney's request. The clerk reminded the Judge on the record that ICE agents were present and seeking to take the defendant into custody.

12. The defense attorney and the interpreter accompanied A.S. downstairs to the lockup area. Shortly thereafter, a court officer used his key card to open the door to the sallyport and released A.S. out the back door

13. The ICE officers learned about A.S.'s release after it happened. A.S. was not taken into ICE custody on April 2, 2018.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
	)	Criminal No. 1:1-cr-1-141-LTS
v.	)	
	)	
WESLEY MACGREGOR,	)	
	)	
Defendant	)	

DEFERRED PROSECUTION AGREEMENT

This Deferred Prosecution Agreement (the "Agreement") is made between the United States Attorney's Office for the District of Massachusetts (the "USAO") and the defendant, Wesley MacGregor ("MacGregor").

1. MacGregor acknowledges that the USAO has independently developed evidence that could be sufficient to establish beyond a reasonable doubt that MacGregor violated federal law as described in Count 4 of the Indictment.

Term of the Agreement

2. This Agreement is effective for a period of six months from the date on which the Information is filed (the "Term"). If the Court rejects this Agreement, all provisions of this Agreement shall be deemed null and void, and the Term shall be deemed not to have begun.

Deferral of Prosecution As to Count 4

3. If MacGregor complies with all his material obligations under this Agreement for the full Term, the USAO will file a dismissal of Count 4 of the Indictment as to him no later than thirty days after the Term expires.

4. Absent a material breach by MacGregor of his obligations under this Agreement, the USAO will bring no additional charges against MacGregor relating to the conduct forming the basis for the Indictment.

5. This Agreement does not protect MacGregor from prosecution for any crimes except those arising out of the conduct described in the Indictment. This Agreement does not apply to any individual other than MacGregor.

6. The USAO and MacGregor understand that the Court must approve the deferral of prosecution set out and agreed to in this Agreement in accordance with 18 U.S.C. § 3161(h)(2). Specifically, for purposes of the Speedy Trial Act, the Court must approve the delay of a trial on the Indictment to allow MacGregor sufficient time to demonstrate his good conduct by complying with Paragraph 10 of this Agreement.

Dismissal of Counts 1-3

7. Within thirty days after execution of this agreement by all parties, the USAO will file an assented-to motion for dismissal of Counts 1-3 of the Indictment as to MacGregor; such dismissal shall be without prejudice to the United States' ability to re-present the indictment in the event of a material breach of MacGregor's obligations under Paragraph 10.

8. The USAO and MacGregor understand that the Court must approve the dismissal of the charges in the Indictment.

Breach of the Agreement

9. If, during the Term, MacGregor (a) commits any violation of federal criminal law, (b) fails to comply with his obligations herein, or (c) otherwise fails to perform or fulfill completely each of his obligations under this Agreement, MacGregor will thereafter be subject to prosecution for Count 4 of the Indictment.

10. Determination of whether MacGregor has breached this Agreement and whether to pursue prosecution of MacGregor will be in the USAO's sole discretion. If the USAO determines that MacGregor has breached this Agreement, it will give MacGregor written notice before instituting any prosecution resulting from such breach. Within thirty days after receiving such notice, MacGregor will have the opportunity to make a presentation to the USAO to demonstrate that: (a) no breach occurred, (b) the breach was not a knowing breach and could not have been avoided with the exercise of due diligence, or (c) the breach has been cured. The USAO will consider any such presentation in determining whether to pursue prosecution of MacGregor.

11. MacGregor agrees that the consequences for a breach set forth in this Agreement are remedies to which the USAO is entitled in the event of a breach and shall survive the termination of this Agreement in the event of a breach. MacGregor agrees that the USAO's remedies for a breach are not limited to those set forth in this Agreement. MacGregor further agrees that, in the event of a breach, MacGregor nevertheless will be bound by his waivers of legal, equitable, and constitutional rights set forth in this Agreement, and those provisions will survive even in the event of a breach.

Agreement Binding Only on MacGregor and USAO

12. This Agreement is binding only on MacGregor and the USAO and does not bind any other component of the U.S. Department of Justice, any federal agency, or any state or local law enforcement or administrative authority. Further, the waivers and other agreements made by MacGregor herein shall not be binding on MacGregor in any civil or criminal proceeding initiated by any person or entity other than the USAO.

13. Nothing in this Agreement restricts in any way the ability of the USAO to proceed against any individual or entity not a party to this Agreement.

Miscellaneous

14. MacGregor and the USAO agree that this Agreement shall be made available to the public.

15. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. Signatures transmitted by facsimile or email shall be deemed to be original signatures for all purposes.

16. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations, or agreements have been made other than those set forth in this Agreement. This Agreement may be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

17. MacGregor is aware that 18 U.S.C. § 3006A, the so-called "Hyde Amendment," authorizes courts in criminal cases to award to certain prevailing defendants' attorneys' fees and other litigation expenses. In exchange for concessions the U.S. Attorney made in this Agreement, MacGregor voluntarily and knowingly waives any claim MacGregor might assert under this statute.

Advice of Counsel

18. MacGregor acknowledges the following: he has read and understands the terms and provisions of this Agreement; he has had a full and complete opportunity to consult with legal counsel and to ask any questions about the terms and provisions of this Agreement; he fully understands the nature of the crime alleged against him in the Indictment, the maximum

penalties and Sentencing Guidelines provisions applicable to the offense, and penalties potentially applicable to him; he has discussed with counsel the charge against him, possible defenses he might have, and whether he should go to trial; his agreements and waivers stated herein are knowing and voluntary and are made with the advice of counsel; and he is satisfied with the legal representation provided by his legal counsel.

AGREED.

ZACHARY CUNHA
UNITED STATES ATTORNEY
Acting under Authority Conferred by
28 U.S.C. § 515

By: _____
WILLIAM ABELY
Criminal Chief
AMANDA STRACHAN
Deputy Criminal Chief

Date: 9-20-22

_____
WELSEY MACGREGOR

Date: 9/8/22

_____
ROSEMARY SCAPICCHIO, ESQ.
Counsel to Wesley MacGregor

Date: 9/8/22

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:19-cr-10141-LTS
	)	
	)	
SHELLEY M. RICHMOND JOSEPH	)	

ATTESTATION OF SHELLEY RICHMOND JOSEPH

I hereby attest that I have complied with paragraph 2 of the Agreement ("Agreement") with the United States Attorney's Office ("the USAO) and myself dated September 20, 2022, by formally referring myself to the Massachusetts Commission on Judicial Conduct ("the CJC") and by providing the CJC with a copy of the Agreement and Statement of Facts contained within the Agreement, including my stipulation to the accuracy of the same.

Signed under the penalties of perjury this 22nd day of September, 2022.

Shelley M. Richmond Joseph

APPENDIX N

Volume I
Pages 1 to 86
Exhibits 1

THE COMMONWEALTH OF MASSACHUSETTS

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IN RE: CONFIDENTIAL INVESTIGATION :
CLAIM NO. 2019-22 :
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- - - - - - - - - - - - - - - - - - - -x

CONFIDENTIAL STATEMENT UNDER OATH OF JUDGE SHELLEY JOSEPH, a witness called by counsel for The Commonwealth of Massachusetts Commission on Judicial Conduct, taken pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure, before Ken A. DiFraia, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of The Commonwealth of Massachusetts Commission on Judicial Conduct, 11 Beacon Street, Boston, Massachusetts, on Tuesday, June 6, 2023, commencing at 12:02 p.m.

PRESENT:

The Commonwealth of Massachusetts Commission on Judicial Conduct
(by Howard V. Neff, III, Esq., Executive Director)
11 Beacon Street, Suite 525,
Boston, MA 02108,
hneff@cjc.state.ma.us, 617.725.8050,
-and-
Judith Fabricant, Special Counsel
One Boston Place, Suite 3300,
Boston, MA 02108,
jfabricant@jamsadr.com, 617.308.6648,
representing The Commonwealth of Massachusetts Commission on Judicial Conduct.

PRESENT: (Continued)
Meehan, Boyle, Black & Bogdanow, P.C.
(by Michael B. Keating, Esq.)
100 Cambridge Street, Suite 2101,
Boston, MA 02114,
mkeating@meehanboyle.com, 617.523.8300,
-and-
Libby, Hoopes, Brooks & Mulvey
(by Thomas M. Hoopes, Esq., and
Elizabeth N. Mulvey, Esq.)
260 Franklin Street,
Boston, MA 02110,
thoopes@lhbmlegal.com;
emulvey@lhbmlegal.com, 617.338.9300,
representing Judge Shelley Joseph.

* * * * *

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JUDGE SHELLEY JOSEPH				
BY MS. FABRICANT	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of document entitled "Information on Immigration Matters," bench card	11

* * * *

P R O C E E D I N G S

JUDGE SHELLEY JOSEPH

a witness called for examination by counsel for The Commonwealth of Massachusetts Commission on Judicial Conduct, having been satisfactorily identified by the production of her driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

MS. FABRICANT: Good afternoon. We are going to identify all the people present.

I'm Judith Fabricant, and I'm the Special Counsel to the Commission on Judicial Conduct. Next to me is Howard Neff, who is the Executive Director of the Commission on Judicial Conduct.

I will ask you, the Witness, to identify yourself.

THE WITNESS: I'm Judge Shelley Joseph.

MS. FABRICANT: And counsel.

MR. KEATING: I'm Attorney Michael Keating.

MR. HOOPES: Thomas Hoopes.

MS. MULVEY: Elizabeth Mulvey.

MS. FABRICANT: Thank you.

DIRECT EXAMINATION

BY MS. FABRICANT:

Q. Judge Joseph, I'm going to ask you some questions. I'm going to give your lawyers an opportunity to ask you anything they want to ask you after I've asked. If we end up running short of time, we will make sure we schedule another time so that we can give everybody the time that they need.

A. Okay.

Q. Unfortunately I'm supposed to be at a meeting just up the street at 3:30; otherwise, we would just keep going. That's why we are doing this at sort of an odd time, but we will make sure that we give everyone the time that they need.

A. Thank you.

Q. Some of my questions will be specific and perhaps maybe even a little leading just to move through some of the information, but I want to give you an opportunity to tell your story. I don't want to restrain you in any way, so I'm going to try to make the most significant questions open-ended, and I'll ask you to just answer as fully and as accurately as you possibly can.

A. Okay. Thanks.

Q. So I'm going to start with some basic background just to confirm the information I have.

Is it accurate that you were sworn as a judge at the District Court on November 2, 2017?

A. It is.

Q. And did you start your orientation in the District Court on November 7, 2017?

A. I did. I actually -- so my official orientation started on the 7th because I had my public swearing in on the 6th, but because I was sworn in earlier than what we had originally expected, I did go to work on the 3rd, you know, and I second-chaired another judge on that day.

Q. Okay. It's my understanding -- but you tell me if you have a different understanding -- that the District Court has a standard practice of about four weeks of orientation in the form of sitting with a series of other judges to watch all kinds of different proceedings in different courthouses.

A. Exactly.

Q. And is that what you did?

A. It is.

Q. Okay. At any time during the orientation

or before or at any time around then, did you sit down with the rules, the rule book, just pull out the rule book and read the rules applicable to the District Court just to make sure you were familiar with it?

A. Not that I recall.

Q. Were you given a copy of the rule book as part of the many, many things that are given to new judges?

A. At some point I received a copy. I don't recall when. Flaschner and other companies send us volumes of books at different points of time. At some point I did receive a copy. I just don't remember when.

Q. Okay. During the orientation process when you sat with different judges, do you have any sense of how many judges you sat with? Just an estimate, if you can.

A. Every day -- I'm trying to remember if I ever sat in the same court twice. I think I was in a different court every day. If there was any overlap where I sat in the same place twice, it was rare. So I think for each day I was with somebody.

Q. So about 20 judges perhaps?

A. Correct.
Q. And during that time, was there ever an occasion that you observed a judge that you were sitting with tell the clerk to turn off the recording system?
A. I don't have any specific memory of that.
Q. And at some point you received a court computer; is that right?
A. I did.
Q. Do you know approximately when that was that you received that?
A. I do. It was towards the end of November, sometime around November 23rd.
Q. And when you received the computer and you received an email address, were you able to then access your court email at that point?
A. Starting then, yes.
Q. Okay. Was there a bunch of email waiting for you?
A. There were a couple, but they were personal emails. As far as I remember, there was nothing of any substance.
Q. By "personal" you mean somebody said, "Welcome to the bench" or something like that?

A. Exactly.
Q. There was a District Court education conference for judges on December 13, 2017, do you remember that?
A. Yes. Well, I remember it being scheduled. I didn't attend. My dad had passed away that week, so I ended up being off the first couple of -- the first week of December he was dying, so I had a couple of half days. The second week of December, when that conference was, I was off for that week.
Q. And I'm sorry for your loss.
A. Thank you.
Q. I'm sure it still feels -- I'm sure you still feel it.
A. It does.
Q. Since you weren't at that conference, did somebody make sure you got the materials from the conference? Were you sent the materials from the conference?
A. I remember being sent -- if I recall, it was a conference when Bryan Stevenson was speaking. I recall being sent his book. I don't recall whether or not I received anything else.
Q. In January -- well, let me step back a

little bit. Through the time that you've been a judge, have there been times when you get something called a transmittal?

A. Yes.

Q. And that sometimes comes from the chief of the District Court. Sometimes it comes from the chief of the Trial Court; is that accurate?

A. Yes.

Q. Do you have any memory of the first time you ever received a transmittal?

A. I don't.

Q. Okay. At some point in time, did you get this document, which I will refer to as the Lunn policy (indicating)? It has a transmittal number coming from the chief of the Trial Court. I think judges generally refer to it as the "Lunn policy." At some point do you remember getting that?

A. I do. The first time I recall receiving this was on April 2nd of 2018.

Q. And rather than marking it as an exhibit for this proceeding, what I am going to do is just say for the record that it is Executive Office Transmittal 17-13, and it's dated November 10, 2017.

So you are familiar with it now?

A. I am.
Q. And the first time you recall getting it was April 2nd of 2018?
A. Correct.
Q. At some point, do you recall getting a transmittal from the District Court dated January 16th of 2018, accompanied by this document, which has been referred to as a "bench card"?
A. (Examines document)
MS. FABRICANT: And this we will mark because I think it's harder otherwise to identify.
(Document marked as Commission Exhibit 1 for identification)
Q. Take your time to review it. I will just point out to you on the second page of it, in the second box on the second page, in the middle of the box you will see a reference to Lunn versus Commonwealth and to Transmittal 17-13 in the third paragraph of that box.
So my question is just, do you remember getting this?
A. I don't remember this one specifically. I do remember getting a bench card on immigration matters. It was -- what do you call it --

laminated.

Q. Laminated?

A. Yes. It was front and back. I think the boxes looked different. I don't remember. But I do remember having a bench card on immigration matters.

Q. Okay. Do you think it was before or after January 16th of 2018?

A. I don't know.

Q. So if I tell you that a District Court transmittal was issued dated January 16, 2018, do you have any reason to think that you didn't get it at that time?

A. No. I would think I received it then.

Q. And then I want to show you this document, which is a letter your lawyer, Mr. Keating, sent to the Commission in October of last year. We are not going to mark this because it is confidential, but just so the record is clear, this is a letter dated October 14, 2022 from Michael Keating to Howard Neff, regarding Complaint No. 2019-22 on the letterhead of Meehan, Boyle.

So your lawyer sent this letter on your behalf. Do you remember this letter? Have you seen this letter before?

A. I did.
Q. And did you see it before your lawyer sent it?
A. I did.
Q. Let me direct your attention to the paragraph that begins at the bottom of Page 2 and goes over to the top of Page 3. Just take your time to read that paragraph.
MR. KEATING: Starting with "Judge Joseph"?
MS. FABRICANT: Yes. It starts at the bottom of Page 2 and goes to the top of Page 3, and it talks generally about the issue of recordings and judges going off the record.
Q. Just take your time to read that paragraph, if you would.
A. (Examines document) Okay.
Q. So my question is -- this paragraph generally says in the course of your career as a lawyer, that you had seen judges go off the record. I would like you to just elaborate about that: When you had seen it, in what kinds of proceedings, in what context. Just tell me more about that.
A. Sure. So most of my practice, starting when I was in law school and I was 303 certified,

was criminal. Not all of it, but predominantly. I had spent two years in the Middlesex District Attorney's Office as a student prosecutor, and there would be lobby conferences in the judge's lobby many times. Judges were called to sidebar many times. Lawyers were called to sidebar many times to discuss matters.

When I became a prosecutor for real as a lawyer at the Attorney General's Office, we had many lobby conferences with judges to try to resolve cases in lobbies that weren't recorded. Oftentimes things were discussed at sidebar to share information in an effort to resolve cases, whatever the issue may be, that weren't recorded. It was just part of the practice. And it seemed to be part of the general practice, not just my practice.

Q. So let's focus in on conversations at sidebar that were not recorded. You talked about lobby conferences, and I understand lobby conferences to be when you are talking about a potential plea, a resolution of a criminal case. Were there other topics that were discussed off the record other than potential resolution of a case?

A. I don't recall. Is there something

specific you are asking about?

Q. I guess really my question is, did you ever see it happen when the subject was something not related to resolving the case, not related to a potential plea but some other topic?

A. Maybe something personal. I just don't remember.

Q. So "something personal" meaning perhaps a lawyer is ill or something like that?

A. Right, or maybe something personal with a client or some collateral issue, whatever it may be, that may not be appropriate to discuss. It may not be for dispositional purposes, but case related.

Q. Okay. Did you ever see in those years or at any time a judge going off the record during an arraignment?

A. I don't have any specific memory, but I don't remember.

Q. Regarding lobby conferences, that is, conferences that are on the subject of potential resolution --

A. Let me back up for a second.

Q. Sure.

A. With respect to arraignments, I don't

remember, but it's certainly possible if there were something important that's personal or a reason to -- well, something that was pertinent to the arraignment. And I can't recall anything specific, but it's certainly possible that that would happen.

Q. Can you think of any sort of example of what that might be?

A. I'm thinking present times -- and, again, not necessarily off the record but at sidebar -- if there were a diversion issue, if there was, you know, again, something related to the arraignment that may change the course of the arraignment.

Q. So that would be on the record but at sidebar?

A. Right.

Q. With respect to lobby conferences, that is, a conference about a potential plea, are you familiar with Rule 12(b) of the Rules of Criminal Procedure, the rule that governs conferences with a judge regarding a potential plea?

A. I have read the rule. I can't tell you now specifically what it says.

Q. Of course. You became a judge in 2017.

A. I did.

Q. And you were practicing criminal law before that.
A. Yes.
Q. Were you aware that the SJC changed that rule in 2015?
A. Yes.
Q. And were you aware that one of the changes of that rule in 2015 was to require that what judges often refer to as lobby conferences must be on the record?
A. I don't know if I was aware of that rule change to require that, but I know that in practice, just from experience, there was -- you know, a tape recorder was sometimes brought in to the lobby. In Cambridge District Court, for instance, I specifically recall that lobby conferences, they would clear the courtroom, and they would conduct lobby conferences in the courtroom one by one.
Q. And so you weren't really conscious that that was because the SJC had changed the rule?
A. Right. It just became practice.
Q. Now we come to April 2, 2018. I know that it's been five years and you've been living with this for five years and you've probably been

thinking about it for five years. I need to ask you some questions about it.

So you were sitting in Newton?

A. I was.

Q. I understand you had sat there before?

A. I had. At some point I went back to look at how many times I had sat there. It was about a half dozen times. Some of those days were Thursdays where they don't have cases scheduled in Newton because the First Justice, Judge Heffernan, is over in Quincy for the day for her drug court, but they have a judge that sits there to handle anything that may come in overnight, potential restraining orders that come in, arrests from the night before. Sometimes that means there's nothing in Newton District Court on that day. Other times, you know, there's a handful of cases that have to be addressed.

Q. Was April 2nd the first time you had been alone in the courthouse? Or maybe not because it sounds like there were other occasions.

A. It was the first time I was alone in the courthouse with a docket.

Q. I see. I see. So you had sat in that courthouse about a half dozen times, but some of

those times there was nothing scheduled?
A. (Witness nods)
Q. And then this day you had a docket?
A. (Witness nods)
Q. Did you have an understanding of what the usual process was if a person that came into the courthouse in custody was then released from custody?
A. Only with respect to by practice in Newton District Court.
Q. So before you became a judge?
A. Before I became a judge.
Q. So what was your understanding?
A. So from my experience with clients that I had in Newton, if somebody came in custody and left in custody, they came in and out through the sally port.
Q. So your understanding was that a person who came in in custody through the sally port would leave through the sally port?
A. Right, if they were going back into custody.
Q. Oh, if they were going back into custody?
A. Yes.
Q. What if the person was not going back into

custody, if the person was being released?

A. So there were a couple of different options. If somebody came in through custody, they would come up to court through the private entrance into the courtroom, the stairway up to the courtroom. They would go back down to the lockup if they were to be released through those same set of stairs to retrieve their personal belongings, and then they would be released by the court officers.

Q. Released how?

A. So from my experience, they were released either into the parking lot or into the public hallway.

So the lockup, you could access the lockup area from my experience three different ways: One through the sally port; one through the public hallway in the basement of the building, which is where the Probation Department is located. So in front of the public counter of the Probation Department, there's a long hallway. If you pass by that front counter, at the end of that hallway, as I remember correctly, is the door to the lockup. So you could be released there and go past Probation up the stairs into the front lobby.

Q. Okay.
A. Then the only other way to be released would be through the courtroom through the stairs, but I don't recall that happening often at all. I don't recall that ever happening with any of my clients.
Q. Okay.
A. And the reason being is the way Newton is set up, which is not the same as other District Courts. I'm not saying all the courts, but the Newton dock, which is where the stairs come up from the lockup and the glass box, I would call it, if you were to come out through there, you go right into the bar area and almost in front of the judge's bench in order to leave the courtroom. In a lot of the other District Court courthouses, that dock area is beyond the bar area so that it's not disruptive to court proceedings.
Q. Okay. So that day, April 2nd, you are running through a list. You have arraignments and whatever else you have. Over the course of that day, aside from the case that we're going to talk about, the Medina-Perez case, aside from that case, were there other cases in which somebody had come

into the building in custody was then released?
A. I don't remember.
Q. Either during your orientation or within the few months from your orientation until April 2nd, were there other days when you sat in Newton with another judge?
A. I don't remember if Newton was one of the cases that I sat with another judge or not. I would have to look at the schedule. I just don't remember.
Q. All right. So now we are going to talk about the Medina-Perez case. I'm using that name because that's the name that's on the Newton District Court docket, though I understand there are other names that have been used. I'll just run through some of it to confirm, and you tell me if I have it accurately or not.
A. Okay.
Q. If I understand correctly, it was called sometime in the morning for arraignment. You appointed the duty attorney for the day, who was Ms. Bostwick?
A. I did.
Q. And at some point in the course of the morning -- and then you get a second call and then a

third call, if I understand correctly, and at some in the course of the morning, do I understand correctly that you were informed that there was an ICE agent present with a detainer for Mr. Medina-Perez?

A. So yes and no. I was informed over the lunch break.

Q. So then let's talk about the lunch break. Who informed you of that during the lunch break?

A. The session clerk, Clerk Okstein.

Q. And that was Lawrence Okstein?

A. Yes.

Q. Did you have some discussion with Mr. Okstein about First Justice Heffernan's policy regarding ICE?

A. We did.

Q. Just tell me about that.

A. So when he informed me that ICE was present for the case that we had continued until after the lunch break, he also informed me that there was a policy in the Newton District Court, or practice, that Judge Heffernan had where ICE was to remain outside of the courtroom -- or the courthouse. I can't remember if he said "courtroom" -- and did I

want to -- well, actually he notified the ICE agents that they should remain in the courtroom -- that they should remain outside the courtroom.

Q. And did you tell him they should?

A. No. I asked him if he had a copy of the policy. I asked where the policy came from. He said it was a Newton policy. I questioned -- and I don't recall my exact words -- whether we were allowed to do that. He said, "That's just the policy that we have here," and it wasn't in writing. I asked if there was a Trial Court policy regarding ICE issues, issues of ICE in the courthouses. He said he thought there was. I asked if he had a copy of it. He couldn't locate a copy.

I started searching the training materials that I had. As a new judge, you carry all of your important materials around with you. You know, your car becomes your office.

Q. Milk crates perhaps.

A. Yes, milk crates. Wheelie bags, whatever it takes. I looked through a couple of training materials that I had with me. I also started looking through what -- I was sitting in Judge Heffernan's lobby that day. There's two lobbies in

the Newton District Court. One is right outside the First Session, which is Judge Heffernan's lobby, and she has the visiting judges sit there when she's not there. The other one is upstairs on the second floor, which is where the second judge would sit, but there's nothing in that lobby other than a desk and chair.

So I was sitting in her lobby for the day. I started looking through some of the materials that she had in her bookcases trying to find anything that said ICE on it. I assumed since there was a policy for everything, there had to be a policy that dealt with these issues, and I couldn't find anything.

So the next thing I did is I called down to the administrative office of the Trial Court because it was still before the time that session was going to begin in the afternoon. I left a message for two of the legal counsel to call me knowing that I needed to get some guidance on it quickly.

I then called Sarah Adamson, who was the administrator to the chief, and asked if there was anybody, since I had left voice mail messages for two of the legal counsel, that I could speak with,

that I had an issue that I needed some assistance with. She connected me with somebody who was able to locate the policy and read it to me.

Q. Would that be maybe Zach Hillman?

A. No. I left a message for Zach. I had left a message I believe for Bethany, and I can't remember Bethany's last name.

Q. Stevenson.

A. Thank you. I always confuse her with somebody else. That's why I don't want to say the wrong name.

Finally they connected me with Ellen Shapiro. I only remember that because I actually knew Ellen from years ago from a former job, and so when she got on the phone, I was relieved that there was somebody that could help me.

Q. So tell me about that conversation with Ellen Shapiro.

A. I said to Ellen that I was sitting in the Newton District Court and that I was just informed that there were ICE agents in the courtroom or in the courthouse that were looking to serve a detainer and that there was a policy in the Newton District Court that Judge Heffernan liked to -- or would

order that ICE agents remain outside of the courtroom.

I had two questions. One was, you know, can we do that. I was concerned that there were First Amendment issues. These are public hearings, open to the public. I didn't know of any policy that allowed us to exclude any members of the public just as a general prohibition. Two, the next question I had was even if we can, should I, you know, do I have to.

I can't remember if she put me on hold or called me back, but she retrieved the policy and read it to me. Between the two of us, we determined that excluding ICE or asking ICE to remain outside the courtroom was not inconsistent with the Trial Court policy.

So then the next question became should I. From the guidance that she gave me, it certainly did not appear as though I had to exclude, but that excluding was not inconsistent with the policy.

She essentially told me, "If you are a judge, you can make whatever decision you want." I said, "Well, I am a visiting judge here. Is this is a policy that's in other courthouses?" She said she

didn't know.

After I hung up with her, I determined that the best thing to do since I was a new judge and just a visiting judge was to follow whatever policy the Newton District Court had for whatever reason they had it, given that it wasn't inconsistent with the guidance that I got from the Trial Court administration. So at that point I told the clerk that he could follow the policy any way that the court typically does. So he told me that he would ask the agents to stay outside the courtroom. I never saw the agents.

Q. Sticking with the lunch break, was there also a conversation with the clerk at some point about an inquiry from the ICE agent as to whether he would be allowed to go to the lockup?

A. No. The only inquiry about going to lockup was after the hearing, and that was when I was still on the bench. I said, you know, "That's fine. They just can't come in here," meaning they couldn't access the lockup through the courtroom, but there were two other ways for them to access the lockup.

Q. So I want to make sure I understand. After the hearing is over, you are still on the bench.

Was it the clerk that raised a question of whether ICE could go to the lockup?

A. Yes, I believe it was the clerk. It may have been one of the court officers, but I think it was the clerk. I just can't remember specifically.

Q. Okay. So we are back to the courtroom and the hearing resumes, according to the information we have, at about 2:48 p.m., does that sound about right?

A. It does, yes. It took about an hour from when I got back from lunch to get the policy and find the policy and determine what we were going to do.

We had recessed until 2:15 anyway because the attorney who I had appointed had a doctor's appointment and asked if we could resume at 2:15.

Q. At this point, David Jellinek appears for Mr. Medina-Perez?

A. Yes.

Q. Okay. So I want to show you this document. So this is two things stapled together. One of them is marked as 12A. One of them is marked as 12B. I will represent to you that they were given those markings in the Federal Grand Jury proceedings.

Again, we are not going to mark this as an exhibit because it's easy to identify. It's 12A and 12B in the Federal Grand Jury proceedings. They are, as far as I've been able to determine, identical. The reason they are 12A and 12B is because they were marked in the testimony of two separate Grand Jury witnesses. One of them being David Jellinek, and the other one being Shannon Jurgens.

A. Okay.

Q. Have you -- in the time that this has been going on, your lawyers have had the opportunity to have access to Grand Jury material. Have you had the opportunity to review this document.

A. I have.

Q. So what I would ask you to do is review this document. You already had the chance to review it. Review it and just tell me anything that you think is not accurate or anything you think is accurate if that is -- if one or the other is easier.

MR. KEATING: Both documents?

MS. FABRICANT: Again, it's 12A and 12B. They are identical.

MR. KEATING: Yes. Okay.

Q. So you don't have to go through it twice, but just -- you might as well take 12A and just tell me what, in your view, is accurate or not accurate.

This, again, is the transcript that the U.S. Attorney's Office produced that they showed to David Jellinek in his testimony and Shannon Jurgens in her testimony.

(Witness confers with counsel)

MR. KEATING: Do you want to start at the beginning or did you want to go to after lunch? Which portion?

MS. FABRICANT: We can go to the after lunch portion.

MR. KEATING: Would it make any sense if she simply read it and said, "This is accurate" or "This is not accurate"?

Q. If you go to Page 4, you get to 2:48. Yes, you can just read it and tell us what you think is accurate.

A. I have some notes that I had. Can I just take a look at them and make sure that they...

MR. KEATING: Yes.

A. So the first thing that -- and this, again, is before the lunch break -- is that there's a

section that is not on here between 12:09 and 2:48 that the case was called again. I don't recall exactly what time it was, but it was sometime before we broke for recess, which is when we had the discussion that the attorney needed additional time and, you know, needed to come back at 2:15.

Q. So that's not on here?

A. It's not.

(Examines document) Starting at 2:48, the first section seems accurate.

Q. Okay.

A. And then I think the only addition that I saw here was at some point when Attorney Jellinek indicated that he was the attorney on the case, when he came to sidebar, I said, "Nice to see you."

Q. Okay. Let's see if we can figure out where that would be. So the clerk calls the case, tells you what case it is. Attorney Jellinek says, "Good afternoon. David Jellinek. May we approach," and you think you said somewhere in here, "Nice to see you"?

A. Yes. I said, "Yes." He said, "Thank you." "Do you want to wait for your client? Or do it?" He said, "No. Sidebar." I said, "We're going to

sidebar." That's when everybody approached and I said, "Nice to see you." I think that's where you see "sidebar."

Q. So the rest of that paragraph, in your view, is accurate except it leaves out your saying, "Nice to see you"?

A. Exactly.

Q. And then we have, according to this, (recording ends at 2:48); (next recording starts at 2:48:48), so one second. Then it starts up with you saying something inaudible and then "is dismissed," and then "so it's my understanding." So from here, just tell us what in your view is accurate or not accurate.

A. I don't know what the "dismissed" is, but according to my notes, to my understanding it's that ICE is here and we have the fugitive of justice matter.

Q. Okay.

A. The only other change that I saw was on Page 7. Again, a lot of it is inaudible, but in the inaudibles area, I --

MR. KEATING: Well, where are we?

Q. What page you are you on?

A. Sorry, on Page -- I'm looking at B on Page 7.

MR. KEATING: Oh, you are looking at B. Okay.

MS. FABRICANT: Maybe the pagination is a little bit different.

MR. KEATING: It looks like it is a little different.

A. I was looking at B on Page 7, the top line where it says, "Clerk Okstein."

Q. So if we are on A, then, we are looking at the bottom of Page 6. The clerk says, "There was a representative from ICE here in the court... due to visit," and then it says, "inaudible."

A. It says, "There was a representative" -- so on Page 7 it says, "There was a representative from ICE here in the court... (inaudible) to visit the lockup." So they are slightly different. I also heard that, "There's a representative from ICE in the court lobby and wants permission to visit the lockup."

Q. Okay. Other than that --

A. I think it's pretty accurate, yes.

Q. So let's go back to the beginning of when

Jellinek appears.

A. And I'm working off of B.

Q. Okay. That's fine.

A. I'm happy to --

Q. That's fine. I made notes. That's fine. So let's go to the beginning of when Mr. Jellinek appears. He says, "May we approach briefly?" You say --

MR. KEATING: I'm sorry, can you just tell me where you are.

MS. FABRICANT: So now I moved over to B. I'm on Page 4.

MR. KEATING: Okay. I just wasn't sure where you were.

MS. FABRICANT: It's the part that says, "(2:48:13 p.m.)."

MR. KEATING: I got it.

Q. A few lines down the clerk says, "Next case." Judge Joseph says, "Good afternoon." Attorney Jellinek says, "Good afternoon." Then he says, "May we approach briefly?" You say, "Yes, please." He says, "Thank you." The clerk says, "Do you want to wait for your client?" Then he says, "No. Sidebar." Let me ask you this.

A. Sure.
Q. So he asked to come to sidebar. Why did you think you were going to sidebar as opposed to doing it in open court?
A. I didn't know. He asked to come to sidebar. It didn't seem like an unusual request. It happens all the time. It was part of my practice as a lawyer and a part of my practice as a judge.
I didn't know what he wanted to discuss. He was a new attorney on the case. The case had been handled by Attorney Bostwick. Up until then, she was, quite frankly, doing a great job with it doing her investigation. I figured he had something to tell me, and I didn't know what it was.
Q. Okay.
A. Or something to discuss. It didn't seem like an unusual request, given -- particularly in this case, given every time that the case was called, there was something new to it.
Q. This was now the fourth time?
A. This is now the fourth time, and there's yet again was something new.
Q. Okay. Then we have a discussion at sidebar about the fugitive from justice warrant and

whether he's the person. Mr. Jellinek talks about the issue of whether he's the person that ICE is looking for. Then there's discussion about the detainer, and so on. There's a discussion about what would happen if he were bailed out from Billerica. This says that you said, "ICE is gonna get him." Then this says that you said, "What if we detain him --" Then according to this, Mr. Jellinek says, "Are we on the record?" According to this, you then said to Larry Okstein, "Can we go off the record for a moment?" So when he said, "Are we on the record," he meaning David Jellinek, did you understand that to be a request to go off the record?

A. I don't understand your question. He asked to go off the record.

Q. Let me rephrase it. According to the transcript, he says, "Are we on the record?" You then said to Clerk Okstein, "Can we go off the record for a moment?" Let me put the question differently.

A. I must have, yes.

Q. Why did you at that point ask the clerk to go off the record?

A. Because it was my understanding that the attorney asked to go off the record.

Q. And what was your understanding of why he wanted to go off the record?

A. Similar to coming to sidebar, I really didn't know. I didn't know if there was something personal he wanted to discuss, if there was something he wanted to say. I just didn't know, but it didn't seem -- I didn't know there was a rule against it, so there didn't seem to be any reason not to allow it.

Q. So I need to probe that a little further. Back to when you were practicing as a lawyer, there were lots of times when there were lobby conferences off the record. There were times when somebody wanted to talk about something personal, illness, or something like that. You didn't have a memory of going off the record during an arraignment. I would like to just understand a little more of what was in your mind on this occasion. It's there on the docket for arraignment. There are these issues about ICE. What was in your mind about what it might be that he would want to discuss off the record?

A. Everything happened really quickly. You know, from listening to the transcript, you know, it's a quick discussion. There wasn't a lot of contemplation. What I do remember is everything moving very quickly, and at every juncture with this case something was changing.

If I can just back to the beginning a little bit just to get to where we are now, it might be helpful.

At the first call when I asked if there was a question of ID -- when I was told there was a fugitive of justice matter from Pennsylvania, the District Attorney's Office informed me that Pennsylvania was looking to come and get him and that they would be requesting that he be held without bail. And the colloquy we are told to give is, "Is there a question of ID?" The DA quickly answered, "No, it's not." Again, it's really not -- this isn't the Assistant District Attorney's decision of whether or not there's a question of ID. It's the defendant's decision of whether there was a question of ID.

At that point the defense attorney that I was appointing had not had the opportunity to

interview him thoroughly. So she had indicated, she meaning the attorney, that she wanted some more time and there was a question of ID, that he was maintaining he was not the same person that Pennsylvania wanted. So, you know, we continued the case.

The second time the case was called, the Assistant District Court gave me a photograph to look at and said, "We have a photograph. I think this is him." It was an old photograph. I believe -- and I could be wrong -- that it was the photograph from Pennsylvania from, you know, years prior. I think eight years, if I remember correctly. I looked at the photograph and I looked at the defendant, and I couldn't tell one way or the other whether it was the same person or not. It was not helpful to me in determining. The defense attorney asked for additional time to do a further investigation, which I allowed.

So now we are back to the afternoon, and there's a new attorney who has filed an appearance. At the beginning of the sidebar conversation -- and, again, over the lunch break, I'm notified that ICE is there with a detainer. I was told it was a

detainer, not a warrant. There's a difference in immigration language I guess between a detainer and a warrant. I don't recall whether I ever saw the detainer or not. I don't know that that matters. So now we are at sidebar. I'm told that they don't believe, they meaning the District Attorney's Office, that he's the same person that Pennsylvania thought he is.

It's my understanding for whatever reason that ICE and Pennsylvania are working off the same, I'll call it, biographical information to determine who this person is. From the very beginning of the day, I was very concerned about who is this guy. I really wanted to determine who he was.

As things are progressing, we are discussing at sidebar -- when Attorney Jellinek asked to go off the record, it seemed to be just a continuation of what we were discussing in that it doesn't seem unusual. It didn't seem -- I guess "unusual" is the best word to use. I thought he had something to tell me. I didn't know if it was something personal. I didn't know why he was requesting to go off the record, but there didn't seem to be any reason not to.

Q. So you had been discussing this person's identity. Why would that be a topic to discuss off the record?

A. Well, as I said, I didn't know what he wanted to tell me. I didn't know if there was something personal, something related to him, something related to the client, something related to Attorney Bostwick and why she wasn't back.

What was also noticeable is, you know, at this point it's close to 3 o'clock in the afternoon, and I don't recall her coming back as the duty attorney that afternoon, so I didn't know if there was, you know, something personal that he wanted to discuss. But I really didn't give it much thought. It just was part of the progressive of how the case was going.

Q. Okay. So there was, according to this, 52 seconds off the record. What happened off the record, as far as you can remember?

A. So although I don't remember the specific details, I remember the substance, and it was really a continuation and, I'd say, even a rehashing of what was discussed on the record.

The only difference is that we discussed --

the attorney asked if he could speak to his client in the lockup with the assistance of an interpreter prior to his release, which I assumed was to ICE custody, and I said, "Yes." So when we went back on the record, I put everything on the record that was different, which included that.

Q. So I want to make sure I got that correctly. So it's a continuation of the discussion you had earlier, and the attorney asked if he could speak with his client in the lockup with the interpreter before he was released?

A. Yes.

Q. Okay. So you've now read, I take it, the Grand Jury testimony of the various witnesses, including David Jellinek?

A. I have.

Q. And so you know that David Jellinek testified that he told you that he thought his client could be released out the back door if David Jellinek couldn't speak with him downstairs. Did he say that?

A. No.

Q. And is that a specific memory that you have that he did not or is it --

A. No, he absolutely did not.
Q. So you then go back on the record, and tell me what you did.
A. So I put everything back on the record as to what we discussed at sidebar that was different than what had been discussed before.
I realize after reading the transcript again that we arraigned him for a second time. I don't know why that happened, but we did. I advised him of all of his rights that were afforded to him as somebody who had just been arraigned.
At the end of that, I indicated that the defense attorney had asked -- or maybe he asked. I would have to go back and look -- to speak with his client in the lockup with the services of the interpreter before he was released, and I had allowed that to happen. So I put that on the record.
Q. Why did you feel like you needed to put that on the record at that point?
A. He asked me to. I didn't feel as if I needed to. He asked. Because I was under the impression that he was going to go directly into ICE custody, it seemed as if it was important for him to be able to speak with his client before that

happened. As I recall, he spoke no English. He would need the assistance of the interpreter in order to do that.

And it didn't seem to make a difference. It was just pausing everything. They were going to be taking him into custody, and it was a place that he could have a quick interview before that happened. So it seemed appropriate.

Q. So you had this conversation off the record. The lawyer asked to go downstairs to talk with his client with the interpreter. Then you go back on the record, and you put this on the record. Whose benefit was that for?

A. I don't know whether it was for anybody's benefit, but it was something that we discussed on the record that was different than what had been on the record before, so I felt that it was the proper thing to put that on the record.

Q. Were there people in the courtroom unrelated to this case?

A. I believe so.

Q. Related to other cases or members of the public observing?

A. I have no idea. I know there were other

cases that were called that day, so certainly there were people in the courtroom. I don't recall who they were.

Q. So when you are back on the record, the clerk says, according to this transcript -- and now I'm looking at Page 7 of 12B -- the clerk says, "There was a representative from ICE here to visit the lockup." You said, "That's fine. I'm not going to allow them to come in here. But he's been released on this." So I want to understand why at this particular moment you said, "I'm not going to allow them to come in here."

A. Because I think somebody had said they requested permission to go to the lockup. They just couldn't come -- according to the Newton rule, they couldn't come into the courtroom, but they could access the lockup in any other way that they wanted to access the lockup. So yes, they could go to lockup. They just couldn't come in here to do that.

Q. So you think somebody had said -- or the clerk, according to this transcript, said, "There was a representative of ICE here to visit the lockup"?

A. (Examines document) I'm just looking.

MR. KEATING: Right here (indicating).

Q. And you said, "I'm not going to allow them to come in here." So if I understand what you are saying, the point of this was they can't get there --

A. They can't get there from here, but they can certainly get there any other way they want.

Q. Okay.

A. And why is that, you know, relevant. There were ICE agents waiting in the lobby. I only know that because the chief court officer was standing in front of the doors in the First Session. I'm going to say blocking the door. I'm not sure, you know, what the intention was or not.

Q. Standing in front of the doors inside the courtroom or outside the courtroom?

A. Inside the courtroom. And I assumed that there was an ICE van in the back, you know, in the sally port area waiting to take him into custody. So certainly the ICE agents, you know, in my mind, could access the lockup area any way they wanted. They just couldn't consistent with the Newton policy come into the courtroom to do that.

Q. So the next day or maybe another day, maybe the next-next day, you had a conversation with

Marybeth Heffernan, the First Justice?

A. I did.

Q. Tell me what you remember about that.

A. It was two days later. This happened on a Monday, so it was on the Wednesday. On Tuesday I didn't sit in Newton, but I don't remember where I sat on Tuesday. When I came into court, she asked me to go up to the Second Session. I handled the cases in the Second Session for the day.

When I was done with that session, I came back downstairs to her lobby. She said, you know, "Sit down. I would like to talk to you about a couple of things." First, she had heard there had been press on one of the cases that I had handled in the Second Session that day. She said, "You know in the future, if you could just let me know if the press is here. I would like to know." I said, "Not a problem. The clerk informed me, so I assumed you knew, but I'll be happy to make sure that you know next time."

Q. And that was something else --

A. That was completely different, unrelated to this case.

And then second she said, "Yes, I would

like to talk to you about a case that was here on Monday that had to deal with," and I don't recall how she described the case, but, you know, at some point I knew that she was talking about this case.

And so I spoke about there being -- you know, what a confusing case it was in that there had been a question of ID in the morning on the Pennsylvania warrant; that, you know, ICE was there in the afternoon with a detainer; and we were trying to figure out who he was; and that, you know, the Pennsylvania fugitive of justice warrant had been dismissed, but yet, you know, ICE was there to serve the detainer; and I had to call to get the policy because I couldn't find the ICE policy here.

She informed me that he had escaped and was released out the back door and evaded ICE from taking him into custody.

I asked, "How did that happen?" She said, "Well, that's what I'm trying to figure out."

Q. So was that the first you learned that he had evaded ICE?

A. Yes.

Q. In the course of this conversation, was there any mention of going off the record?

A. I don't believe there was. I don't recall mentioning it, and I certainly don't recall her asking.

Q. Did you think it was something worth talking to her about?

A. I didn't. It just didn't come to mind when I was talking to her about what happened.

Q. Sometime after that, within a short time after that, did you get the recording from the clerk?

A. I did, and I got it probably about a month later. It was the next time I was sitting in Newton court. I think it was at the beginning of May.

Q. So sometime within that time period before May 8th --

A. Yes.

Q. -- you were sitting in Lowell and had a conversation with Judge Stacey Fortes?

A. Yes.

Q. Who was at the time the Regional Administrative Justice and now is the Chief Justice?

A. Now is the chief, yes.

Q. Tell me about that conversation.

A. So I was sitting in Lowell Court. After

the morning session, Judge Fortes said, "Why don't you grab your lunch and come into the lobby," so I did. We were just catching up talking about the kids and just other stuff, how things were going.

She said, "I wanted to talk to you about a case you handled in Newton a few weeks ago." I said, "Sure." It wasn't a scheduled meeting, so I didn't know if she wanted to talk about the case. As far as I knew, it was over.

And, again, I don't recall how it came up. She asked me what had happened. I started telling her again about the fugitive of justice matter and the issues of ID and that ICE was there and that I called for the policy.

She said, "At any point did you go off the record?" I said, "Yes." We discussed that. She said, "You know there's a District Court rule that prohibited you from going off the record?" I said, "No." She showed me the rule or read me the rule. I can't remember. I said, you know, "Thank you." We discussed that.

She said, "You know there's really no good reason to ever go off the record. The record is your friend."

That was pretty much the end of the discussion, as far as I remember.

Q. Did she ask you a question about going off the record?

A. She did.

Q. Do you remember what her question was?

A. I don't.

Q. Do you remember what you told her about going off the record?

A. Well, I remember she asked me if I went off the record, and I told her that I did.

Q. Okay. Did you give her any explanation of why?

A. At some point -- I think she asked me, and I just don't recall, but she may have asked me if I had ever been off the record before, and I told her about an incident or case I had handled in the Waltham District Court being a judge where counsel and the DA were at sidebar. We were discussing a case, and at some point in time while we were discussing this case at sidebar, I was notified by attorneys that -- attorneys that were sitting in the audience were trying to get our attention because what was being said at sidebar was being broadcast

throughout the -- or magnified -- amplified into the audience. We were put on notice of that. The clerk repeated that to me saying, "They can hear this sidebar."

Q. In Waltham?

A. In Waltham, yes. And at some point because we couldn't figure out why that was happening -- and I don't recall if it was me or the clerk -- we pulled the wire to the microphone that was right next to us, and that stopped the amplification into the galley so that we could continue the conversation. Well, I didn't say the galley. It was the audience.

Q. Did she ask why you went off the record in this instance?

MR. KEATING: Can you say that again.

Q. Did she ask why you went off the record in this instance?

MR. KEATING: Thank you.

A. I don't recall the specific questions she asked me. I know she asked me if I went off the record. She showed me the rule, and, you know, she asked if I was aware of the rule.

I remember telling her about what had

happened in Waltham, but I don't recall anything else specific about the conversation.

She may have. I just don't remember.

Q. Okay. So you've now -- or have you now read Judge Fortes' Grand Jury testimony?

A. (Witness nods)

Q. So you know that she said that you talked about uncertainty about how the recording system worked in Newton. Is that accurate?

A. Yes, we discussed that.

So the Newton system at that time was not an FTR system. I don't recall when Superior Court changed to FTR, or not, but they were changing over the District Courts to FTR. I was sitting mostly in Middlesex County, whatever that region was, plus Lawrence because that's technically Essex I guess. All the courts, from my memory -- and I could be wrong -- were FTR except for Waltham and Newton, which were not updated yet. They were the old recording system.

Q. JAVS. So you talked about that?

A. We talked about that.

Q. In this conversation with Judge Fortes, in your view, were you candid with her?

A. I was.
Q. So then on May 8th, you had a meeting with Chief Justice Dawley and Judge Fortes?
A. Yes.
Q. And at that point you talked about going off the record, and did you acknowledge at that point going off the record?
A. Yes.
Q. Did you say why you went off the record?
A. Again, I don't recall the specific questions that were asked. I would think that I must have, but I just don't remember the specific questions he asked.
I remember telling him the whole story. I assumed that his concern, which was my concern, and it was certainly Judge Heffernan's concern, was the fact that this individual evaded ICE, you know, who was there to serve a detainer. He quickly told me that that was not his concern at all.
That was Judge Heffernan's big concern. In fact, we talked about that a little bit more as part of this discussion. She had mentioned that she was really worried about his identification, was he going to commit another crime, you know, we didn't

know who he was, this was horrible. That was her focus, was the fact that he had evaded ICE and what should the policy be in Newton Court since she was going to change the court to make sure that there was a policy as to where exactly people should be released.

Judge Fortes was very focused about going off the record. That was the substance of the conversation with her. You know, when I was describing the whole issues with the identification and ICE, you know, she really jumped to, "Did you go off the record?" I said, "Yes, of course." We discussed that.

Similarly, with Chief Dawley, as far as I recall, I started telling him the whole story about how this was a fugitive of justice matter and there was a question of ID and then the District Attorney's Office dismissed the fugitive of justice and that there was still a question of ID and that she was --

THE COURT REPORTER: I'm sorry, would you mind repeating that part from "the District Attorney's Office."

A. There was a question of ID, and the

Assistant District Attorney was dismissing -- or moving to dismiss the fugitive of justice matter. And then we had the issue that ICE had a detainer based on the same biographical information.

He I remember stopping me and said, "I'm really not concerned about ICE. I'm concerned about you going off the record." Then we started talking about going off the record. He asked me if I knew why that was such an important issue, and I said, "No, but I understand now." You know, Judge Fortes certainly alluded to that. You know, by the end of the conversation, he had as well. So we talked about that.

Q. I take it you've now read Chief Justice Dawley's testimony in the Grand Jury?

A. I have.

Q. And he testified that you said the discussion off the record was a discussion of the defendant's identity. Is that one of the things you said?

A. Well, it was, yes. We discussed -- off the record we discussed his identity, the fugitive of justice matter, the fact that ICE had a detainer, and the fact that the defense attorney wanted to

announce he had to speak with him with the interpreter before he was released to ICE custody.

Q. I know I asked this before, but I'm going to ask it again. Why would his identity be something that should be discussed off the record?

A. Well, that's a hard question to answer. I think his identity was something that needed to be discussed. I certainly felt that I had a responsibility as a judge to everybody involved, the defendant, the attorneys, whoever they may be, the District Attorney's Office, ICE, everybody. We needed to know who he was. It didn't matter to me whether this was on or off the record. Ascertaining his identity was of huge importance to me, and I felt that there was a responsibility to know who he was.

Q. But why would that be off the record?

A. I don't know that there was a specific reason to be off the record, but as the case just progressed, it was -- you know, we called the case, Can we go to sidebar, Can we go off the record. It's just the way things progressed in the case. You know, it was just the chronology. There was no specific reason to do it or not to do it.

I didn't give it much thought. Obviously I should have. I learned from this. You know, I'm aware that there is a rule on it now. Had I known that there was a rule then, I never would have gone off the record.

Q. When you met with Chief Justice Dawley, he asked whether you had any involvement in Mr. Medina-Perez being released out back, and you said you did not?

A. No.

Q. What is your thinking about that now?

A. The same. I had absolutely no involvement with him going out the back. I didn't know. I didn't condone it. You know, I had zero involvement with that, other than being the judge on the bench at the time presiding when he was released out the back.

Q. So you've had five years to think about this. I'm sure you've been thinking about it a lot in five years. Are there things you've learned, things you think differently now?

A. Well, I think the biggest lesson is never go off the record and the record is your friend.

Q. Okay. Are there topics you think should be

addressed that I haven't asked you about? Is there anything I haven't asked that you think we should talk about?

A. (No response)

Q. I'll turn to your lawyers.

MR. HOOPES: Do you mind if we take a two-minute break?

MS. FABRICANT: Absolutely. This is a good time to take a break.

(Discussion off the record)

(Recess at 1:21 p.m.)

MR. KEATING: (1:55 p.m.) So I think what we would like to do, if it's all right with you and Howard, is if we give Judge Joseph the chance to make a statement, rather than us asking her questions. We may want to afterwards ask her questions, but I think she can cover the waterfront.

MS. FABRICANT: Absolutely.

THE WITNESS: Give me one second. There's one thing I wanted to look at. (Examines documents)

So as you can imagine, you know, a whole day has, you know, became much more complicated. Summarizing it in an hour and a half, like, there's just so much more, but there's a couple of very

minor things that I think are important to paint the full picture of just some other stuff that was going on at the same time. This is not meant to be exhaustive in any reason, but just a couple of little details that didn't come up because either they weren't asked or we went on to something else. So I'm going to jump a little bit, but try to keep it as organized as possible.

With respect to Judge Heffernan and what happened on April 2nd in the morning, again, minor detail, but I had tried to call her at some point in the morning session because there was a case on the list where a defendant had written her a personal letter, and she had the file at some point in her lobby. The case was on the list that day, and the clerk's office couldn't find the file. You know, obviously she was not in court. I thought she was at a training or something. I was not sure why she was out. So I called and left her a voice mail message that morning asking her to return the call because we were looking for a file. She had not returned the call that day. I believe she testified at the Grand Jury she was at a funeral, which made perfect sense why she didn't call back.

But just in case anybody was wondering why I didn't reach out to her as this case got more complicated, that was the reason why. Because I had already called her and left a message. In fact, I think there were a number of times I tried her that morning around that same time period, and she just didn't call back then.

The second thing is when I spoke with her in her lobby on the 4th, so two days later, her big concern -- we talked about this for a while -- was, you know, who is this guy. She was very concerned that since he had evaded ICE -- you know, we didn't know where he was. We didn't know who he was. We didn't know, other than the fact there was a detainer, what, if anything, he had committed. If it wasn't a warrant, it was a detainer. So I assumed it was a question of citizenship as opposed to a warrant because he had committed a crime elsewhere. Not that that mattered, but as we were speaking, she was thinking, "What if he committed a crime. You know, this could end up on the front page of the Paper." She was very concerned about the fact that he had gotten away and we just didn't know who he was, and what if he commits a crime.

That really stuck with me to the point that I was so concerned about it, the next day when I really had the time to contemplate and think about that, that I had called her the following day -- so now we're talking about Thursday -- and I left her a voice mail message after work just asking her to give me a call.

She returned that call on Friday morning. I remember that call a little bit because I was at Logan Airport. I was heading to Florida for the weekend with my mom, and I excused myself from my mom so I could talk to her. And I specifically remember saying to Judge Heffernan that, you know, "Have we found him yet?" She said, "No." I said, "I'm concerned that we don't know who he is. Like, I've really been upset about this. I apologize." I said, "I'm so sorry this is complicating things for you. I know I didn't have anything to do with him getting away, but I was the judge at that time, and whatever happened on the day that you were not there you are now dealing with." I felt really horrible for complicating her job essentially, that this was just something she had to deal with. She said, "We're good. Don't worry about it. I'll see you

the next time you are here. I'm going to deal with the policies."

I don't recall much more of the conversation that we had, but I thought it was important that you should know that.

With respect to Judge Fortes, I know you were asking a lot as to the reasons that we went off the record. As you can see, I was struggling a little bit. There really was no reason. I mean, the attorney asked. I allowed it. In retrospect, knowing the rule and knowing, you know, that the recording is certainly my friend; and if it were recorded, we would not be here. I would never have had to see -- and I mean this respectfully -- Mr. Neff.

(To Mr. Neff) When I met you, I think I joked that I never wanted to have to see you again other than at a training.

I could honestly say that if that recording had been on, we would not be sitting here, and nor would I expect to have been before Mr. Neff on any other reason. There really just wasn't, you know, a reason.

You know, I think the only reason -- you

know, it just didn't seem -- I didn't know that it was improper, and it just seemed to be part of the natural progression of the case. There was just no reason not to do it.

One of the things during my five years -- well, three and a half years off, I had way too much time, as Ms. Fabricant, you alluded to, the fact that, you know, I thought about this way too much, is I had the opportunity to pull and listen to the tapes of when I sat in Waltham because I was determined to find the recording of when we pulled the wire.

Waltham, like Newton, was on FTR, so I couldn't just log on and hear it. I had to actually get the CDs. I went back on my schedule, and I pulled all the CDs from however many days I sat in Waltham until I found this one. You know, what was interesting about it is I had called the attorneys to sidebar because there was an issue that I had seen regarding the defendant's mental health of prior -- I think it was something about a suicide attempt or something of that nature. I don't recall much more about the case now, but I remember there being some significant mental health issues that I

saw, and we were discussing this at sidebar, and then you hear, you know, the clerk whispering. I don't remember the conversation, but then you hear nothing else. You hear, you know, the wire, just when the wire got pulled. You hear nothing else at sidebar, but you hear the chitter-chatter in the courtroom because the other microphones were still on. You know, why do I mention that? I mean, that was effectively going off the record.

THE COURT REPORTER: Excuse me, would you mind going a little slower.

THE WITNESS: The interpreters in court ask me to do that all the time also. I have to slow down and pause.

So that was one of the reasons, you know, that was brought up.

Obviously I didn't have the tape then, or the CD, I should call it, when I was with Judge Fortes, but I was curious myself and was able to find that during my three and a half years off.

With respect to Chief Dawley, a couple of things, I mean, that I wanted to make sure that I mention is, part of our discussion when we were talking about being off the record is that he, you

know, again, had mentioned how, you know, the record can be your friend. He did tell me that there had been issues with ICE and that they had made a call to the Trial Court. I don't know that it was directly to him, but it was to the administration. He explained to me that a year prior to my case Judge Heffernan had had an issue with ICE that made the front page of the Papers, and we discussed that case a little bit. I actually went home and, you know, found the articles myself. It essentially was that there was an Uber driver that was charged with, as I recall it, raping a Boston College student. It was, like, three months after the incident that he was arraigned, and she had released him on a much lower bail than what the Commonwealth had asked for, and one of the reasons is because the family was there and was able to post the bail at the Newton courthouse. ICE had called in and said that they wanted to serve a detainer, would they wait, and she was like, "If he posts, he posts." I believe that's what happened. I don't know what happened, but it made news that that had happened.

So Chief Dawley had indicated to me that, you know, that's one of the reasons why the record

is your friend. Because if there's ever a question about what happened, you know, it's there.

I told him that, you know, I understood loud and clear. I told him that I was mortified that I was sitting in his office having been such a new judge and that he had to do this.

I asked him at one point in time, you know, why he didn't just call me to discuss it. I had already talked to Judge Fortes about being off the record. He said, "Well, the issue was so important I wanted to make sure you came here to talk to me about it. I didn't want to just call you to discuss it."

You know, I apologized and said, "You know I hope this doesn't, you know, affect, you know, my career as a judge." He goes, "No. This is a learning experience. I really hope you learn from this." It was a very -- we ended it on a very friendly term from there.

Regarding being off the record, you know, I never intended to mislead anybody. The three judges that I spoke to about this all had different angles, different concerns. I answered their questions candidly, openly, as honestly as I could.

Other than Judge Dawley's -- the conversation with Judge Heffernan was very quick. It was not -- you know, we were in her lobby, and then we both went off and handled whatever cases we had. It hadn't been discussed again that day. It was quick and casual.

You know, I just wanted to be able to answer everybody's questions as honestly and to the best of my memory that I can, but there was absolutely no intent to mislead anybody.

The first time that I was asked about going off the record was with Judge Fortes. I acknowledged it immediately. You know, the second time was with Judge Dawley. Again, I acknowledged it immediately. Had Judge Heffernan asked or if I had thought it was important at the time, I certainly would have discussed it with her as well.

The only last thing I wanted to mention about Newton Court is after the case ended, you know, at whatever time after 3 o'clock in the afternoon, I went back to my lobby, and I had an email from, I believe it was, Zach Hillman, with Ellen Shapiro copied on it. It showed that the policy had been scanned in at, like, 1:00 --

before -- you know, during the lunch break and then emailed to me, I'm going to say, at approximately 3:20 in the afternoon, but it was after the hearing was over when I physically got the copy. But what I did is I went to the clerk's office and made copies of the policy. I kept a copy. I left a copy for Judge Heffernan. I gave a copy to Clerk Okstein. I also gave a copy to Magistrate Schultz, who was a clerk magistrate in Newton, so that everybody would have a copy. So I just distributed the copies.

MR. KEATING: Did you want to make any other general statements other than the specifics that you just referred to?

(Discussion off the record)

THE WITNESS: I mean, the irony of it is I was sitting in Lynn after this all happened, and the clerk asked if I would go off the record and talk to some folks about a mental health issue, and I was like, "No, no, no, no."

You know, based on anything that I said, do you have any other questions? If not...

MS. FABRICANT: Not based on what you said, but there are a couple of things I want to follow up on from earlier.

MR. KEATING: Why don't you go ahead. Then if she would like to say something else for the record, she will.

MS. FABRICANT: Okay. That's fine.

DIRECT EXAMINATION, Resumes

BY MS. FABRICANT:

Q. So I just want to go back to a couple of things. You talked about previous experience in the Newton District Court when you were in practice.

A. Sure.

Q. Can you give me a general estimate of how often you practiced in Newton District Court?

A. So that's really hard, and I'll tell you why. So I was a bar advocate in Newton for a while. When I left the Attorney General's Office and, you know, I started my own practice in 2002, I -- or was it -- whatever it may have been -- oh, in 2000, I was a bar advocate in two courts in Suffolk County and two courts in Middlesex County, one being Newton. Newton was at Newton for a while. It moved to Cambridge. Then it came back to Newton. Then I got off the bar advocate list and only handled private matters.

So I was very familiar with the Newton

personnel just by the fact, you know, I was in private practice for 16 years. You know, people came and left.

I don't recall how many matters I had in Newton District Court. My office was in Newton. I really didn't have a "home court." A lot of people practice a lot in the areas where their office is. I had a very active criminal defense practice, so I was all over the State.

I had a lot of cases in Newton District Court, but they would ebb and flow. Some days I was there every week. Other times it would be months until I came back again.

I only recall appearing before Judge Heffernan a handful of times. I used to appear, you know, more before Judge Klein, and then there were some other judges that would visit Newton off and on. So I was not overly familiar with Judge Heffernan.

So I don't know. I had a lot of cases in Newton, but it was not constant, after my bar advocate work ended.

Q. You talked earlier about the various ways a person might be released from the building.

A. Yes.

Q. And experiences you had had when you represented somebody and that person was released in various ways. I'm trying to get a sense of how many times you had those experiences.

A. Oh, gosh, it's really hard to say. It would have been more so when I had the bar advocate work, which was early on in my career, in my defense career. I would have to go back and look. I don't know.

I mean, the way -- so the way the bar advocate program works, you are allowed two courts per county and two counties. As I told you, Newton was one of my counties. Oftentimes, you know, folks are arrested, they are in custody when you get appointed to represent them. There are times when there's summons arrests and you get appointed to represent them.

My private cases in Newton -- and I was -- I got out of the bar advocate program, I'm going to say, approximately -- and I would have to look -- seven years after I started it.

I handled a lot of bar advocate cases early on. You know, I was trying to establish a private

practice. Then little by little as my private practice grew, I had less time. And you don't make a lot of money in the bar advocate program. So I little by little got rid of all my bar advocate cases.

So it's hard to say. I'm trying to remember whether I had any private clients that were in custody in Newton. I just don't know, but, I mean, I handled a lot of cases in Newton.

Q. So do you think -- back to the issue of how people were released.

A. Sure.

Q. You said one of the ways somebody might be released was through the sally port, the same way they came in, but they were being released.

A. Right.

Q. Do you think that was a handful of times, 10 times, 20 times, 100 times, 1,000 times?

A. I think the most -- I don't know the answer to that. I would say if somebody came in -- I can rank it, though, if that's helpful.

Q. Okay.

A. If somebody came in in custody and left in custody, they were coming in and out of the sally port. That's obvious.

If somebody came in through the front door and not in custody, when they were done with court, they left through the front door. Again, obvious.

The more nebulous part is if somebody came in, custody, and then left. I know that there were people, from experience, who went out the back door when they came downstairs to get their property and went off. If they didn't have to check into probation, you know, if the court was in session, they were not going to come up the stairs. If it was just easier to let them out the back, the court officers would let them out the back. It just kind of happened.

I don't know whether or not -- until this case happened, I never thought about what the security policies were. That's not something that as judges we are made aware of in the different courts we go to. That's really up to the security folks and, I would presume, maybe the First Justice to make whatever policies.

You know, once I'm done on the bench, you know, holding somebody on bail, releasing somebody, sentencing somebody, unless there's -- you know, I feel my job is done. That's a security issue,

unless there's something brought to my attention. Or a court officer, I should say, instead of security.

There were certainly times when I had clients, and I would say more times than not -- let me back up. I don't ever remember one of my clients being released into the courtroom having been in custody in Newton. In other courts, you know, for sure, but not in Newton. I can't say for sure that that didn't happen, but I have no memory of that happening.

The way my experience was is that people went back down to the lockup area, got their belongings -- they had their little bag of stuff -- and were released into the hallway, which would mean they would walk by the Probation Department, come up the stairs into the lobby area, and then go out the front door. But they wouldn't come back into the courtroom.

Q. When you say "into the lobby area," you mean the public lobby area?

A. Excuse me, the public lobby area, yes. So when you enter the courthouse, that lobby area. The only courtroom on that first floor is there's the First Session.

Q. Okay. And going back to David Jellinek's testimony in the Grand Jury, so you read his testimony?

A. I did.

Q. You know that he testified that he believed he had your blessing for the plan to have his client released out the back?

A. Right.

Q. Is there anything that you can think of that would have given him that impression?

A. There's nothing that I can think of that would have given him that impression.

In fact, what I find really interesting is the Assistant DA -- there was only Attorney Jellinek, the Assistant DA and me there, but after reading her testimony also, the fact that she goes out to the hallway and tells the ICE agents he's coming here I think is an important indication that nothing improper was said at sidebar that would have alluded to anything any different than that. If something had been said or done to make her think that he was being released anyplace else, you know, I think she would have indicated such.

Q. And let's go back to the conversation with

Judge Fortes. So you read her Grand Jury testimony?

A. I have.

Q. You know that her description of that conversation is a little different from the description you have given today; that is, she doesn't say that you acknowledged having gone off the record. She says that you talked about questions about whether -- about how the recording system worked.

MR. KEATING: I don't think that's right.

MS. MULVEY: We object.

MS. FABRICANT: You can certainly object, and I can certainly get it wrong.

MR. KEATING: Well, not object.

MS. MULVEY: What we do in court is maybe if you show her specifically, but to ask her to comment on 60 pages of testimony...

Q. And I don't have a copy of that to hand you. I'm going to just ask you again to just summarize your understanding of the conversation that you had with Judge Fortes.

A. My understanding or my memory -- and again, it's not perfect.

Q. None of us is.

A. My memory is -- you know, again, after the small talk was over, you know, was that however she brought up the subject of the Newton case -- and again, I don't recall how it came up -- at some point, you know, she asked had I been off the record, to which I said, "Yes." Or, you know, did we go to sidebar, did we go off the record. I said, "Yes." We discussed that.

I remember telling her the whole story because to me that was important to understand how we got to sidebar and how we got off the record because of the question of ID issue and the fact that the case was so complicated from the very, very beginning.

I don't recall how much detail I gave her. If I gave her any detail, it would have been that I appointed an attorney to represent him; that there was a fugitive of justice warrant; that there was a question of ID; the Assistant DA was adamant that that was him; she said there was a fingerprint match; she had a photograph; I had looked at the photograph; the photograph, you know, really did not shed light for me as to whether he was the same person or not, as I indicated earlier, that there

was an older photograph; the fact that the attorney wanted additional time; that over the lunch break, I am then informed that ICE was present; we couldn't find the follow; there was a Newton policy that was a Trial Court policy; there was a new attorney; I didn't know whether the new attorney -- at first whether I knew that Attorney Jellinek was a court-appointed attorney in both Waltham and Newton -- he had been before me before -- but he was coming in as a private attorney, which, you know, made me pause a little bit; you know, he asked to come to sidebar; I'm notified immediately that he's not -- he meaning the defendant is not the same person that Pennsylvania thinks he is; and that the Assistant District Attorney was going to be moving to dismiss the case, the fugitive of justice case; the fact that there was going to be no bail request on the Newton case, but that they still felt that -- we still knew that ICE was there with the detainer based on the same information that Pennsylvania had. I thought all of that was really important in understanding how we got to sidebar and off the record.

But she did ask me if I went off the

record. I acknowledged it. She asked if I knew there was a rule, I said, "No." She either showed me the rule or read me the rule and said just, you know, "Don't do it again. You need to know that this is a rule."

That was pretty much the end of it, with the exception of the discussion about the Newton and Waltham recording systems. And I don't recall specifically how that came up, you know.

MS. FABRICANT: Okay. And then you wanted to make a statement?

THE WITNESS: Yes.

Is there anything else I missed?

MR. KEATING: No.

THE WITNESS: As you can imagine, I spent now close to five years -- give me a minute.

MS. FABRICANT: Take your time.

MR. KEATING: Take your time.

MS. FABRICANT: There's water over there if you like.

THE WITNESS: -- trying to figure out how something that I was trying so hard to get right could go so wrong.

I was trying to do all the things that a

judge should do and show all the attributes that a judge should have in trying to get this right. I was trying to be conscientious, knowledgeable, empathetic, responsible, patient. This case took all day.

I have truly racked my brains, particularly for the three and a half years that I wasn't working, when I was sleeping, when I was awake, trying to recreate and figure out how we got to where we are and how this went so horribly wrong, when I was trying so hard to cross all my T's and dot all my I's and make sure things happened properly.

There's nothing else I ever wanted to do other than be a judge. In fact, when I was interviewing with the Lieutenant Governor, she asked me, "So when did you decide you wanted to be a judge?" I started talking about being a young child. She was like, "I don't want to hear about when you were a young kid. When in your career did you decide?"

When I was nominated, I called my aunt in Florida, and I said, "Aunt Paula, I've just been nominated to be a judge." She goes, "When I first

met you, you were 14 years old. You told me you wanted to be a judge." I was like, "Can you tell that to the Lieutenant Governor."

I can't imagine there being anything in this world that would cause me to do something unethical, you know, wrong, to jeopardize the job that was so new to me that I worked my whole career to get. To having been accused of the things that I was accused of, including the noncriminal, the candor things, you know, really just go against every grain of me.

I'm one of those people when I raise my right hand and take the oath of office, whether it's to be a notary public, a judge, Assistant AG, Special Assistant AG, I fill up with tears inside. I have to hide it. People think I'm nuts. I take those words incredibly seriously and really to heart. To have been accused of things that run afoul of that was incredibly horrible and painful obviously to me, to my family, to people that know me and love me and supported me throughout all of this.

During my time that I was unable to work because the judicial ethic rules prevented me from

doing anything other than teach or write, which weren't happening because of a Federal indictment, I did a lot of volunteer work. I tried to serve the public in any way that I could to do some good for the public. That's just the public service part of me.

I'm so appreciative and thrilled to be back on the bench and to be serving in the BMC.

But, you know, I never did anything -- I didn't intentionally mislead any of the folks I work with. We are all colleagues. We are there for each other. You know, certainly the chief is there to help you as you navigate, you know, the judicial waters, I would say. You know, our colleagues, we all support each other. There would be no reason for me not to be candid with them, and there certainly would have been no reason for me to participate in whatever scheme the defense attorney was trying to accomplish. You know, if I had known that it was wrong to be off the record, certainly that never would have happened. I didn't know what he was planning. I didn't know what he was doing. I didn't suspect anything.

I'm just, you know, horrified and mortified

that, you know, this has gotten to where it is now.

MS. FABRICANT: Okay. Thank you.

MR. KEATING: I wonder if, Judith, you and Howard would permit us to talk with you for a moment and Judge Joseph could excuse herself. If we could have a couple of minutes.

If that's all right with you.

THE WITNESS: Sure.

MR. KEATING: Is that all right with you?

MS. FABRICANT: Sure. Yes.

MR. KEATING: Just a couple of minutes.

(Discussion off the record)

(Whereupon the proceedings were concluded at 2:30 p.m.)

COMMONWEALTH OF MASSACHUSETTS)

SUFFOLK, SS.)

I, Ken A. DiFraia, RPR and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that there came before me on the 6th day of June, 2023, at 12:02 p.m., the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge touching and concerning the matters in controversy in this cause; that she was thereupon examined upon her oath, and her examination reduced to typewriting under my direction; and that the examination is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 7th day of June, 2023.



Notary Public

Commission expires 2/8/2030

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& 2:2,5

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02108 1:18,21
02110 2:7
02114 2:3

1

1 1:1,2 3:10 11:13
1,000 74:17
10 10:23 74:17
100 2:3 74:17
11 1:13,18 3:10
12 16:18
12:02 1:14 86:6
12:09 32:1
12a 29:22 30:2 30:5,22 31:2
12b 29:22 30:2 30:5,22 46:6
13 9:3
14 12:19 83:1
16 12:10 72:2
16th 11:7 12:7
17-13 10:23 11:18
1:00 69:24
1:21 60:11
1:55 60:12

2

2 6:4 13:6,11 17:22
2/8/2030 86:24
20 7:24 74:17
2000 71:17
2002 71:16
2015 17:5,8
2017 6:4,7 9:3 10:23 16:23
2018 10:19 11:3,7 12:7,10 17:22
2019-22 1:6 12:20
2022 12:19
2023 1:14 86:6 86:20
2101 2:3
23rd 8:13
260 2:6
28624 86:21
2:15 29:14,16 32:6
2:30 85:14
2:48:13 35:16
2:48:48 33:10
2nd 10:19 11:3 18:18 21:19 22:5 61:10

3

3 13:7,11 42:10 69:20
30 1:10
303 13:24
3300 1:20
3:20 70:3
3:30 5:11
3rd 6:12

4

4 3:5 31:17 35:12
4th 62:9

5

52 42:18
525 1:18

6

6 1:14 34:12
60 78:17
617.308.6648 1:21
617.338.9300 2:8
617.523.8300 2:4
617.725.8050 1:19
6th 6:10 86:5

7

7 6:7 33:21 34:2,9,16 46:6
7th 6:9 86:19

8

86 1:1
8th 50:15 55:2

a

able 8:15 26:2 30:4 44:24 66:19 67:17 69:7
absolutely 44:1 59:12 60:8,18 69:10
access 8:16 20:14 28:21,22 30:12 46:17,18 47:20
accompanied 11:7
accomplish 84:19
accurate 6:3 10:7 30:18,19 31:3,3,15,16,19 32:10 33:5,13 33:14 34:23 54:9
accurately 5:23 22:16
accused 83:8,9 83:18
acknowledge 55:6
acknowledged 69:13,14 78:6 81:1
action 86:17
active 72:8
actually 6:8 24:1 26:13 65:14 67:9
adamant 79:19
adamson 25:21
addition 32:12

additional 32:5 40:18 80:2
address 8:15
addressed 18:17 60:1
administration 28:8 67:5
administrative 25:16 50:21
administrator 25:22
advised 44:9
advocate 71:14 71:18,22 72:22 73:7,12,20,23 74:3,4
affect 68:15
affixed 86:19
afforded 44:10
afoul 83:19
afternoon 4:9 25:18 32:19 35:19,20 40:20 42:10,12 49:9 69:21 70:3
ag 83:14,15
agent 23:4 28:15
agents 24:1 26:21 27:1 28:11,12 47:9 47:19 77:17
ago 26:14 51:6
ahead 71:1
airport 63:10
allow 38:11 46:9,12 47:1
allowed 24:9 27:7 28:16 40:19 44:17 64:10 73:12
alluded 57:11 65:7 77:20
amendment 27:5
amplification 53:10
amplified 53:1
angles 68:22
announce 58:1
answer 5:22 58:6 69:8 74:18
answered 39:18 68:23
anybody 25:23 62:1 68:21 69:10
anybody's 45:14
anyplace 77:22
anyway 29:14
apologize 63:16
apologized 68:14
appear 27:19 72:15
appearance 40:21
appearing 72:14
appears 29:17 35:1,7
applicable 7:3
appointed 22:20 29:15 73:16,17 79:17 80:8
appointing 39:24
appointment 29:16
appreciative 84:7
approach 32:19 35:7,21
approached 33:1
appropriate 15:12 45:8
approximately 8:10 70:2 73:21
april 10:19 11:3 17:22 18:18 21:19 22:5 61:10
area 20:15 21:14,16,17 33:22 47:18,20 76:12,16,19,20 76:21,22
areas 72:7
arraigned 44:8 44:11 67:14
arraignment 15:16 16:4,11 16:12 22:19 38:18,21
arraignments 15:24 21:20
arrested 73:15
arrests 18:14 73:17
articles 67:10
ascertaining 58:13
aside 21:22,23
asked 5:6 24:5 24:6,11,13 25:22 29:16 36:2,5 37:15 38:2 39:10 40:18 41:17 43:1,9 44:13 44:13,20,21 45:10 48:7 49:18 51:11 52:10,14,15 53:21,21,23 55:11,13 57:8 58:3 59:7 60:1 60:2 61:6 64:10 67:15 68:7 69:11,15 70:17 79:5 80:11 81:1 82:16

asking 15:1 27:14 50:3 60:15 61:20 63:6 64:7
assistance 26:1 43:2 45:2
assistant 39:19 40:8 57:1 77:14,15 79:19 80:15 83:14,15
assumed 25:11 43:3 47:16 48:18 55:15 62:17
attempt 65:22
attend 9:6
attention 13:5 52:23 76:1
attorney 4:19 14:9 22:20 29:15 32:5,13 32:14,18 35:20 36:10,11 38:2 39:23 40:2,18 40:21 41:16 42:8,12 43:1,9 44:13 57:1,24 64:10 71:15 77:14 79:17 80:1,5,6,7,8,10 80:15 84:18 86:14,16
attorney's 14:3 31:5 39:13,19 41:6 56:18,23 58:11
attorneys 52:22 52:22 58:10 65:18
attributes 82:1
audience 52:23 53:2,13
aunt 82:22,23
awake 82:8
aware 17:4,7 17:11 53:23 59:3 75:17

b

b 2:2 3:8 16:18 34:1,3,9 35:2 35:11
back 9:24 12:3 15:22 18:6 19:21,22,24 20:6 27:12 29:6,11 32:6 34:24 38:13 39:7 40:20 42:8,11 43:4 43:19 44:2,4 44:14 45:12 46:4 47:17 48:11 49:16 59:8,13,17 61:24 62:7 65:15 69:21 71:7,21 72:13 73:9 74:9 75:6 75:11,12 76:5 76:12,17 77:1 77:7,24 84:7
background 6:2
bag 76:13
bags 24:20
bail 39:16 67:15,17 75:22 80:17
bailed 37:5
bar 21:14,17 71:14,18,22 72:21 73:7,11 73:20,23 74:3 74:4
based 57:4 70:20,22 80:20
basement 20:17
basic 6:1
beacon 1:13,18
beginning 31:10 34:24 35:6 39:7 40:22 41:12 50:13 79:14
begins 13:6
behalf 12:23
believe 26:6 29:3 40:11 41:6 45:21 50:1 61:22 67:20 69:22
believed 77:5
belongings 20:8 76:13
bench 3:11 8:24 11:8,23 12:5 21:15 28:19,24 59:15 75:21 84:8
benefit 45:13 45:15
best 28:3 41:20 69:9
bethany 26:6
bethany's 26:7
beyond 21:17
big 55:20 62:9
biggest 59:22
billerica 37:6
biographical 41:11 57:4
bit 10:1 34:6 39:8 55:21 61:7 63:9 64:9 67:9 80:11
black 2:2
blessing 77:6
blocking 47:12
bmc 84:8
bogdanow 2:2
book 7:2,3,7 9:22
bookcases 25:10
books 7:12
boston 1:13,18 1:20,21 2:3,7 67:12

bostwick 22:21 36:11 42:8
bottom 13:6,11 34:12
box 11:16,17 11:19 21:12
boxes 12:4
boyle 2:2 12:21
brains 82:6
break 23:7,8,9 23:20 28:13 31:24 40:23 60:7,9 70:1 80:2
briefly 35:7,21
broadcast 52:24
broke 32:4
brooks 2:5
brought 17:14 66:16 76:1 79:3
bryan 9:21
building 20:17 22:1 72:24
bunch 8:18

c

c 4:1
call 11:24 21:12 22:24 23:1 25:19 39:10 41:11 49:13 61:11,20 61:22,24 62:7 63:7,8,9 66:18 67:3 68:8,12
called 1:9 4:3 10:3 14:5,6 22:18 25:15,21 27:12 32:2 36:19 40:7 46:1 51:14 58:20 61:19 62:4 63:4 65:18 67:18 82:22
calls 32:17
cambridge 2:3 17:15 71:21
candid 54:24 84:16
candidly 68:24
candor 83:10
car 24:18
card 3:11 11:8 11:23 12:5
career 13:18 68:16 73:8,9 82:20 83:7
carry 24:16
case 14:21,23 15:4,13 21:22 21:23,23 22:11 23:19 32:2,14 32:17,18 35:19 36:10,10,18,18 39:6 40:6,7 42:15 45:20 48:23 49:1,3,4 49:6 51:6,8 52:17,20,21 58:19,20,22 61:12,15 62:1 62:2 65:3,23 67:6,9 69:19 75:15 79:3,13 80:16,16,18 82:4
cases 14:11,13 18:9,17 21:24 22:8 45:22 46:1 48:9,14 69:4 72:10,20 73:19,23 74:4 74:8
casual 69:6
catching 51:3
cause 83:5 86:10
cd 66:18
cds 65:15,16
certainly 16:1,5 27:18 46:1 47:6,19 50:2 55:16 57:11 58:8 64:12 69:17 76:3 78:12,13 84:12 84:17,20
certified 13:24
certify 86:5,14
chair 25:7
chaired 6:13
chance 30:16 60:14
change 16:12 17:12 33:20 56:4
changed 17:4 17:20 54:13
changes 17:7
changing 39:6 54:13
charged 67:11
chatter 66:6
check 75:8
chief 10:5,7,15 25:22 47:10 50:21,22 55:3 56:14 57:14 59:6 66:21 67:23 84:12
child 82:19
chitter 66:6
chronology 58:23
citizenship 62:17
civil 1:11
cjc.state.ma.us 1:19
claim 1:6
clear 12:18 17:17 68:4
clerk 8:4 23:10 23:10 28:8,14 29:1,3,5 32:17 34:10,12 35:18 35:22 37:19,23 46:5,6,21

48:18 50:10 53:2,8 66:2 70:7,9,17
clerk's 61:16 70:5
client 15:11 32:23 35:23 42:7 43:1,10 43:19 44:15,24 45:11 77:6
clients 19:14 21:6 74:6 76:4 76:5
close 42:10 81:16
collateral 15:11
colleagues 84:11,14
college 67:12
colloquy 39:16
come 17:22 18:13,14 20:4 21:11,13,24 28:20 32:6 36:2,5 39:14 46:9,12,15,16 46:19 47:2,22 50:6 51:2 61:5 75:10 76:15,17 80:12
comes 10:5,6
coming 10:15 38:5 42:11 74:23 77:18 80:10
commencing 1:14
comment 78:17
commission 1:10,13,16,22 4:4,12,14 11:12 12:16 86:24
commit 55:24
commits 62:24
committed 62:15,18,20
commonwealth 1:3,10,12,12,16 1:22 4:4 11:18 67:15 86:1,4
companies 7:11
complaint 12:20
completely 48:22
complicated 60:22 62:3 79:13
complicating 63:17,22
computer 8:8 8:14
concern 55:15 55:15,16,19,20 62:10
concerned 27:4 41:13 57:6,6 62:11,22 63:2 63:15
concerning 86:9
concerns 68:23
concluded 85:14
condone 59:14
conduct 1:10 1:13,16,23 4:5 4:12,14 17:17
conference 9:3 9:10,16,18,19 9:21 16:17
conferences 14:4,10,19,20 15:19,20 16:16 16:19 17:9,16 17:18 38:14
confers 31:8
confidential 1:6,9 12:17
confirm 6:2 22:15
confuse 26:9
confusing 49:6
connected 26:2 26:12
conscientious 82:3
conscious 17:19
consistent 47:21
constant 72:21
contemplate 63:3
contemplation 39:4
context 13:22
continuation 41:18 42:22 43:8
continue 53:11
continued 2:1 23:19 40:5
controversy 86:9
conversation 26:17 28:14 40:22 45:9 47:24 49:23 50:18,23 53:12 54:2,23 56:9 57:12 64:4 66:3 69:2 77:24 78:4,20
conversations 14:17
copied 69:23
copies 70:5,10
copy 3:10 7:7 7:10,13 24:5 24:13,14 70:4 70:6,6,7,8,10 78:18
correct 8:1 11:4
correctly 20:22 22:18 23:1,3 40:14 43:8

counsel 1:9,20 4:3,12,18 25:19,24 31:8 52:18 86:15,16
counter 20:19 20:21
counties 73:13 73:14
county 54:15 71:18,19 73:13
couple 8:20 9:7 9:9 20:2 24:21 48:13 60:24 61:4 66:21 70:23 71:7 85:6,11
course 13:18 16:12,23 21:21 22:23 23:2 49:23 56:12
court 6:4,7,16 7:4,20,21 8:7 8:16 9:2 10:6,7 10:15 11:6 12:9 17:15 18:11,16 19:10 20:4,9 21:16 21:18 22:13 23:21 24:11 25:1,16 26:20 26:24 27:16 28:5,7,10 29:4 34:13,17,20 36:4 40:8 47:10 48:7 50:13,24 51:17 52:18 54:12 56:3,4,21 61:17 66:10,12 67:4 69:19 71:9,12 72:5,6 72:11 75:2,9 75:11 76:2 78:15 80:5,8
courthouse 18:19,22,24 19:7 23:23 26:22 67:18 76:22
courthouses 6:20 21:16 24:12 27:24
courtroom 17:17,18 20:5 20:6 21:3,15 23:23,24 24:2 24:3 26:21 27:2,15 28:11 28:21 29:6 45:19 46:2,16 47:15,15,16,22 66:7 76:6,18 76:23
courts 21:10,10 54:14,17 71:18 71:19 73:12 75:18 76:7
cover 60:17
crates 24:19,20
crime 55:24 62:18,21,24
criminal 14:1 14:21 16:18 17:1 72:8
cross 3:2 82:11
curious 66:19
custody 19:7,8 19:15,16,19,21 19:22 20:1,3 22:1 43:4 44:23 45:6 47:18 49:17 58:2 73:15 74:7,22,23 75:2,5 76:7

d

d 3:1 4:1
da 39:17 52:19 77:14,15 79:19
dad 9:6
dated 10:23 11:6 12:10,18
david 29:17 30:7 31:6 32:19 37:12 43:15,17,19 77:1
dawley 55:3 56:14 59:6 66:21 67:23 69:14
dawley's 57:15 69:1
day 6:13 7:19 7:21,23 18:11 18:16 19:3 21:19,22 22:20 24:24 25:8 41:13 46:1 47:23,23,24 48:9,15 60:22 61:15,22 63:2 63:4,20 69:5 82:5 86:5,19
days 9:9 18:8 22:5 48:4 62:9 65:16 72:11
deal 49:2 63:23 64:1
dealing 63:21
dealt 25:13
december 9:3,8 9:9
decide 82:17,21
decision 27:22 39:20,21
defendant 40:15 58:10 61:13 80:13
defendant's 39:21 57:19 65:20
defense 39:23 40:17 44:13 57:24 72:8 73:8 84:18
department 20:18,20 76:15

described 49:3
describing 56:10
description 3:9 78:3,5
desk 25:6
detail 61:11 79:15,16
details 42:21 61:5
detain 37:8
detainer 23:4 26:22 37:4 40:24 41:1,2,4 49:9,13 55:18 57:3,23 62:15 62:16 67:19 80:19
determine 29:12 30:4 41:11,14
determined 27:13 28:2 65:11
determining 40:17
difference 41:1 42:24 45:4
different 6:15 6:19,19 7:12 7:16,21 12:4 20:2,15 34:6,8 34:18 43:6 44:5 45:16 48:22 68:22,23 75:17 77:20 78:4
differently 37:21 59:21
difraia 1:11 86:3
direct 3:2 5:1 13:5 71:5
direction 86:12
directly 44:22 67:5
director 1:17 4:13
discuss 14:6 15:12 36:9,16 38:7,23 42:2 42:14 68:8,12
discussed 14:12 14:22 42:23,24 44:5,6 45:15 51:16,21 54:10 56:13 57:21,22 58:5,8 67:8 69:5,17 79:8
discussing 41:16,18 42:1 52:19,21 66:1
discussion 23:13 32:5 36:23 37:3,4 39:3 43:8 52:2 55:22 57:18,18 60:10 66:23 70:14 81:7 85:12
dismiss 57:2 80:16
dismissed 33:11,15 49:12 56:18
dismissing 57:1
dispositional 15:13
disruptive 21:17
distributed 70:10
district 6:4,7 6:16 7:4 9:2 10:6 11:6 12:9 14:2 17:15 18:16 19:10 21:9,16 22:13 23:21 25:1 26:20,23 28:5 39:13,19 40:8 41:6 51:17 52:18 54:14 56:17,22 57:1 58:11 71:9,12 72:5,10 80:15
diversion 16:10
dock 21:11,16
docket 18:22 19:3 22:13 38:21
doctor's 29:15
document 3:10 10:13 11:7,9 11:12 12:14 13:16 29:20 30:13,16 32:9 46:23
documents 30:21 60:20
doing 5:12 36:4 36:12,13 84:1 84:22
door 20:22 43:19 47:12 49:16 75:1,3,6 76:17
doors 47:11,14
dot 82:12
downstairs 43:20 45:10 48:11 75:7
dozen 18:8,24
driver 67:11
driver's 4:6
drug 18:11
due 34:13
duly 4:7 86:7
duty 22:20 42:11
dying 9:8

e

e 3:1,8 4:1,1
earlier 6:11 43:9 70:24 72:23 79:24
early 73:8,23
easier 30:20 75:11

easy 30:2
ebb 72:11
education 9:2
effectively 66:9
effort 14:13
eight 40:13
either 20:12 22:3 61:5 81:2
elaborate 13:20
elizabeth 2:6 4:21
ellen 26:12,14 26:18,19 69:23
email 8:15,16 8:18 69:22
emailed 70:2
emails 8:21
empathetic 82:4
employed 86:15,16
emulvey 2:8
ended 5:21 9:7 68:18 69:19 72:22
ends 33:9
english 45:1
enter 76:22
entitled 3:10
entrance 20:4
escaped 49:15
esq 1:17 2:2,5,6
essentially 27:21 63:22 67:10
essex 54:16
establish 73:24
estimate 7:17 71:11
ethic 83:24
evaded 49:16 49:21 55:17 56:2 62:12
everybody 5:8 33:1 58:9,11 70:9
everybody's 69:8
exact 24:8
exactly 6:21 9:1 32:3 33:7 56:5
examination 4:3 5:1 71:5 86:11,12
examined 4:7 86:10
examines 11:9 13:16 32:9 46:23 60:20
example 16:6
except 33:5 54:18
exception 81:7
exclude 27:7,19
excluding 27:14,20
excuse 66:10 76:21 85:5
excused 63:11
executive 1:17 4:13 10:22
exhaustive 61:4
exhibit 3:10 10:20 11:13 30:1
exhibits 1:2
expect 64:21
expected 6:12
experience 17:13 19:14 20:11,15 68:17 71:8 75:6 76:11
experiences 73:2,5
expires 86:24
explained 67:6
explanation 52:12

f

fabricant 1:20 3:5 4:9,11,18 4:22 5:2 11:10 13:10 30:22 31:12 34:5 35:11,15 60:8 60:18 65:7 70:22 71:4,6 78:12 81:10,17 81:19 85:2,10
fact 55:17,21 56:2 57:23,24 62:4,14,23 65:7 72:1 77:13,16 79:12 80:1,17 82:15
familiar 7:4 10:24 16:18 71:24 72:18
family 67:16 83:20
far 8:21 30:4 42:19 51:9 52:2 56:14
federal 29:24 30:3 84:2
feel 9:14 44:18 44:20 75:24
feels 9:13
felt 45:17 58:8 58:15 63:21 80:18
figure 32:16 49:10,19 53:7 81:21 82:9
figured 36:13
file 61:14,16,21
filed 40:21
fill 83:15
finally 26:12
financially 86:17
find 25:10,13 29:12 49:14 61:16 65:11 66:20 77:13 80:4
fine 28:19 35:3 35:5,5 46:8

71:4
fingerprint 79:20
first 4:7 9:7,8 10:9,18 11:2 18:10,18,21 23:14 25:2 27:5 31:23 32:10 39:10 47:11 48:1,13 49:20 69:11 75:19 76:23,24 80:6 82:24
five 17:23,24 18:1 59:18,20 65:5 81:16
flaschner 7:11
floor 25:5 76:23
florida 63:10 82:23
flow 72:11
focus 14:17 56:2
focused 56:7
folks 70:18 73:14 75:19 84:10
follow 28:4,9 70:23 80:4
following 63:4
follows 4:8
form 6:17
former 26:14
fortes 50:18 51:1 54:5,23 55:3 56:7 57:10 64:6 66:19 68:9 69:12 78:1,21
found 63:14 65:17 67:10
four 6:17
fourth 36:20,21
franklin 2:6
frankly 36:12
friday 63:8
friend 51:24 59:23 64:12 67:2 68:1
friendly 68:19
front 12:3 20:19,21,24 21:14 47:11,14 62:21 67:8 75:1,3 76:17
ftr 54:12,13,14 54:18 65:13
fugitive 33:17 36:24 39:12 49:11 51:12 56:16,18 57:2 57:22 79:18 80:16
full 61:2
fully 5:22
funeral 61:23
further 38:12 40:18 86:14
future 48:16

g

g 4:1
galley 53:11,12
general 14:16 27:8 70:12 71:11
general's 14:9 71:15
generally 10:16 13:12,18
getting 10:17 11:2,5,21,23 63:19
give 5:4,8,14,18 39:16 42:14 52:12 59:1 60:14,19 63:7 71:11 81:16
given 7:7,8 28:6 29:23 36:17,18 77:10 77:12 78:5 86:13
glass 21:12
go 6:12 13:19 20:6,23 21:13 28:16 29:2 31:1,10,12,17 34:24 35:6 37:11,14,16,19 37:24 38:2,4 41:17,23 44:2 44:14,22 45:10 45:11 46:14,18 48:8 51:15,23 56:11 58:21,21 59:23 70:17 71:1,7 73:9 75:18 76:16 77:24 79:7,7 81:23 83:10
goes 13:7,11 68:16 77:16 82:24
going 4:10 5:3 5:4,12,20 6:1 10:21 12:17 13:13 15:15 19:21,22,24 21:22 22:10 25:17 28:17 29:12 30:1,11 32:24 36:3 38:18 42:16 44:22 45:5 46:8,11 47:1 47:11 49:24 51:4,18 52:3,9 55:5,7,24 56:4 56:7 57:7,8 58:3 59:13 61:2,7 64:1 66:9,11 69:11 70:2 73:20 75:10 77:1 78:19 80:15,17
gonna 37:6
good 4:9 32:18 35:19,20 51:22

60:8 63:24 84:4
gosh 73:6
gotten 62:23 85:1
governor 82:16 83:3
governs 16:19
grab 51:2
grain 83:11
grand 29:24 30:3,6,12 43:14 54:5 57:15 61:23 77:2 78:1
great 36:12
grew 74:2
guess 15:2 41:2 41:19 54:16
guidance 25:20 27:18 28:7
guy 41:13 62:11

h

h 3:8
half 9:9 18:8,24 60:23 65:6 66:20 82:7
hallway 20:13 20:17,20,21 76:14 77:17
hand 78:18 83:13 86:18
handful 18:17 72:15 74:16
handle 18:12
handled 36:11 48:8,14 51:6 52:17 69:4 71:22 73:23 74:8
happen 15:3 16:5 37:5 44:17 49:18 76:9
happened 39:1 42:18 44:9 45:1,8 48:4 50:7 51:11 54:1 61:10 63:20 67:21,21 67:22 68:2 70:16 75:13,15 82:12 84:21
happening 21:4 21:5 53:7 76:10 84:2
happens 36:7
happy 35:4 48:19
hard 58:6 71:13 73:6 74:5 81:22 82:11
harder 11:11
heading 63:10
health 65:20,24 70:18
hear 53:3 65:14 66:2,3,4,5,6 82:19
heard 34:19 48:13
hearing 28:18 28:24 29:7 70:3
hearings 27:5
heart 83:18
heffernan 18:10 23:22 26:24 48:1 61:9 63:13 67:7 69:2,15 70:7 72:15,19
heffernan's 23:14 24:24 25:2 55:16,20
held 39:15
help 26:16 84:13
helpful 39:9 40:17 74:20
hereinbefore 86:6
hereto 86:16
hereunto 86:18
hide 83:16
hillman 26:4 69:22
hneff 1:19
hold 27:11
holding 75:22
home 67:9 72:6
honestly 64:19 68:24 69:8
hoopes 2:5,5 4:20,20 60:6
hope 68:15,17
horrible 56:1 63:21 83:19
horribly 82:10
horrified 84:24
hour 29:10 60:23
howard 1:17 4:13 12:19 60:14 85:4
huge 58:14
hung 28:2

i

ice 23:4,15,18 23:22 24:1,12 24:12 25:11 26:21 27:1,14 27:14 28:15 29:2 33:17 34:13,17,19 37:2,6 38:22 40:23 41:10 43:3 44:22 46:7,22 47:9 47:17,19 49:8 49:12,14,16,21 51:13 55:17 56:2,11 57:3,6 57:23 58:2,11 62:12 67:3,7 67:18 77:17 80:3,19

idea 45:24
identical 30:4 30:23
identification 11:13 55:23 56:10
identified 4:5
identify 4:10 4:15 11:11 30:2
identity 42:2 57:19,22 58:4 58:7,14
iii 1:17
illness 38:16
imagine 60:21 81:15 83:4
immediately 69:13,15 80:12
immigration 3:11 11:23 12:5 41:2
importance 58:14
important 16:2 24:17 44:23 57:9 61:1 64:5 68:10 69:16 77:18 79:10 80:21
impression 44:22 77:10,12
improper 65:2 77:19
inaudible 33:11 33:21 34:14,17
inaudibles 33:22
incident 52:17 67:13
included 43:6
including 43:15 83:9
inconsistent 27:15,20 28:6
incredibly 83:17,19
indicated 32:14 40:1 44:12 67:23 77:23 79:24
indicating 10:14 46:24
indication 77:18
indictment 84:2
individual 55:17
information 3:11 5:18 6:2 14:13 29:7 41:11 57:4 80:20
informed 23:3 23:6,9,18,20 26:20 39:13 48:18 49:15 80:3
inquiry 28:15 28:17
inside 47:14,16 83:15
instance 17:15 53:15,18
intended 68:21
intent 69:10
intention 47:13
intentionally 84:10
interested 86:17
interesting 65:18 77:13
interpreter 43:2,11 44:16 45:2,11 58:2
interpreters 66:12
interview 40:1 45:7
interviewing 82:16
investigation 1:6 36:13 40:19
involved 58:9
involvement 59:7,12,14
irony 70:15
issue 13:12 14:14 15:11 16:10 26:1 37:2 57:3,9 65:19 67:7 68:10 70:18 74:9 75:24 79:12
issued 12:10
issues 24:12,12 25:13 27:5 38:21 51:13 56:10 65:24 67:3

j

jamsadr.com 1:21
january 9:24 11:7 12:7,10
javs 54:21
jellinek 29:17 30:7 31:6 32:13,18,19 35:1,6,20 37:1 37:9,13 41:16 43:15,17,20 77:15 80:7
jellinek's 77:1
jeopardize 83:6
jfabricant 1:21
job 26:14 36:12 63:22 75:24 83:6
joked 64:17
joseph 1:9 2:8 3:4 4:2,17 5:3 13:9 35:19 60:14 85:5

judge 1:9 2:8 3:4 4:2,17 5:3 6:4,13 8:3 10:2 13:9 15:15 16:20,23 18:10 18:12 19:11,12 22:6,8 23:22 24:16,23 25:2 25:5 26:24 27:22,23 28:3 28:4 35:19 36:8 50:18 51:1 52:18 54:5,23 55:3 55:16,20 56:7 57:10 58:9 59:15 60:14 61:9 63:13,19 64:6 66:18 67:7 68:6,9,16 69:1,2,12,14,15 70:7 72:14,16 72:18 78:1,21 82:1,2,15,18,24 83:2,14 85:5
judge's 14:4 21:14
judges 6:18 7:9 7:16,17,24 9:3 10:16 13:13,19 14:5,10 17:8 25:3 68:21 72:17 75:17
judicial 1:10,13 1:16,22 4:4,12 4:14 83:24 84:13
judith 1:20 4:11 85:3
jump 61:7
jumped 56:11
juncture 39:5
june 1:14 86:6 86:19
jurgens 30:8 31:6
jury 29:24 30:3 30:6,12 43:14 54:5 57:15 61:23 77:2 78:1
justice 18:10 23:14 33:17 36:24 39:12 48:1 49:11 50:21,21 51:12 55:3 56:16,18 57:2,14,23 59:6 75:19 79:18 80:16

k

keating 2:2 4:19,19 12:15 12:19 13:9 30:21,24 31:9 31:14,22 33:23 34:3,7 35:9,13 35:17 46:24 53:16,19 60:12 70:11 71:1 78:10,14 81:14 81:18 85:3,9 85:11
keep 5:12 61:7
ken 1:11 86:3
kept 70:6
kid 82:20
kids 51:4
kind 75:12
kinds 6:19 13:21
klein 72:16
knew 26:14 48:19 49:4 51:9 57:8 80:7 80:19 81:1
know 6:12 8:10 12:8 16:11 17:11,12,13,22 18:16 24:17 27:3,6,10 28:1 28:19 32:6 33:15 36:5,9 36:14 38:6,6,8 38:9 39:2,2 40:5,12 41:4 41:21,22 42:4 42:5,9,12,13 43:17 44:9 45:14,24 47:8 47:9,12,17,19 48:11,15,16,17 48:19 49:3,6,8 49:10,12 51:8 51:17,20,22 53:21,22 54:7 55:17,24 56:1 56:9,11 57:10 57:11 58:3,12 58:15,18,20,23 59:2,13,14 60:21,22 61:16 62:11,12,13,13 62:14,21,24 63:13,15,18 64:5,6,11,22,24 65:1,1,8,17 66:2,4,8,15 67:1,1,4,10,21 67:24 68:2,3,7 68:14,14,15,15 68:20 69:3,7 69:13,20 70:1 70:20 71:16 72:1,2,16,20 73:10,14,24 74:7,18 75:5,9 75:14,21,22,23 76:7 77:5,22 78:3 79:1,2,5,6 79:22 80:6,10 80:11 81:4,4,9 83:6,10,20 84:9,12,13,14 84:19,21,22,24 85:1
knowing 25:19 64:11,11
knowledge 86:8

knowledgeable 82:3
known 59:3 84:19

l

laminated 12:1 12:2
language 41:2
larry 37:10
law 13:24 17:1
lawrence 23:11 54:16
lawyer 12:15 12:22 13:2,19 14:9 15:9 36:8 38:13 45:10
lawyers 5:4 14:6 30:11 60:5
leading 5:17
learn 68:17
learned 49:20 59:2,20
learning 68:17
leave 19:20 21:15
leaves 33:5
left 19:15 25:18 25:23 26:5,5 61:19 62:4 63:5 70:6 71:15 72:3 74:22 75:3,5
legal 25:19,24
lesson 59:22
letter 12:15,18 12:22,23,24 61:14
letterhead 12:21
lhbmlegal.com 2:7,8
libby 2:5
license 4:6
lieutenant 82:16 83:3
light 79:23
liked 26:24
line 34:9
lines 35:18
list 21:20 61:13 61:15 71:22
listen 65:9
listening 39:2
little 5:17 10:1 34:6,7 38:12 38:19 39:8 55:21 61:5,7 63:9 64:9 66:11 67:9 74:1,1,4,4 76:13 78:4 80:11
living 17:23
lobbies 14:11 24:24
lobby 14:4,4,10 14:19,19 15:19 16:16 17:9,14 17:16,18 20:24 24:24 25:2,6,8 34:20 38:14 47:9 48:11 51:2 61:15 62:9 69:3,21 76:16,19,20,21 76:22
locate 24:14 26:3
located 20:18
lockup 20:6,14 20:15,22 21:12 28:16,17,21,22 29:2 34:18,21 43:2,10 44:15 46:8,14,17,18 46:19,22 47:20 76:12
log 65:14
logan 63:10
long 20:20
look 18:6 22:9 31:21 40:9 44:14 60:20 73:9,21
looked 12:4 24:21 40:14,14 79:21
looking 24:23 25:9 26:22 34:1,3,9,11 37:3 39:14 46:6,23 61:21
looks 34:7
loss 9:11
lot 20:12 21:15 33:21 39:3 59:19 64:7 72:6,7,10,20 73:23 74:3,8 84:3
lots 38:14
loud 68:4
love 83:21
lowell 50:17,24
lower 67:15
lunch 23:7,8,9 23:20 28:13 29:11 31:10,13 31:24 40:23 51:2 70:1 80:2
lunn 10:13,16 11:17
lynn 70:16

m

m 2:5
ma 1:18,21 2:3 2:7
made 35:5 61:23 67:3,7 67:22 70:5 75:17 80:11
magistrate 70:8,9
magnified 53:1
mail 25:23 61:19 63:6

maintaining 40:4
make 5:7,13,21 7:4 9:17 27:22 28:23 31:14,21 43:7 45:4 48:19 56:4 60:15 66:22 68:11 70:11 74:2 75:20 77:21 81:11 82:12
mark 11:10 12:17 30:1
marked 11:12 29:22,22 30:6
marking 10:20
markings 29:24
marybeth 48:1
massachusetts 1:3,10,11,12,13 1:13,16,22 4:4 86:1,4
match 79:21
material 30:12
materials 9:17 9:18 24:15,17 24:22 25:9
matter 33:18 39:12 51:12 56:16 57:2,23 58:12
mattered 62:19
matters 3:11 11:24 12:5 14:7 41:4 71:23 72:4 86:9
mean 8:23 64:9 64:14 66:8,22 70:15 73:11 74:8 76:14,20
meaning 15:8 28:20 37:12 40:2 41:6 80:13
means 18:15
meant 61:3
medina 21:23 22:11 23:5 29:18 59:8
meehan 2:2 12:21
meehanboyle... 2:4
meeting 5:11 51:7 55:2
members 27:7 45:22
memory 8:6 10:9 15:17 38:17 43:23 54:17 69:9 76:9 78:22 79:1
mental 65:20 65:24 70:18
mention 49:24 66:8,23 69:18
mentioned 55:22 67:1
mentioning 50:2
message 25:18 26:5,6 61:20 62:4 63:6
messages 25:23
met 59:6 64:16 83:1
michael 2:2 4:19 12:19
microphone 53:9
microphones 66:7
middle 11:16
middlesex 14:2 54:15 71:19
milk 24:19,20
mind 38:20,22 47:19 50:6 56:22 60:6 66:11
minor 61:1,10
minute 60:7 81:16
minutes 85:6 85:11
mislead 68:21 69:10 84:10
missed 81:13
mkeating 2:4
mom 63:11,12
moment 37:11 37:20 46:11 85:4
monday 48:5 49:2
money 74:3
month 50:11
months 22:4 67:13 72:12
morning 22:19 22:24 23:2 49:7 51:1 61:10,12,20 62:6 63:8
mortified 68:4 84:24
move 5:17
moved 35:11 71:20
moving 39:5 57:2 80:15
mulvey 2:5,6 4:21,21 78:11 78:15

n

n 2:6 3:1 4:1
name 22:11,12 26:7,11
named 86:7
names 22:14
natural 65:3
nature 65:22
navigate 84:13
nebulous 75:4

necessarily 16:9
need 5:8,14 18:1 38:12 45:2 81:4
needed 25:20 26:1 32:5,6 44:18,21 58:7 58:12
neff 1:17 4:13 12:20 64:15,16 64:21
neither 86:14
never 28:12 59:4,22 64:13 64:17 68:21 75:15 84:9,21
new 7:8 24:16 28:3 36:10,19 36:22 40:21 68:6 80:5,6 83:7
news 67:22
newton 18:3,9 18:15 19:9,15 21:8,11 22:6,7 22:12 23:21 24:7 25:1 26:20,23 28:5 46:15 47:21 48:6 50:12 51:6 54:9,11 54:18 56:3 65:13 67:17 69:19 70:9
71:9,12,14,20 71:20,20,21,24 72:5,5,10,17,21 73:13,19 74:7 74:8 76:7,8 79:3 80:4,9,18 81:7
nice 32:15,20 33:2,6
night 18:14
nods 19:2,4 54:6
nominated 82:22,24
noncriminal 83:9
notarial 86:19
notary 1:12 4:7 83:14 86:3,23
notes 31:20 33:16 35:5
notice 53:2
noticeable 42:9
notified 24:1 40:23 52:21 80:12
november 6:4,7 8:12,13 10:23
number 10:14 62:5
nuts 83:16

o

o 4:1
o'clock 42:10 69:20
oath 1:9 83:13 86:11
object 78:11,12 78:14
observed 8:3
observing 45:23
obvious 74:24 75:3
obviously 59:1 61:17 66:17 83:20
occasion 8:3 38:20
occasions 18:20
october 12:16 12:19
odd 5:13
office 10:22 14:3,9 24:18 25:16 31:5 39:13 41:7 56:18,23 58:11 61:16 68:5 70:5 71:15 72:5,7 83:13
officer 47:10 76:2
officers 20:9 29:4 75:12
offices 1:12
official 6:8
oftentimes 14:11 73:14
oh 19:22 34:3 71:17 73:6
okay 5:9,24 6:14,24 7:15 8:18 10:12 12:6 13:16 15:14 21:1,7 21:19 22:17 29:6,20 30:9 30:24 32:11,16 33:19 34:4,22 35:3,13 36:15 36:23 42:17 43:13 47:7 52:12 54:4 59:24 71:4 74:21 77:1 81:10 85:2
okstein 23:10 23:11,14 34:10 37:10,19 70:7
old 40:10 54:19 83:1
older 80:1
once 75:21
open 5:21 27:6 36:4
openly 68:24
opportunity 5:5,19 30:11 30:13 39:24 65:9
opposed 36:3 62:17

options 20:3
order 21:15 27:1 45:3
orders 18:13
organized 61:8
orientation 6:6 6:9,17,24 7:15 22:3,4
originally 6:11
outside 23:23 24:3 25:1 27:1 27:14 28:11 47:15
overlap 7:22
overly 72:18
overnight 18:13
own 71:16

p

p 4:1
p.c. 2:2
p.m. 1:14 29:8 35:16 60:11,12 85:14 86:6
page 3:9 11:15 11:16 13:6,7 13:11,11 31:17 33:21,24 34:1 34:2,9,12,16 35:12 46:6 62:22 67:8
pages 1:1 78:17
pagination 34:5
painful 83:19
paint 61:1
paper 62:22
papers 67:8
paragraph 11:19 13:6,8 13:14,17 33:4
parking 20:12
part 7:8 14:15 14:15 35:15 36:7,8 42:15 55:21 56:22 65:2 66:23 75:4 84:5
participate 84:18
particular 46:11
particularly 36:17 82:6
parties 86:16
pass 20:20
passed 9:6
past 20:23
patient 82:4
paula 82:23
pause 66:14 80:11
pausing 45:5
pennsylvania 39:12,14 40:5 40:12 41:7,10 49:8,11 80:14 80:20
people 4:10 45:19 46:2 56:5 72:2,6 74:10 75:6 76:11 83:12,16 83:20
perez 21:23 22:11 23:5 29:18 59:8
perfect 61:24 78:23
period 50:14 62:6
permission 34:20 46:14
permit 85:4
person 19:6,18 19:24 20:1 37:1,2 40:4,16 41:7,12 72:24 73:3 79:24 80:14 86:6
person's 42:1
personal 8:20 8:23 15:6,8,10 16:2 20:8 38:7 38:16 41:22 42:6,13 61:13
personnel 72:1
pertinent 16:3
phone 26:15
photograph 40:8,9,10,12,14 79:21,22,22 80:1
physically 70:4
picture 61:2
place 1:20 7:22 45:6
plan 77:6
planning 84:22
plea 14:21 15:5 16:17,20
please 35:22
plus 54:15
point 7:10,13 8:7,16 10:12 10:17 11:5,15 18:6 22:23 28:8,14 29:17 32:13 37:23 39:23 42:10 44:19 47:3 49:4 51:15 52:14,20 53:6 55:5,7 61:11 61:14 63:1 68:7 79:5
points 7:12
policies 64:2 75:16,20
policy 10:14,16 23:14,21 24:6 24:6,7,10,11 25:12,12 26:3 26:23 27:6,12 27:16,20,24 28:4,9 29:11 29:12 47:21 49:13,14 51:14

56:3,5 69:24 70:6 80:4,5
port 19:17,19 19:20 20:16 47:18 74:13,24
portion 31:11 31:13
possible 16:1,5 61:8
possibly 5:23
post 67:17
posts 67:20,20
potential 14:21 14:23 15:5,20 16:17,20 18:13
practice 6:16 13:23 14:15,16 14:16 17:12,21 19:9 23:21 36:7,8 71:9,16 72:2,7,8 74:1,2
practiced 71:12
practicing 17:1 38:13
predominantly 14:1
present 1:15 2:1 4:10 16:8 23:4,18 80:3
presiding 59:16
press 48:14,17
presume 75:19
pretty 34:23 52:1 81:6
prevented 83:24
previous 71:8
prior 40:13 43:3 65:21 67:6
private 20:4 71:23 72:2 73:19,24 74:1 74:6 80:10
probably 17:24 50:11
probation 20:18,19,23 75:9 76:15
probe 38:12
problem 48:18
procedure 1:11 16:19
proceeding 10:21
proceedings 6:19 13:21 21:18 29:24 30:3 85:13
process 7:15 19:6
produced 31:5
production 4:6
professional 1:11
program 73:12 73:20 74:3
progressed 58:20,22
progressing 41:15
progression 65:3
progressive 42:15
prohibited 51:18
prohibition 27:8
proper 45:17
properly 82:13
property 75:7
prosecutor 14:3,8
public 1:12 4:7 6:10 20:12,16 20:19 27:5,6,7 45:23 76:20,21 83:14 84:4,5,5 86:3,23
pull 7:2 65:9
pulled 53:9 65:11,16 66:5
purposes 15:13
pursuant 1:10
put 27:11 37:20 43:5 44:4,17 44:18 45:12,18 53:2

q

question 11:20 13:17 15:2 27:9,17 29:1 37:15,20 39:11 39:17,20,22 40:3 49:7 52:3 52:6 56:17,19 56:24 58:6 62:17 68:1 79:12,19
questioned 24:7
questions 5:4 5:16,21 18:2 27:3 53:20 55:11,13 60:16 60:17 68:23 69:8 70:21 78:8
quick 39:3 45:7 69:2,6
quickly 25:20 39:1,5,17 55:18
quincy 18:11
quite 36:12

r

r 4:1
racked 82:6
raise 83:12
raised 29:1
rank 74:20
raping 67:12
rare 7:23
rather 10:20 60:15
reach 62:2
read 7:3 13:8 13:14 16:21

26:3 27:13 31:15,18 43:13 51:19 54:5 57:14 77:2 78:1 81:3
reading 44:7 77:16
real 14:8
realize 44:7
really 15:2 17:19 38:5 39:1,18 41:14 42:14,21 51:22 55:23 56:11 57:6 63:1,3,16 63:21 64:9,22 68:17 71:13 72:6 73:6 75:18 77:13 79:22 80:21 83:10,17
reason 12:11 16:2 21:8 28:5 30:5 38:10 41:9,24 51:23 58:19,24 61:4 62:3 64:9,22 64:23,24 65:4 84:15,17
reasons 64:7 66:15 67:16,24
recall 7:6,11 9:20,22,22 10:18 11:2,5 14:24 16:4 17:16 21:4,5 24:8 32:2 41:3 42:11 45:1 46:2 49:2 50:1 50:2 51:10 52:15 53:8,20 54:1,12 55:10 56:15 64:3 65:22 67:12 72:4,14 79:4 79:15 81:8
receive 7:13
received 7:10 8:7,11,14,15 9:23 10:10 12:13
receiving 10:18
recess 32:4 60:11
recessed 29:14
record 10:22 12:18 13:13,19 14:23 15:15 16:9,13 17:10 37:9,11,12,14 37:16,18,20,24 38:2,4,15,18,24 41:17,23 42:3 42:18,19,23 43:5,5 44:2,4 44:17,19 45:10 45:12,12,16,17 45:18 46:4 49:24 51:16,18 51:23,23 52:4 52:9,11,16 53:14,17,22 55:6,7,9 56:8 56:12 57:7,8 57:18,22 58:5 58:13,17,19,21 59:5,23,23 60:10 64:8 66:9,24 67:1 67:24 68:10,20 69:12 70:14,17 71:3 78:7 79:6 79:7,11 80:23 81:1 84:20 85:12 86:13
recorded 14:11 14:14,18 64:13
recorder 17:14
recording 8:5 33:9,9 50:9 54:8,20 64:12 64:19 65:11 78:8 81:8
recordings 13:12
recreate 82:9
recross 3:2
redirect 3:2
reduced 86:11
refer 10:13,16 17:9
reference 11:17
referred 11:8 70:13
regarding 12:20 15:19 16:20 23:15 24:11 65:20 68:20
region 54:15
regional 50:20
registered 1:11
rehashing 42:22
related 15:4,4 15:13 16:11 42:6,7,7 45:22 86:15
release 43:3
released 19:7 20:1,7,9,10,11 20:23 21:2 22:1 43:11,19 44:16 46:10 49:16 56:6 58:2 59:8,16 67:14 72:24 73:3 74:10,13 74:14 76:6,14 77:7,22
releasing 75:22
relevant 47:8
relieved 26:15
remain 23:22 24:2,3 27:1,14
remember 7:14 7:19 8:21 9:4,5 9:20 10:17 11:20,22,23

12:4,5,23 15:7 15:18 16:1 20:22 22:2,7,9 23:24 26:7,13 27:11 29:5 39:4 40:13 42:19,20,21 48:3,6 51:20 52:2,6,8,10 53:24 54:3 55:12,14 57:5 63:9,13 65:23 66:3 74:6 76:5 79:9
repeated 53:3
repeating 56:22
rephrase 37:17
reporter 1:11 56:21 66:10
represent 29:23 73:16,18 79:17
representative 34:13,15,16,19 46:7,22
represented 73:3
representing 1:22 2:8
request 36:6,17 37:13 80:17
requested 46:14
requesting 39:15 41:23
require 17:8,12
resolution 14:21,23 15:21
resolve 14:10 14:13
resolving 15:4
respect 15:24 16:16 19:9 61:9 64:6 66:21
respectfully 64:14
response 60:4
responsibility 58:9,15
responsible 82:4
rest 33:4
restrain 5:20
restraining 18:13
resume 29:16
resumes 29:7 71:5
retrieve 20:8
retrieved 27:12
retrospect 64:10
return 61:20
returned 61:22 63:8
review 11:14 30:13,15,16,17
rid 74:4
right 8:8 15:10 16:15 17:21 19:21 21:13 22:10 25:1 29:9 46:24 53:9 60:13 74:15 77:8 78:10 81:22 82:2 83:13 85:7,9
rights 44:10
rpr 86:3
rule 1:10 7:2,3 7:7 16:18,19 16:21 17:5,8 17:11,20 38:9 46:15 51:17,19 51:19 53:22,23 59:3,4 64:11 81:2,3,3,5
rules 1:11 7:2,3 16:18 83:24
run 22:14 83:18
running 5:6 21:20

s

s 3:8 4:1
sally 19:16,19 19:20 20:16 47:18 74:13,23
sarah 25:21
sat 7:16,17,20 7:22 18:5,7,23 22:5,8 48:7 65:10,16
satisfactorily 4:5
saw 28:12 32:13 33:20 41:3 66:1
saying 21:10 33:5,11 47:3 53:3 63:13
says 13:18 16:22 32:18 34:10,12,14,15 34:16 35:7,15 35:18,19,20,21 35:22,22,23 37:6,7,9,18 46:5,6 78:7
scanned 69:24
schedule 5:7 22:9 65:15
scheduled 9:5 18:9 19:1 51:7
scheme 84:18
school 13:24
schultz 70:8
seal 86:19
searching 24:15
second 6:13 9:9 11:15,16,16 15:22 22:24 25:4,5 33:10 40:7 44:8 48:8 48:9,15,24

60:19 62:8 69:13
seconds 42:18
section 32:1,10
security 75:16 75:18,24 76:2
see 11:17 13:2 15:3,14 18:23 18:23 32:15,16 32:20 33:2,3,6 63:24 64:8,14 64:17
seem 36:6,16 38:9,10 41:19 41:19,24 45:4 65:1
seemed 14:15 41:17 44:23 45:8 65:2
seems 32:10
seen 12:23 13:19,21 65:20
send 7:11
sense 7:16 31:14 61:24 73:4
sent 9:18,20,22 12:15,22 13:2
sentencing 75:23
separate 30:6
series 6:18
seriously 83:17
serve 26:22 49:12 55:18
67:19 84:3
service 84:5
services 44:15
serving 84:8
session 23:10 25:2,17 47:11 48:8,9,10,15 51:1 61:12 75:9 76:24
set 20:7 21:9 86:18
seven 73:22
shannon 30:8 31:6
shapiro 26:13 26:18 69:23
share 14:12
shed 79:23
shelley 1:9 2:8 3:4 4:2,17
short 5:6 50:8
show 12:14 29:20 78:16 82:1
showed 31:5 51:19 53:22 69:23 81:2
sidebar 14:5,6 14:12,18 16:9 16:14 32:15,24 33:1,3 35:24 36:2,3,6,24 38:5 40:22 41:5,16 44:5 52:19,21,24
53:4 58:21 65:19 66:1,6 77:19 79:7,11 80:12,22
signature 86:21
significant 5:21 65:24
similar 38:5
similarly 56:14
simply 31:15
sit 7:1 25:3,5 48:6,12
sits 18:12
sitting 6:18 8:4 18:3 24:23 25:8 26:19 50:12,17,24 52:22 54:14 64:20 68:5 70:16
sjc 17:4,20
sleeping 82:8
slightly 34:18
slow 66:13
slower 66:11
small 79:2
somebody 7:23 8:23 9:17 19:15 20:3 21:24 26:2,10 26:16 38:15 44:11 46:13,20 73:3 74:12,19 74:22 75:1,4 75:22,22,23
sorry 9:11 34:1 35:9 56:21 63:17
sort 5:13 16:6
sound 29:8
sounds 18:20
speak 25:24 43:1,10,20 44:14,24 58:1
speaking 9:21 62:20
special 1:20 4:11 83:15
specific 5:16 8:6 15:1,17 16:4 42:20 43:23 53:20 54:2 55:10,12 58:18,24
specifically 11:22 16:22 17:16 29:5 63:12 78:16 81:9
specifics 70:12
spent 14:2 81:15
spoke 45:1 49:5 62:8 68:22
ss 86:2
stacey 50:18
stairs 20:8,24 21:3,11 75:10 76:16

stairway 20:5
standard 6:16
standing 47:10 47:14
stapled 29:21
start 6:1,6 31:9
started 6:9 24:15,22 25:9 51:11 56:15 57:7 71:16 73:22 82:18
starting 8:17 13:9,23 32:9
starts 13:10 33:9,10
state 72:9
statement 1:9 60:15 81:11
statements 70:12
stay 28:11
step 9:24
stevenson 9:21 26:8
sticking 28:13
stopped 53:10
stopping 57:5
story 5:19 55:14 56:15 79:9
street 1:13,18 2:3,6 5:11
struggling 64:8
stuck 63:1
student 14:3 67:12
stuff 51:4 61:2 76:13
subject 15:3,20 79:3
substance 8:22 42:21 56:8
suffolk 71:18 86:2
suicide 65:21
suite 1:18,20 2:3
summarize 78:20
summarizing 60:23
summons 73:17
superior 54:12
support 84:15
supported 83:21
supposed 5:10
sure 5:7,13 7:4 9:13,13,17 13:23 15:23 28:23 31:21 35:13 36:1 43:7 47:12 48:19 51:7 56:4 59:19 61:18 66:22 68:11 71:10 74:11 76:8,8 82:12 85:8,10
suspect 84:23
swearing 6:10
sworn 4:7 6:3 6:11 86:7
system 8:5 54:8 54:11,12,20 78:9
systems 81:8

t

t 3:8
t's 82:11
take 11:14 13:7 13:14 31:2,21 43:13 47:18 57:14 60:6,9 81:17,18 83:13 83:16
taken 1:10
takes 24:21
talk 21:22 22:10 23:8 38:16 45:10 48:12 49:1 51:5,8 60:3 63:12 68:11 70:17 79:2 85:4
talked 14:18 54:7,21,22 55:5,21 57:12 62:10 68:9 71:8 72:23 78:7
talking 14:20 49:4 50:5,7 51:3 57:7 63:5 66:24 82:18
talks 13:12 37:1
tape 17:13 66:17
tapes 65:10
teach 84:1
tears 83:15
technically 54:16
tell 5:19 6:15 8:4 12:9 13:22 16:21 22:15 23:17 24:4 26:17 30:17 31:2,18 33:13 35:9 36:14 40:15 41:21 42:5 44:2 48:3 50:23 67:2 71:13 83:2
telling 51:11 53:24 55:14 56:15 79:9
tells 32:17 77:17
term 68:19
testified 4:8 43:18 57:17 61:22 77:5
testify 86:7
testimony 30:6 31:6,7 43:14 54:5 57:15

77:2,3,16 78:1 78:17 86:13
thank 4:22 5:15 9:12 26:9 32:22 35:22 51:20 53:19 85:2
thanks 5:24
thing 25:15 28:3 31:23 45:18 60:20 62:8 69:18
things 7:8 14:12 29:21 41:15 48:13 51:4 57:19 58:22 59:20,21 61:1 63:17 65:5 66:22 70:23 71:8 81:24 82:12 83:8,10,18
think 7:20,23 10:15 11:11 12:3,6,11,13 16:6 29:4 30:18,18 31:18 32:12,20 33:2 34:23 36:3 40:9,13 46:13 46:20 50:4,13 52:14 55:11 58:7 59:18,21 59:22,24 60:2 60:12,17 61:1 62:5 63:3 64:16,24 65:21 74:9,16,18 77:9,11,18,21 77:23 78:10 83:16
thinking 16:8 18:1 59:11,19 62:20
thinks 80:14
third 11:18 23:1
thomas 2:5 4:20
thoopes 2:7
thoroughly 40:1
thought 24:13 41:8,20 42:14 43:18 59:1 61:17 64:4 65:8 69:16 75:15 80:21
three 20:15 65:6 66:20 67:13 68:21 82:7
thrilled 84:7
thursday 63:5
thursdays 18:8
time 5:7,7,8,13 5:14 6:24 7:1 7:12 8:2 10:1,9 10:12,18 11:2 11:14 12:12 13:7,14 15:15 18:18,21 25:17 30:10 32:3,5 36:7,18,20,21 40:2,7,18 44:8 48:20 50:8,12 50:14,20 52:20 54:11 59:16 60:9 61:3 62:6 63:3,19 64:1 65:7 66:13 68:7 69:11,14 69:16,20 74:2 80:2 81:17,18 83:23
times 10:2 14:5 14:5,6 16:8 18:7,8,16,24 19:1 38:14,15 62:5 72:12,15 73:5,16 74:16 74:17,17,17,17 76:3,4
today 78:5
together 29:21
told 27:21 28:8 28:10 39:11,16 40:24 41:5 43:18 52:8,11 52:16 55:18 68:3,4 73:13 83:1
took 29:10 82:4
top 13:7,11 34:9
topic 15:5 42:2
topics 14:22 59:24
touching 86:9
towards 8:12
training 24:15 24:21 61:18 64:18
transcript 31:4 37:18 39:2 44:7 46:5,21
transmittal 10:3,10,14,23 11:6,18 12:10
trial 10:7,15 24:11 25:16 27:15 28:7 67:4 80:5
tried 61:11 62:5 84:3
true 86:13
truly 82:6
truth 86:8,8
try 5:20 14:10 61:7
trying 7:19 25:10 49:9,19 52:23 73:4,24 74:5 81:21,22 81:24 82:2,3,9 82:11 84:19
tuesday 1:13 48:5,7
turn 8:4 60:5

twice 7:20,22 31:1
two 14:2 24:24 25:18,24 27:3 27:8,13 28:22 29:21 30:6 48:4 60:7 62:9 71:18,19 73:12 73:13
typewriting 86:11
typically 28:10

u

u.s. 31:5
uber 67:11
unable 83:23
uncertainty 54:8
under 1:9 44:21 86:12
understand 14:19 18:5 22:13,18 23:1 23:2 28:23 37:13,15 38:19 46:10 47:2 57:10 79:10
understanding 6:14,15 19:5 19:13,18 33:12 33:16 38:1,3 41:9 78:20,22 80:22
understood 68:3
unethical 83:6
unfortunately 5:10
unrelated 45:20 48:22
unusual 36:6 36:17 41:19,20
updated 54:19
upset 63:16
upstairs 25:4
use 41:20
used 22:14 72:15
using 22:11
usual 19:6

v

v 1:17
van 47:17
various 43:14 72:23 73:4
versus 11:17
view 31:3 33:5 33:13 54:24
visit 34:14,17 34:20 46:7,22 72:17
visiting 25:3 27:23 28:4
voice 25:23 61:19 63:6
volume 1:1
volumes 7:12
volunteer 84:3

w

wait 32:23 35:23 67:19
waiting 8:18 47:9,18
walk 76:15
waltham 52:18 53:5,6 54:1,18 65:10,13,17 80:8 81:8
want 5:5,18,19 12:14 24:1 26:10 27:22 28:23 29:20 31:9,10 32:23 35:23 38:23 43:7 46:10 47:6 60:16 68:12 70:11,23 71:7 82:19
wanted 36:9 38:4,7,8,16 40:2,5 41:14 42:5,13 46:17 47:20 51:5,8 57:24 60:20 64:17 66:22 67:19 68:11 69:7,18 80:2 81:10 82:14,17 83:2
wants 34:20
warrant 36:24 41:1,3 49:8,11 62:16,18 79:18
watch 6:18
water 81:19
waterfront 60:17
waters 84:14
way 5:20 21:2,8 28:9 40:15 46:17 47:6,20 58:22 65:6,8 73:11,11 74:13 76:11 84:4
ways 20:15 28:22 72:23 73:4 74:12
wednesday 48:5
week 9:6,8,9,10 72:12
weekend 63:11
weeks 6:17 51:6
welcome 8:24
went 18:6 43:4 52:10 53:14,17 53:21 55:9 61:6 64:7 65:15 67:9 69:4,21 70:5 75:6,8 76:12 80:24 82:10
wheelie 24:20
whereof 86:18
whispering 66:2

wire 53:9 65:12 66:4,5
witness 1:9 3:2 4:3,15,17 19:2 19:4 31:8 54:6 60:19 66:12 70:15 81:12,15 81:21 85:8 86:13,18
witnesses 30:7 43:14
wonder 85:3
wondering 62:1
word 41:20
words 24:8 83:17
work 6:12 63:6 72:22 73:8 83:23 84:3,10
worked 54:9 78:9 83:7
working 35:2 41:10 82:8
works 73:12
world 83:5
worried 55:23
worry 63:24
worth 50:4
write 84:1
writing 24:10
written 61:13
wrong 26:11 40:11 54:18 78:13 81:23 82:10 83:6 84:20

x

x 1:4,8 3:1,8

y

year 12:16 67:6
years 14:2 15:14 17:23,24 18:1 26:14 40:12,13 59:18 59:20 65:5,6 66:20 72:2 73:22 81:16 82:7 83:1
young 82:18,20

z

zach 26:4,5 69:22
zero 59:14

APPENDIX O

Department of Homeland Security
Immigration and Customs Enforcement

Memorandum of Investigation

File Number:	Title:	Control Office:
079 677 654	PEGUERO, Oscar Manuel, aka: MEDINA-Perez, Jose	BOS

On April 2, 2018, I, Deportation Officer (DO) Richard Simmons responded to a Secure Communities (SC) hit based on arrest by Newton Police. The subject, A079677654, Oscar PEGUERO, 03/02/1979, AKA Jose MEDINA-Perez 08/15/1981 of the Dominican Republic, was arrested by Newton Police and charged with possession of Class B (cocaine). Subject has no other known criminal history. I arrived at the Newton District Courthouse at approximately 0930 hours. At security, I identified myself and asked for the chief court officer. The security officer stated he was not around but the other court officers on duty were in the courtroom. I entered the courtroom and sat in the designated area for police, directly next to a court officer and Newton Police officer. A Newton Police officer, I believe his first name was Jason, greeted me by asking if I was here for his guy, Perez. I said yes, I have a detainer and warrant. He said that he had the paperwork already.

As I observed the court proceedings throughout the morning, during a brief recess, I introduced myself to the court officer situated near me. I asked him if I would be able to take custody of the subject in lock-up at the conclusion of his arraignment. He said that I could and that it would be better for him and the other court officer in the court as they were the only two court officers around. I said that would be great as I was alone currently and for officer safety reasons it would be best.

The subject's arraignment took some time and was not called until after lunchtime. Throughout the day, as circumstances permitted, the court officers, the assistant district attorney (ADA), the clerk magistrate and the defense attorney were all made aware of my presence and intent to arrest PEGUERO upon his release from state custody. In addition, I could see that both the ADA and defense attorney were in physical possession of the immigration detainer.

Just before the lunch break, approximately 1230 hours, the female defense attorney approached me and asked if I was with ICE. I stated, "Yes, how can I help you?" She was explaining to me her reservations about her client being the wanted person out of Pennsylvania and the subject that I was in court for based on the information in the detainer. I assured her that her client was subject of the ICE detainer, confirmed through biometrics. Ultimately, at approximately 1310 hours, the case was held over to the afternoon session.

I reentered the courtroom at approximately 1400 hours. As I sat in the courtroom waiting for the session to begin, a male attorney, not present in the courtroom earlier in the day introduced himself as the subject's defense counsel and asked if I was with ICE. I stated, "Yes, how can I help you?" He went on to say that he believed there to be a case of mistaken identity with his client. I told him that I knew his client's identity. He proceeded read and to point out differences in his client's height and weight compared to the subject cited in the detainer. I told him that I was not concerned with those discrepancies. I further told him that I was only concerned with his client's biometric match. I explained that his client has been previously removed from the U.S. and that his presence is evidence of his illegal reentry into the U.S.

After the conversation with the defense attorney I spoke with the ADA in greater detail about the subject's immigration history. I explained his previous deportations and that he would be presented for prosecution to the U.S. Attorney's Office for Reentry After Deportation when he comes into ICE custody.

At approximately 1410 hours, the clerk entered the courtroom and asked if I was with ICE. I stated, "Yes". He asked if I had a warrant and again I stated, "Yes, I have it right here". I asked if he wanted it or wanted to see it and he said "No". The clerk went on to say that the judge wants me to tell you to leave the courtroom. I said, "Leave the courtroom?". The clerk said yes. I said why am I being told to leave the courtroom? He stated that the judge didn't want her courtroom being intimidated by the presence of ICE. It should be noted that I was in plain clothes, with all my branding and gear covered by a shirt and a jacket. I asked again if he was telling me to leave the courtroom and he said the judge doesn't want anyone being intimidated by ICE. I left the courtroom and the clerk followed me out to the front lobby/security area. He explained to me that he would let me know as soon as a decision on the case had been rendered. The clerk returned to the courtroom and shortly thereafter the clerk returned to speak to me again and stated that if the subject is released he will be released either through the courtroom or brought back down to lock-up and released into the courthouse. I asked, "So he will come up the stairs over there and into the lobby to use the main exit?" He stated, "Yes".

At that time, I expressed to him the serious matter of officer safety. I pointed out that I was currently alone and there are three (3) males that have been waiting all day for the subject. The subject's defense attorney has been meeting with them, off and on throughout the afternoon. I asked the clerk that if it was at all possible it would be better for officer safety reasons for me to take the subject into custody in lock-up. He said, "No, I'm sorry", and returned to the courtroom. It should be noted that it is Massachusetts Trial Court policy to allow ICE officers into the lock-up to take aliens into custody. However, I was refused this opportunity.

At this time, I waited outside the court room for the decision and at approximately 1421 hours I contacted my team to see if there was anyone available for back-up. Deportation Officer (DO) Domenico Federico responded and arrived at the court approximately 30 minutes later. I never left the front lobby. The clerk came out of the court at approximately 1450 and said the subject was being released. The clerk went on to say that subject would be brought back down to lock-up and then escorted by a court officer to the lobby/security area, where I was waiting.

The ADA came out sometime later (I would estimate no more than 10 minutes) and stated to me that she had a bad feeling that the subject was released out the back of the building. She based her feeling on a "look" that she got from the subject's defense attorney. We told her that we were just waiting for the court officer to bring the subject upstairs and she commented on why it was taking so long. The clerk met us in the lobby and stated that the subject should be coming up any minute and then went back to the court room. The ADA asked the victim witness advocate (VWA) to inquire about the subject and he went downstairs.

Within a few minutes the VWA returned and informed that he did not see the subject in lock up and that the only other way to leave the building is from lock up but he doubted that the court officers would have allowed for that to happen. The ADA also made a similar statement that she couldn't believe that would happen.

We increasingly became suspicious that the subject was not in lock up and Deportation Officer Federico stated he would go to the sally port at lock-up. He exited the front entrance and went around to the back of the courthouse on foot. Deportation Officer Federico reported that he noticed a court officer outside talking to correctional officers that were inside their transport van. DO Federico explained to the court officer that we were waiting for our subject to be brought up stairs in the lobby so that we could take him in to custody. The officer stated the name of subject before DO Federico did and very sarcastically said that he released him from the back door. DO Federico asked him why he did so, knowing that we were in the building with a detainer and a warrant of arrest. The officer responded to DO Federico with an arrogant tone that he just let him go from the back.

Ultimately, late in the afternoon, the chief court officer was suddenly available. He advised us that the subject was released out the back of the building but couldn't explain why. It was explained to us by multiple court personnel that it required the assistance of someone with a security pass (court personnel).

APPENDIX P

Department of Homeland Security
Immigration and Customs Enforcement

Memorandum of Investigation

File Number:	Title:	Control Office:
079 677 654	PEGUERO, Oscar Manuel, aka: MEDINA-Perez, Jose	BOS

On April 2, 2018, at about 2:15 PM I, Deportation Officer Domenico Federico, received a phone call from Supervisory Detention and Deportation Officer (SDDO) Stephen Wells requesting that I would assist Deportation Officer (DO) Richard Simmons at the Newton District Court Located at 1309 Washington Street, West Newton, Massachusetts. I grabbed my duty gear and proceeded to that address in order to assist DO Simmons. I arrived at about 2:51PM and parked my government issued vehicle in the front of the building. I contacted my colleague via cell phone about his location in the building and then entered the main entrance. I was greeted by a Court Security Officer at the check point and identified myself as Deportation Officer and showed my credentials. I explained to the officer that I was there on official business and looking for DO Simmons. Once passed through the security I noticed DO Simmons was just outside the court room. DO Simmons stated that the clerk had informed him just a few minutes ago that the subject was going to be released. The clerk also stated that the subject was going to be brought down to lock up and then escorted by a court officer to the lobby where we were.

Within a few minutes, a female Assistant District Attorney (ADA) greeted us and seemed to be aware about the subject's case. We told her that we were just waiting for the court officer to bring the subject upstairs and she commented on why it was taking so long. The clerk met us in the lobby and stated that the subject should be coming up any minute and then went back to the court room. The ADA asked the victim witness advocate (VWA) to inquire about the subject's and he went downstairs. Within a few minutes the VWA returned and informed that he did not see the subject in lock up and that the only other way to leave the building is from lock up but he doubted that the Court Officers would have allowed for that to happen. The ADA also made a similar statement that she couldn't believe that would happen. I became increasingly suspicious that the subject was not in lock up and I informed DO Simmons that I would go to the sally port near the lock up and exited the courthouse through the front entrance. I walked to rear of the building and noticed a court officer outside talking to correctional officers that were inside their transport van. I identified myself as a Deportation Officer to the Court Officer and showed him my credentials. I explained to the Court Officer that we were waiting for our subject to be brought up stairs in the lobby so that we could take him in to custody. The officer stated the name of subject before I did (PEGUERO) and very sarcastically said that he released him from the back door. I asked him why has did so, knowing that we were in the building with a detainer and a warrant of arrest. The officer responded, with an arrogant tone, that he just let him go from the back. I informed DO Simmons and returned to our office.

APPENDIX Q

I

1 - 37

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	
VS.	Case No.
JOHN DOE.	

Federal Grand Jury
U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts

Thursday
December 20, 2018

APPEARANCE: DUSTIN CHAO and CHRISTINE WICHERS
Assistant U.S. Attorneys

WITNESS: RICHARD C. SIMMONS

I N D E X

WITNESS		PAGE
Richard C. Simmons		
	Examination by Mr. Chao	3

EXHIBITS	DESCRIPTION	PAGE
No. 8	Form I-247	6

P R O C E E D I N G S

(12:07 p.m.)

RICHARD C. SIMMONS, Sworn

EXAMINATION BY MR. CHAO:

Q Good afternoon, Officer Simmons.

A Good afternoon.

Q Can you please state and spell your full name for the record?

A Richard C. Simmons, R-I-C-H-A-R-D, -C-, and then Simmons is S-I-M-M-O-N-S.

Q Officer Simmons, are you currently working?

A I work for the Department of Homeland Security Immigration and Customs Enforcement, removal operations, fugitive operations out of the Burlington Office.

Q And what is your current position?

A Deportation officer.

Q How long have you worked as a deportation officer?

A Since 2007, approximately 12 years.

Q Has that mostly been out of the Burlington office?

A The Boston field office. It has always been the Boston field office. We were located in Boston in 2007 to 2009 and then we moved to Burlington.

Q And what are some of your responsibilities as an enforcement officer?

A To enforce the immigration laws, the Immigration

Nationality Act. As a part of deportation officer, as part of a fugitive operations group, my area of operation is the Suffolk County area and we go after fugitives, immigration fugitives, at large criminal aliens and people who are in the country legally but have committed a crime are amenable to deportation or removal.

Q As a deportation officer you are an employee of the Department of Homeland Security; correct?

A Correct.

Q And Immigration and Custom enforcement?

A Correct.

Q And that is a federal agency?

A It is.

Q Can you tell us what kind of proceedings you're involved in through DHS, ICE?

A The proceedings that we typically deal with are administrative in nature. So, when we target somebody for an arrest, we're typically charging them with administrative charges out of the Immigration Nationality Act.

Q And are you familiar with what is known as a removal proceeding?

A I am.

Q And can you briefly tell the grand jury what is a removal proceeding?

A A removal proceeding is an immigration proceeding

-- after I conduct an investigation and an arrest, we charge people administratively under the Immigration Nationality Act, if they're amenable to removal and deportation. And the amenability is based on their criminal convictions and their status, their current status in the United States.

And the immigration proceedings, there is an immigration judge which he determines the outcome of the case. There is a defense attorney, there is prosecution, there is our Office of Chief Counsel, we have our own attorneys and they're the ones that litigate the cases in front of the immigration judge and the immigration judge is the one that makes the determination on whether the subject is eligible for any kind of relief, if they can stay in the United States, or, whether they must leave and be removed.

A Now, when you describe this removal proceeding, is that a proceeding that ICE or DHS normally carries out on a regular basis?

Q Yes.

A And as an enforcement officer have you been involved in those types of removal proceedings done by ICE/DHS?

Q I've never had -- yes, I've been involved in the arrest process and then I have been called as a witness but I've never had to physically testify up to this point in my career, in immigration court.

A Let's talk about the arrest process. Are you familiar with what is known as an immigration detainer?
Q Yes.
A I'm going to put up, and admit, Grand Jury Exhibit 8.

(Grand Jury Exhibit No. 8 was marked.)

BY MR. CHAO:
Q Are you familiar with what is before you as Grand Jury Exhibit 8, at least the first page of it there?
A I am familiar with that document, Form I-247.
Q And can you just tell the grand jury what are they looking at here, what is an Immigration Detainer Notice of Action?
A It is a request for a law enforcement agency, a court or potentially a correctional facility, a jail, to hold somebody until we can take custody of that person.
Q Can you walk us through how is this, what is shown in Exhibit 8, Immigration Detainer, how is that generated?
A There's a few different ways it can be generated. This particular detainer, based on the event number in the top left hand corner and the address in the right-hand where it says, "From the Department of Homeland Security," this particular detainer was generated from our Pacific Enforcement Removal Center out in Laguna Niguel, California.

Q Okay. Now, I'm going to show you that is this PERC in Laguna Niguel right there?

A So, what happened was the subject of this detainer was arrested and booked by the Newton Police Department. When agencies book people and submit their fingerprints they get sent to the FBI. The FBI then compares them with everything in their system, and if they generate a match with a foreign born national or somebody that is of interest to ICE, Immigration Customs Enforcement, that notification gets sent to Pacific Enforcement Removal, the center out there in Laguna Niguel. And then they examine the biometrics, the fingerprints, the match, and they determine whether if it matches with our record whether there is cause for a Notice of Action, a detainer, to be lodged with that police department.

Q So, with this particular detainer here in Exhibit 8, is it fair to say that there was an arrest by the Newton Police Department to start; correct?

A Correct.

Q And fingerprints from the Newton Police Department were forwarded to the FBI and then forwarded to ICE; correct?

A Correct.

Q And then ICE determined that the fingerprints on the Newton Police Department matched the fingerprint of a

known subject to ICE and in this case it was someone known as Oscar Peguero, a.k.a. Jose Medina Perez; is that correct?

A Correct. The FBI is the one that actually confirms the match with the fingerprints and then we verify it through our own records by comparing facial photographs and the biographical information, names and dates of birth.

Q So, the FBI does this fingerprint comparison but based on that fingerprint comparison, you're matching that Newton fingerprint with a fingerprint out there that is associated with someone that could be subject to removal, immigration removal proceedings?

A Yes.

Q And in this instance here, on March 30th, 2018, a person known as Jose Medina Perez was subject to what?

A He was an alien who was determined that through the biometric match, the fingerprint match, that he was an alien who had been previously removed from the United States and that he was already issued a form I-205, Immigration Warrant of Removal and Deportation, which is effected when he is removed from the country.

So, ultimately he is a fugitive with us and we issue another warrant of removal and deportation for him based on the prior order of removal from the immigration judge.

Q Okay. So, getting back to this form here on

Exhibit 8 is it fair to say that this form from the Pacific --

A -- Enforcement Center, yeah.

Q -- is sent to the Newton Police Department and it is notifying that there is a final order of removal against the alien?

A Correct.

Q That there is a biometric confirmation of the alien's identity?

A Yes.

Q And that it is a request; correct?

A It is a request.

Q So, it is a request that DHS be notified at least 48 hours, if possible, before the alien is released from custody; is that your understanding?

A That is. Yes, it is.

Q And what is attached to this -- this is signed by an immigration officer?

A It is, from the Pacific Enforcement Center in Laguna Niguel.

Q And the second page of this detainer, again, it just has the identifiers known to ICE DHS of the immigrant, or the alien; correct?

A It does.

Q And then it has what is based on DHS ICE records,

the citizenship and date of birth?
A Correct.
Q And then I want to show you the third page of Exhibit 8. This is a -- well, what is this?
A This is the Warrant of Removal of Deportation. So, this particular document was generated when this subject was arrested by Newton Police. We, in conjunction with the Notice of Action Detainer, they send a warrant now. We've been doing that for the last couple of years.
Q And so based upon the DHS ICE records, the person whose fingerprint was taken from Newton Police Department, this Jose Medina Perez, was subject to removal based upon the final order by a designated official and it is signed here?
A That is correct.
Q And then the following page of this Warrant of Removal, it has instructions at the top; correct?
A It does.
Q And what are those instructions, basically?
A When the subject is removed from the country, this document is executed. They add a photograph, we do a right index print when the subject is booked out of whatever facility he is in, before he goes on to the plane, he is escorted to the airport, or potentially put on a charter flight with a bunch of other aliens and then whatever the

flight he is on, or the manor in which he is removed, they enter that information along the top and the officer signs below. And the alien if he is cooperative will sign below also.

Q So, this is the ultimate act, or the ultimate step, in the removal proceeding; correct?

A Yes, it is.

Q So, when the person is in custody, ICE custody, they're printed, they're photographed, the person signs, the officer signs and they witness the departure at either an airline, most likely an airline; correct?

A Most likely at an airport ground if the person -- they may be escorted all the way to their country, or the person may be just -- it might be a verified departure where somebody is just placed on a plane and we wait for the plane to leave the airport.

Q Okay. So, this document is not completed until the alleged alien, or the alien, is actually removed?

A Correct.

Q And this would signify the end of the removal proceeding?

A It would.

Q Now, I want to draw your attention directly, well, one last question.

Can this removal proceeding be accomplished

without the alien being in custody, in your custody?
A No.
Q If you haven't brought him here he can't be removed, correct?
A Correct.
Q So, I want to draw your attention to April 2nd, 2018. Were you working on that date, Officer Simmons?
A Yes.
Q Where were you assigned?
A That particular day?
Q If you recall.
A That particular day I was assigned to the fugitive operations group, the team that I usually work with. An that particular week, if I recall correctly, we were assigned to the duty which is receiving phone calls regarding these types of situations and responding to courts or local police departments as needed.
Q So, when you're on duty, what is your role, what was your role, as part of this duty group?
A That particular day at that time we had a lot of officers or teams spread out throughout the Suffolk County and Middlesex areas. I broke off from one of those teams and responded to Newton to try and arrest this individual.
Q Okay. When you go to Newton, what documents are you taking with you, presenting?

A The documents were already sent to the local police and they were also sent to the court. I will, if I'm the field, I will have an electronic copy of these documents, the detainer and the warrant of removal. If I'm in the office then I'll be able to get a hardcopy or a paper copy.

Q So, on April 2nd, 2018 are you wearing a particular uniform, or how are you dressed?

A I am dressed in plain clothes all of the time. I don't have a uniform. I'm in jeans, loose fitting shirt untucked and depending on the time of the year a jacket or a vest.

Q But you have your equipment, you have a firearm, you have handcuffs?

A Firearm, handcuffs, magazines, everything is on my belt and it is all concealed or covered by my other garments.

Q And do you have a badge?

A I do. I have two. I have a belt badge that can be converted to a neck badge that I typically always wear on my belt. And then I also have a wallet badge and credentials that I have with me.

Q And, again, this is all covered by your outer garments generally speaking, and for that date in particular, April 2nd, 2018?

A Whenever we're in court, yes.
Q So, can you tell us approximately when did you arrive at the Newton District Court?
A Approximately 9:30 in the morning.
Q And that is in the City of Newton at 1309 Washington Street; is that correct?
A It is.
Q Now, did you go there by yourself or did you work with a partner?
A I went there by myself.
Q I'm going to show you what is already in evidence as Grand Jury P91. Do you recognize the picture before you, P91?
A The front door of the court.
Q When you arrived, do you recall where you parked your car?
A Almost in front of the door.
Q Now, you said you arrived at 9:30. Can you kind of slowly walk us through what happened next on April 2nd, 2018?
A As you enter the courthouse almost immediately you encounter a metal detector and a security officer which you have to pass through if you're not law enforcement. What happens is I present my badge and credentials and identify myself and then I ask for the chief court officer if they're

available.

Q Okay. I'm just showing Exhibit P4. Entering the courthouse this is the metal detector; correct?

A Yes.

Q So, you identified yourself as what to the security at the door?

A The security at the door. The gentleman was at the door. I showed him my badge and credentials. I told him my name, that I was with Immigration and Customs Enforcement and that I was here for somebody that was in custody and that I needed to speak with the chief court officer if possible.

Q I'm just going to show you Exhibit P88; do you recognize this?

A I do. That is the doors to the first session room. The court room as soon as you walk in the front door, it is immediately in front of you.

Q Did you enter that courtroom after you walked through security, the courtroom showing here in P88?

A Yes. After I walked in, yes.

Q Now, showing you P17; do you recognize this photo, P17?

A That looks like the first session courtroom that I was sitting in that day.

Q Alright. So, can you walk us through, tell the

grand jurors after you went through the medal detector area, and you entered the courthouse, where did you go next?

A I proceeded through those doors and went immediately to the left, there is a bench that is against the wall that, typically, law enforcement officers sit in while they're in the audience in court.

Q Is it fair to say that it is in generally the right side of the picture?

A Yes. That is generally, yes, that is the area right there on that bench against the wall.

Q Now, when you entered the courtroom at 9:30 on April 2nd, 2018, to the best of your recollection who was, was there, anyone in the courtroom?

A There were attorneys, defense attorneys, plus the assistant district attorney, at least one. I think the clerk of courts was there. I don't think the judge was on the bench yet, but she may have been.

Immediately to where I was sitting --

Q Let me walk you through the next picture. So, here, do you recognize the P9?

A It is the bench.

Q So, here is the glass dock area where incarcerated defendants are brought up to the court, right?

A People who are in lockup, yeah, they'd be brought up through the court.

Q Now, I'm going to show you P8; do you recognize this picture?
A That's the secure area where they bring people who are in lockup, up.
Q Can you tell the grand jury, Officer Simmons, where in relation to this picture, where you recall being seated when you fist entered courtroom one in Newton District Court on April 7th?
A If you follow that railing all the way to the wall, I was sitting right there against the wall on the bench directly next to the police officer from the Newton Police who was involved in that case.
Q So, the Newton police officer would be somewhere in this area where I'm indicating in front of this window, left of P8?
A Yes. And there was also a court officer sitting there.
Q And the court officer would be in this general area next to this glass dock area?
A Yes.
Q Did you have, with the Newton Police and the court officer here, did you have an unobstructed view to this glass dock area that is shown in P8, Officer Simmons?
A I did.
Q Now, can you tell us what, if any, interactions

did you have with the Newton police officer? Do you recall his first name?

A Jason, I believe.

Q What interaction did you have with Jason that you recall?

A When I walked into the courtroom and sat down I made eye contact with the officer, and I introduced myself, by, again, presenting my badge and credentials and he immediately asked me if I was here for his guy, I think were his words.

Q And did he name the guy?

A And then he said the guy, yes. He said name Perez, I believe it was. I can't remember which of his name he used. I think it was Perez that he mentions.

Q And did this Newton police officer, whose first name is Jason, did he indicate whether or not he had the immigration detainer paperwork already?

A He did. After he asked if I was here for his guy, I said, "Yes." I said, you know, "I have the warrant and the detainer."

And he said, "I already have the paperwork," because they received it through fax.

Q So, part of that morning, do you recall having any interaction with the court officer that was stationed here?

A Yeah. Shortly, I can't remember exactly what time

off the top of my head, but there was a short recess or break, and I made contact with the court officer to identify myself, introduce myself, and to ask him if it would be possible to take custody of the subject if he's released today, if I could take custody in lockup.

Just for officer safety reasons. I was by myself and it is just a lot safer if we do it in lockup for everybody. Actually there is a policy memorandum from the trial courts of the Commonwealth that actually allows for that to happen.

Q And do you recall when you made that request of the court officer, was he standing outside the glass?

A He was outside the glass, yes.

Q Okay.

A At that point he approached the rail, he was close to the rail.

Q And when you made that request do you recall what was his response, if any?

A He told me that, he said, "That would be great, no problem, because they were shorthanded and it would be easier for them if I took him in lockup."

Q So, as part of the court proceedings on April 2nd, 2018, is it fair to say that there was a morning session and an afternoon session?

A Yes.

Q And what separated the morning session and the afternoon session was a, basically, a lunch break some time between 12:30 and before 2:00?

A Correct.

Q Now, were you in this area, to the best of your recollection, that entire morning session? In other words from 9:30 a.m. approximately to the 12:30 lunch hour?

A I was.

Q Did you take, what happened during the lunch hour? Where did you go?

A When they broke for lunch, I left the courtroom, I went to my vehicle, and went and got lunch.

Q Did you stay there at lunch or did you come back?

A I picked up lunch through a drive-through at McDonald's and then I came back to the courthouse, ate in my car and then went inside.

Q And where was your car when you were eating your lunch during this break?

A In front of the courthouse.

Q I want to draw your attention to your interactions with the assistant district attorney and the clerk magistrate and the defense attorney.

So, did you make a determination as to whether the assistant district attorney was aware of the ICE detainer?

A Yeah. I could observe, I was close enough to

observe the attorney having a copy of the detainer. It is common anyway once we send these documents to the court that they get copies of them to the assistant district attorney and the defense attorney ultimately ends up with them.

So, I was able to determine, I overhead them talking about the detainer, the case, and I was able to see they had the documents.

Q Alright. I want to draw your attention to just before the lunch break around approximately 12:30 p.m. Do you recall a female defense attorney for the subject Jose Medina Perez?

A I do.

Q Okay. Can you just briefly tell us, or to the best of your recollection tell us, what was your interaction with the female defense attorney for Mr.Perez at that point?

A She approached me and asked if I was with ICE, and I said, "Yes, I am."

She was concerned at the time they were trying to figure out whether the subject in custody was also wanted in Pennsylvania. And she was of the opinion that he was not the person -- well, I told her that this subject was confirmed through biometrics and fingerprints. That I was certain of the subject's identify and it wasn't the person wanted in Pennsylvania, it was actually a person who was

previously removed from the United States.

Q Alright. So, you had dealing with a female defense attorney initially for Mr.Medina Perez; correct?

A Yes.

Q Now, I want to draw your attention to after your lunch break around approximately 2:00, 1:30, 2:00, where did you go?

A After the lunch break I reentered the courtroom right around 2:00.

Q Okay. So, you reentered the courtroom here showing, I'm showing you P17.

A Yes.

Q Okay.

A And at that time I was sitting either on the front bench to the left or against the wall. I had moved back and forth a little bit because the defense attorney, the male defense attorney, approached me.

Q When you say male defense attorney, did you come to discover that a new attorney, a male defense attorney, now was representing Jose Medina Perez?

A Yeah. A male approached me identifying himself as the attorney for Perez.

Q Can you tell us what that conversation was?

A He was also concerned about physical descriptors that were not matching with his subject and the person who

was wanted in Pennsylvania. And I explained to him that the physical descriptors weren't, I was not concerned with. When people are booked in, in my experience, very rarely nowadays do they have a height, like a measuring tape or anything, they just guess. So, physical descriptors I wasn't concerned with. I told him that it was a biometric match through fingerprints and that I was certain of the subjects identity and was processing that removal case to have him removed from the United States.

Q Now, was this male defense attorney for Mr.Perez, was aware that you were with ICE?

A He was.

Q And how do you know that?

A He asked me if I was with ICE and I told him, "Yes, I was."

Q Do you recall at any point showing this male defense attorney something that also confirmed your belief that Mr.Perez was indeed the person who was subject to the warrant of removal?

A During the conversation he asked me, he talked about physical descriptors. I told him that through the biometrics I was 100 percent certain that was the person we were looking for.

And in addition to that, I had a photograph sent to me electronically on my phone of the last, the time that

he was removed from the United States prior. And the picture of the subject and the subject that was in the locked area --

Q The glass area?

A The glass area, were a match. And he looked at it and he didn't confirm or deny anything. He just asked for a copy of it and I told him I couldn't give him a copy of it.

Q Did you have a conversation with the assistant district attorney around that time too?

A Yeah. After the defense attorney walked away, the assistant district attorney and I for the first time during that day just exchanged a few words and she asked me about what the subject was looking at as far as immigration proceedings and I explained that he was going to be presented for prosecution, criminal prosecution, with the U.S. Attorney's Office for reentry after deportation.

Q Now, I want to draw your attention to, again, the afternoon session about, let's say approximately ten minutes after your conversations with the male defense attorney for Mr.Perez, and the assistant DA, did you have another conversation after that?

A Yes. The clerk.

Q The clerk magistrate?

A Yes, the clerk that was in the court.

Q Was that the person that was seated directly in

front of the judge shown in P9?

A Yes.

Q Now, can you tell us what that conversation was?

A So, he walked out of the, I guess, the back end of the courtroom, maybe the judge's chamber area, wherever he came from, he walked into the court from the back area and asked me if I was with ICE. And I said, "Yes, I am."

And he said, "Do you have a warrant?"

And I said, "Yes I do. I can give you a copy if you want," or, "would you like a copy?" And he said, "No."

And shortly after that he said that the judge had instructed, or asked him to ask me to leave the courtroom.

At which time I said, "You want me to leave the courtroom?" And he said, "Yes, the judge has asked me to tell you to leave the courtroom. I asked why and he said that the judge said that she didn't want ICE intimidating her audience.

Q So, did you comply?

A I did. I walked out of the courtroom. Actually, the clerk, the clerk magistrate, walked with me, escorted me out to the hallway.

Q So, the hallway area, is that the area that is generally shown here in P86?

A It is.

Q Can you tell us, did you have further conversation

with the clerk magistrate as he walked you out of that courtroom?

A So, the clerk explained to me that if it was determined, if they weren't comfortable in determining that the subject wanted in Pennsylvania was not the subject that they had in custody that that subject would be released, the person I was looking for would be released into the court and walk through the doors that I had just walked through out to the lobby area.

Q So, referring to Mr.Perez being released; correct?

A Mr.Perez, yes.

Q And the doors being referred to would be --

A Those first session.

Q These doors?

A Yes.

Q And these doors are exactly facing this entryway?

A Correct. So, I asked him, I explained to him again the officer safety issues and if we could get him in the lockup it would be very helpful because I was by myself. He said, "No."

At that time I called my office, I called one of my team members to see if he could cut loose from one of the other courts to come and help me out.

Q Did there come a point, Officer Simmons, that you

were aware that there were other people in the courtroom that you believed to be associated with Mr.Perez?

A There were three gentlemen sitting in the court, in the back of the court, the entire day, the entire morning that I was there walking in and out but they were sitting in the same area and they were always together. They had never been called up, none of them had a case because I sat in the court all morning. None of them were called up.

So, I didn't really put it together until the afternoon session when that male defense attorney started having meetings with the individuals.

Q The male defense attorney you are referring to is the male defense attorney for Mr.Perez?

A Yes.

Q And then the male defense attorney for Mr.Perez began having meeting with those three individuals?

A Yes. There is a conference room right to the right of that security office, and they were meeting in there. There is a glass door, you can see right in. They were meeting in there. There were a couple of different times when they actually went in and talked to him.

Q And to your knowledge, based on sitting in that courtroom, did you know, or come to know, whether or not that male defense attorney had any other clients or cases other than Mr.Perez?

A Yeah, he was not in the courtroom the entire morning session. The only case -- I wasn't sitting in the courtroom in the afternoon session, the only case I was aware of in the afternoon was Perez and it was the only case I thought him to be involved with.

Q So, because of those three males that you believed had been waiting for Mr.Perez and their contact with the defense attorney; did you express your security concerns to anyone inside the Newton District Court whether it be the clerk or a court officer?

A I did. I expressed it to the clerk when they told me they were going to release the subject through the court and out into the lobby area. I also expressed it to the Newton police officer but their policies didn't allow him to give me any assistance if there were to be any trouble, or, to lend any backup.

Q But the clerk magistrate, to your recollection, told you that Mr.Perez was going to be, if he was released, would be released outside these doors shown in P88?

A He did. The first time when he walked me out, the first time that he explained to me if he was released it could be through there. After he left me in the hallway for a few minutes he walked back out again and said that he would let me know when the case was at an end and that they had changed their minds, that they were going to release the

subject. They were going to bring him back downstairs into the lockup area in the courthouse downstairs, and release him into the courthouse, walk him up the stairs to that lobby area where I was.

Q Okay. Release him into the courtroom; correct?

A No. The courtroom was the first option.

Q Right.

A Then they told me that they were going to bring him, release him, into the courthouse through the lockup area downstairs and then walk him up the stairs with the court officers.

Q Okay. So, walk him back upstairs to this lobby area?

A Back right to that lobby area, yes.

Q And because of your security concerns, you said you contacted someone for, I guess, for backup?

A I did. Once of my team members, it ended up being that Domenico Federico was available to assist and he was approximately 25/30 minutes away, so, he responded shortly after I called.

Q And from the time that you were walked out of the courtroom by the clerk magistrate, did you ever leave this lobby area that is shown in P86?

A I did not.

Q Okay. I want to draw your attention to let's say

approximately 2:50 p.m. or before 3:00, did you have another interaction with the clerk magistrate in this lobby area?

A Yeah. At that time he told me that they were going to be releasing him. Bringing him back into lockup and releasing him into the, inside the courthouse, from the lockup area, and he was going to be walked up to us, up to the lobby area by court officers.

Q Right. So, after that you continued to wait in this lobby area, correct? I'm showing you P86; right?

A I did.

Q Did you then, a short time after, have an interaction with the assistant district attorney?

A While I was standing in the lobby the assistant district attorney walked out of the first session doors and approached me and said that she thought there was something funny going on. That it shouldn't have taken this long, basically, for him to come up. And that she got a weird look while she was in the courtroom from the defense attorney, a strange look, and she said in her words to me, she thought that he might be getting released out the back door.

Q Okay. What happened next, to the best of your recollection?

A To the best of my recollection, Domenico Federico --

Q Did the clerk magistrate at any time come to you and tell you that he is going to come out any second from that area that you recall?

A Oh, yes he did. Yes, he did.

He said "He should be brought up soon. He's in lockup, he was brought downstairs. He should be brought up soon."

Q And did there come a point around that time that a victim witness advocate that works as part of the courthouse got involved?

A Yes. The assistant district attorney, while she was out there explaining to me her concerns, had a young male who she identified as a victim witness advocate. She asked him to go down the stairs that Perez was supposed to be walked up, to go down to the lower level, or the basement area where the lockup was, and a few offices are down there, to see if she could see Perez, the subject. And shortly thereafter he returned and did not see, he claimed that he could not find any evidence that Perez was downstairs.

Q At that time do you recall whether or not Domenico Federico was with you?

A Domenico Federico was with me at that time and when the concerns about the subject being released out the back door came to light, he walked out of the courtroom and on foot, around the back of the building, along the side

where he subsequently encountered a court officer standing outside talking to a couple of other sheriff's deputies sitting in the transport area.

Q And that is what officer Federico told you, right?

A Yes.

Q And as a result of Mr.Peguero being released out the back door, and you not being aware that Mr.Medina Perez a.k.a. Peguero was released out the back door, were you able to take custody of Mr.Medina Perez pursuant to this detainer?

A That day?

Q Correct.

A No, not that day.

Q I'm going to just excuse you briefly, Officer, I want to check with the grand jurors to see if they have any questions.

(Whereupon, at 12:45 p.m. the witness left the grand jury room.)

(Whereupon, at 12:49 p.m. the witness returned to the grand jury room.)

BY MR. CHAO:

Q Officer Simmons, I'd remind you that you're still under oath.

A Yes, sir.

Q One of the grand jurors has a question. Do you

recall what, if any, conversations you had after you learned that Mr.Medina Perez was released out the back door? In other words, did you have a conversation with the clerk? What happened? Why did it happen? With the court officer, what happened?

A At that time the chief court officer actually appeared. I'm not sure where he was throughout the day.

Q Was that Scot Noe, N-O-E?

A I believe that is his name, yes. He was unavailable early in the morning but I met him for the first time some time after 3:00 when we found out the subject had been released. I asked him, "What happened?"

He said, "I don't know. He was released out the back door."

Q Did you have any interactions after you learned that Mr.Perez was released out the back door? Did you have any interactions with the clerk magistrate, if you recall?

A After that? May I refer --

Q Sure.

A At that time I don't -- I think the last time I spoke to the clerk magistrate was the last time he came out to say that the subject is in lockup and he should be up in a few minutes. I don't recall another conversation.

Q So, the conversation that you recall with Newton District Court personnel after you learned that Mr.Perez

was released was with that chief security officer?
A Yeah, the chief court officer, yes.
Q Do you recall when you were waiting outside in this lobby area shown in P86, do you recall whether or not you saw Officer Federico engage in any conversation with any individuals, if you recall?
A I don't recall.
Q Where was your attention focused when you were waiting outside this area after you were told to leave the courtroom?
A My attention was focused on the door to the court, and to the stairwell to the left, waiting for the subject to come up from lockup.
Q A member of the grand jury asked you, you had a, do you recall at a point in time you had a conversation with a male defense attorney for Mr.Perez where you were discussing with the male defense attorney the issue as to the identification of Mr.Perez; do you recall that?
A Yes, I do.
Q Okay. And then to support your position that Mr.Perez is the correct person, you took out your phone; correct?
A I did.
Q And you had a photo. What was that photo of?
A The photo was a picture of Perez, the subject,

that was in the locked secured area in the courtroom. It was a picture of that subject when he was deported from the United States, his prior removal.

Q Okay. And at some point after you showed that picture, the male defense attorney asked you for that photo; correct?

A He did.

Q Do you recall why you did not give him the photo at that time?

A It just wasn't, it is not something we do. We don't share photographs. We just don't share that information with a --

Q That document was not --

A At that point in time, no. If he wants to obtain that type of information there is a procedure called the Freedom of Information Act. When I'm there in the capacity of an immigration officer, that particular attorney, it was my belief that he was the criminal attorney for that subject, and if he doesn't have any sort of what we call a G28, a Notice of Attorney for an immigration case, then we really don't share that information.

Q So, those were government records, that photo, they were not part of what was sent to the Newton Police Department?

A That's correct.

Q And the final question from a member of the grand jury, did you have any concern as to public safety by having to affect a custodial transfer, an arrest in the lobby, of the Newton District Court?

A Yeah. There is a huge security issue, officer safety issue. It was an officer safety issue for myself. It was a safety issue for the security officer working behind the metal detector. The gentleman was of advanced age, he was probably in his sixties. I wasn't going to receive help from the Newton police. It is kind of a confined space and he had three individuals there that had been waiting for him all day that there was no way for me to control while affecting an arrest in the lobby.

MR. CHAO: Okay. Officer Simmons, if there are any further questions we may recall you at another time. But at this time we're going to conclude questioning. Thank you.

(Whereupon, at 12:54 p.m. the witness was excused.)

CERTIFICATE OF REPORTER

This is to certify that the attached proceeding before: A FEDERAL GRAND JURY in the Matter of:

UNITED STATES OF AMERICA
VS.
JOHN DOE

Place: Boston, Massachusetts
Date: December 20, 2018

were held as herein appears, and that this is the original transcript thereof.

Carol Summers
OFFICIAL REPORTER

A
a.k.a 8:2 32:8
a.m 20:7
able 13:5 21:5,6 32:8
accomplished 11:25
act 4:1,19 5:3 11:5 35:16
Action 6:14 7:14 10:8
add 10:21
addition 23:24
address 6:22
administrative 4:17,18
administrativ... 5:2
admit 6:4
advanced 36:8
advocate 31:9 31:13
affect 36:3
afternoon 3:5,6 19:24 20:2 24:18 27:10 28:3,4
age 36:8
agencies 7:5
agency 4:12 6:15
airline 11:11,11
airport 10:24 11:12,16
alien 8:15,17 9:6 9:14,23 11:3 11:18,18 12:1
alien's 9:9
aliens 4:4 10:25
alleged 11:18
allow 28:14
allows 19:9
Alright 15:25 21:8 22:2
amenability 5:4
amenable 4:5 5:3
AMERICA 1:6 37:6
anyway 21:2
APPEARANCE 1:22
appeared 33:7
appears 37:15
approached 19:15 21:17 22:17,21 30:15
approximately 3:18 14:2,4 20:7 21:9 22:6 24:18 29:19 30:1
April 12:6 13:7 13:25 14:19 16:12 17:8 19:22
area 4:2,3 16:1,9 16:22 17:3,14 17:19,19,23 20:5 24:3,4,5 25:5,6,22,22 26:9 27:6 28:13 29:2,4 29:10,13,14,23 30:2,6,7,9 31:3 31:16 32:3 34:4,9 35:1
areas 12:22
arrest 4:18 5:1 5:23 6:1 7:17 12:23 36:3,13
arrested 7:4 10:7
arrive 14:3
arrived 14:15,18
asked 18:9,18 21:17 23:14,20 24:6,12 25:7 25:12,14,15 26:18 31:14 33:12 34:14 35:5
assigned 12:9,12 12:15
assist 29:18
assistance 28:15
assistant 1:22 16:15 20:21,24 21:3 24:8,11 24:20 30:12,13 31:11
associated 8:10 27:2
ate 20:15
attached 9:17 37:2
attention 11:23 12:6 20:20 21:8 22:5 24:17 29:25 34:8,11
attorney 1:3 5:8 16:15 20:21,22 20:24 21:1,3,4 21:10,15 22:3 22:16,17,18,19 22:19,22 23:10 23:17 24:9,10 24:11,19 27:10 27:12,13,15,24 28:8 30:12,14 30:19 31:11 34:16,17 35:5 35:17,18,20
Attorney's 24:16
attorneys 1:22 5:10 16:14,14
audience 16:6 25:17
available 15:1 29:18
aware 20:24 23:11 27:1 28:4 32:7

B
back 8:25 20:13 20:15 22:15 25:4,6 27:4 28:23 29:1,12 29:14 30:4,20 31:24,25 32:7 32:8 33:2,14 33:16
backup 28:16 29:16
badge 13:18,19 13:20,21 14:24 15:8 18:8
based 5:4 6:21 8:8,23 9:25 10:10,12 27:22
basement 31:15
basically 10:19 20:2 30:17
basis 5:17
began 27:16
belief 23:17 35:18
believe 18:3,13 33:9
believed 27:2 28:6
belt 13:16,19,21
bench 16:4,10 16:17,21 17:11 22:15
best 16:12 20:5 21:14 30:22,24
biographical 8:6
biometric 8:16 9:8 23:6
biometrics 7:12 21:23 23:22
birth 8:6 10:1
bit 22:16
book 7:5
booked 7:4 10:22 23:3
born 7:8
Boston 1:13 3:20,21,21 37:12
break 19:2 20:2 20:18 21:9 22:6,8
briefly 4:23 21:13 32:14
bring 17:3 29:1 29:8
Bringing 30:4
broke 12:22 20:11
brought 12:3 16:23,24 31:5 31:6,6
building 31:25
bunch 10:25
Burlington 3:14 3:19,22

C
C 1:23 2:3 3:1,3 3:9
C- 3:9
California 6:25
call 35:19
called 5:23 26:22,22 27:7 27:8 29:20 35:15
calls 12:15
capacity 35:16
car 14:16 20:16 20:17
career 5:25
Carol 37:19
carries 5:16
case 1:7 5:8 8:1 17:12 21:6 23:8 27:7 28:2 28:3,4,24 35:20
cases 5:10 27:24
cause 7:13
center 6:25 7:10 9:3,19
certain 21:24

23:7,22
CERTIFICA... 37:1
certify 37:2
chamber 25:5
changed 28:25
Chao 1:22 2:4 3:4 6:8 32:21 36:14
charge 5:1
charges 4:19
charging 4:18
charter 10:24
check 32:15
chief 5:9 14:25 15:11 33:6 34:1,2
CHRISTINE 1:22
citizenship 10:1
City 14:5
claimed 31:18
clerk 16:16 20:21 24:22,23 24:24 25:20,20 26:1,3 28:10 28:11,17 29:22 30:2 31:1 33:3 33:17,21
clients 27:24
close 19:15 20:25
clothes 13:9
come 20:13 22:18 26:24,25 27:23 30:17 31:1,2,8 34:13
comfortable 26:4
committed 4:5
common 21:2
Commonwealth 19:9
compares 7:6
comparing 8:5
comparison 8:7
8:8
completed 11:17
comply 25:18
concealed 13:16
concern 36:2
concerned 21:19 22:24 23:2,6
concerns 28:8 29:15 31:12,23
conclude 36:16
conduct 5:1
conference 27:17
confined 36:10
confirm 24:6
confirmation 9:8
confirmed 21:23 23:17
confirms 8:4
conjunction 10:7
contact 18:7 19:2 28:7
contacted 29:16
continued 30:8
control 36:12
conversation 22:23 23:20 24:8,21 25:3 25:25 33:3,23 33:24 34:5,15
conversations 24:19 33:1
converted 13:20
convictions 5:4
cooperative 11:3
copies 21:3
copy 13:3,6 21:1 24:7,7 25:9,10
corner 6:22
correct 4:8,9,11 7:18,19,22,23 8:2,3 9:7,11,23 10:2,15,17
11:6,11,19 12:4,5 14:6 15:3 20:4 22:3 26:11,18 29:5 30:9 32:12 34:21,22 35:6 35:25
correctional 6:16
correctly 12:14
Counsel 5:9
country 4:5 8:20 10:20 11:13
County 4:3 12:21
couple 10:9 27:20 32:2
court 5:25 6:16 13:2 14:1,3,14 14:25 15:11,16 16:6,23,25 17:8,16,18,21 18:24 19:2,12 19:22 21:2 24:24 25:6 26:7 27:3,4,8 28:9,10,12 29:11 30:7 32:1 33:4,6,25 34:2,11 36:4
courthouse 1:12 1:13 14:21 15:3 16:2 20:15,19 29:2 29:3,9 30:5 31:9
courtroom 15:18,19,23 16:11,13 17:7 18:6 20:11 22:8,10 25:5 25:12,14,15,19 26:2 27:1,23 28:1,3 29:5,6 29:22 30:18 31:24 34:10
35:1
courts 12:16 16:16 19:9 26:24
covered 13:16 13:23
credentials 13:22 14:24 15:8 18:8
crime 4:5
criminal 4:4 5:4 24:15 35:18
current 3:15 5:5
currently 3:11
custodial 36:3
custody 6:17 9:15 11:8,8 12:1,1 15:11 19:4,5 21:20 26:6 32:9
Custom 4:10
Customs 3:13 7:9 15:9
cut 26:23

D

D 2:1 3:1
DA 24:20
date 10:1 12:7 13:24 37:13
dates 8:6
day 12:10,12,20 15:24 24:12 27:4 32:11,13 33:7 36:12
deal 4:16
dealing 22:2
December 1:15 37:13
defendants 16:23
defense 5:8 16:14 20:22 21:4,10,15 22:3,16,17,18 22:19 23:10,17
24:10,19 27:10 27:12,13,15,24 28:8 30:18 34:16,17 35:5
deny 24:6
department 1:2 3:12 4:8 6:23 7:4,15,18,20 7:25 9:4 10:11 35:24
departments 12:17
departure 11:10 11:14
depending 13:11
deportation 3:16,17 4:1,6,7 5:3 8:19,22 10:5 24:16
deported 35:2
deputies 32:2
describe 5:15
DESCRIPTI... 2:5
descriptors 22:24 23:2,5 23:21
designated 10:13
detainer 6:2,13 6:19,21,24 7:3 7:14,16 9:21 10:8 13:4 18:17,20 20:24 21:1,6 32:10
detector 14:22 15:3 16:1 36:8
determination 5:12 20:23
determine 7:12 21:5
determined 7:24 8:15 26:4
determines 5:7
determining

26:4
DHS 4:15 5:16 9:13,22,25 10:10
different 6:20 27:20
directly 11:23 17:11 24:25
discover 22:19
discussing 34:17
district 1:4 14:3 16:15 17:8 20:21,24 21:3 24:9,11 28:9 30:12,14 31:11 33:25 36:4
dock 16:22 17:19,23
document 6:11 10:6,21 11:17 35:13
documents 12:24 13:1,4 21:2,7
DOE 1:9 37:8
doing 10:9
Domenico 29:18 30:24 31:20,22
door 14:14,17 15:6,7,8,16 27:19 30:21 31:24 32:7,8 33:2,14,16 34:11
doors 15:15 16:3 26:8,13,15,17 28:19 30:14
downstairs 29:1 29:2,10 31:6 31:19
draw 11:23 12:6 20:20 21:8 22:5 24:17 29:25
dressed 13:8,9
drive-through 20:14
DUSTIN 1:22
duty 12:15,18 12:19

E

E 2:1 3:1,1
early 33:10
easier 19:21
eating 20:17
effected 8:19
either 11:10 22:14
electronic 13:3
electronically 23:25
eligible 5:13
employee 4:7
encounter 14:22
encountered 32:1
ended 29:17
ends 21:4
enforce 3:25
enforcement 3:13,24 4:10 5:19 6:15,25 7:9,10 9:3,19 14:23 15:10 16:5
engage 34:5
enter 11:2 14:21 15:18
entered 16:2,11 17:7
Entering 15:2
entire 20:6 27:4 27:4 28:1
entryway 26:17
equipment 13:13
escorted 10:24 11:13 25:20
event 6:21
everybody 19:8
evidence 14:11 31:19
exactly 18:25 26:17
Examination 2:4 3:4
examine 7:11
exchanged 24:12
excuse 32:14
excused 36:19
executed 10:21
Exhibit 6:4,6,10 6:19 7:16 9:1 10:4 15:2,13
EXHIBITS 2:5
experience 23:3
explained 23:1 24:14 26:3,18 28:21
explaining 31:12
express 28:8
expressed 28:11 28:13
eye 18:7

F

facial 8:5
facility 6:16 10:23
facing 26:17
fair 7:17 9:1 16:7 19:23
familiar 4:20 6:2,9,11
far 24:13
fax 18:22
FBI 7:6,6,21 8:3 8:7
federal 1:12 4:12 37:3
Federico 29:18 30:24 31:21,22 32:4 34:5
female 21:10,15 22:2
field 3:20,21 13:3
figure 21:20
final 9:5 10:13 36:1
find 31:19
fingerprint 7:25 8:7,8,9,9,16 10:11
fingerprints 7:5 7:12,20,24 8:4 21:23 23:7
firearm 13:13 13:15
first 6:10 15:15 15:23 18:2,15 24:11 26:14 28:20,21 29:6 30:14 33:10
fist 17:7
fitting 13:10
flight 10:25 11:1
focused 34:8,11
follow 17:9
following 10:16
foot 31:25
foreign 7:8
form 2:6 6:11 8:18,25 9:1
forth 22:16
forwarded 7:21 7:21
found 33:11
Freedom 35:16
front 5:11 14:14 14:17 15:16,17 17:14 20:19 22:14 25:1
fugitive 3:14 4:2 8:21 12:12
fugitives 4:3,4
full 3:7
funny 30:16
further 25:25 36:15

G

G 3:1
G28 35:20
garments 13:17 13:24
general 17:18
generally 13:24 16:7,9 25:23
generate 7:7
generated 6:19 6:20,24 10:6
gentleman 15:7 36:8
gentlemen 27:3
getting 8:25 30:20
give 24:7 25:9 28:15 35:8
glass 16:22 17:19,23 19:12 19:13 24:4,5 27:19
go 4:3 12:24 14:8 16:2 20:10 22:7 31:14,15
goes 10:23
going 6:4 7:1 14:11 15:13 17:1 24:14 28:12,18,25 29:1,8 30:4,6 30:16 31:2 32:14 36:9,16
Good 3:5,6
government 35:22
grand 1:12 4:23 6:4,6,9,12 14:12 16:1 17:5 32:15,18 32:20,25 34:14 36:1 37:3
great 19:19
ground 11:12

guess 23:5 25:4 29:16
guy 18:9,11,12 18:18

H

hallway 25:21 25:22 28:22
hand 6:22
handcuffs 13:14 13:15
happen 19:10 33:4
happened 7:3 14:19 20:9 30:22 33:4,5 33:12
happens 14:24
hardcopy 13:5
head 19:1
height 23:4
held 37:15
help 26:24 36:9
helpful 26:20
hold 6:17
Homeland 3:12 4:8 6:23
hour 20:7,9
hours 9:14
huge 36:5

I

I-205 8:18
I-247 2:6 6:11
ICE 4:15 5:16 7:9,21,24 8:1 9:22,25 10:10 11:8 20:24 21:17 23:11,14 25:7,16
ICE/DHS 5:21
identification 34:18
identified 15:5 31:13
identifiers 9:22
identify 14:24 19:2 21:24
identifying 22:21
identity 9:9 23:8
immediately 14:21 15:17 16:4,18 18:9
immigrant 9:22
immigration 3:13,25,25 4:3 4:10,19,25 5:2 5:6,7,11,11,25 6:2,13,19 7:9 8:11,18,23 9:18 15:9 18:17 24:13 35:17,20
incarcerated 16:22
index 10:22
indicate 18:16
indicating 17:14
individual 12:23
individuals 27:11,16 34:6 36:11
information 8:6 11:2 35:12,15 35:16,21
initially 22:3
inside 20:16 28:9 30:5
instance 8:13
instructed 25:12
instructions 10:17,19
interaction 18:4 18:24 21:14 30:2,12
interactions 17:25 20:20 33:15,17
interest 7:8
intimidating 25:16
introduce 19:3
introduced 18:7
investigation 5:1
involved 4:15 5:20,22 17:12 28:5 31:10
issue 8:22 34:17 36:5,6,6,7
issued 8:18
issues 26:19

J

jacket 13:11
jail 6:16
Jason 18:3,4,16
jeans 13:10
JOHN 1:9 37:8
Jose 8:2,14 10:12 21:10 22:20
judge 5:7,11,11 8:24 16:16 25:1,11,14,16
judge's 25:5
jurors 16:1 32:15,25
jury 1:12 4:23 6:4,6,10,12 14:12 17:5 32:18,20 34:14 36:2 37:3
JUSTICE 1:2

K

kind 4:14 5:13 14:18 36:10
know 18:19 23:13 27:23,23 28:24 33:13
knowledge 27:22
known 4:20 6:2 8:1,1,14 9:22

L

Laguna 6:25 7:2 7:11 9:20
large 4:4
law 6:15 14:23 16:5
laws 3:25
learned 33:1,15 33:25
leave 5:14 11:16 25:12,13,15 29:22 34:9
left 6:22 16:4 17:15 20:11 22:15 28:22 32:17 34:12
legally 4:5
lend 28:16
let's 6:1 24:18 29:25
level 31:15
light 31:24
litigate 5:10
little 22:16
lobby 26:9 28:13 29:4,12,14,23 30:2,7,9,13 34:4 36:3,13
local 12:17 13:1
located 3:21
locked 24:3 35:1
lockup 16:24 17:4 19:5,7,21 26:20 29:2,9 30:4,6 31:6,16 33:22 34:13
lodged 7:14
long 3:17 30:16
look 30:18,19
looked 24:5
looking 6:13 23:23 24:13 26:7
looks 15:23
loose 13:10 26:23
lot 12:20 19:7
lower 31:15
lunch 20:2,7,9 20:11,12,13,14 20:18 21:9 22:6,8

M

magazines 13:15
magistrate 20:22 24:23 25:20 26:1 28:17 29:22 30:2 31:1 33:17,21
male 22:16,18 22:19,21 23:10 23:16 24:19 27:10,12,13,15 27:24 31:13 34:16,17 35:5
males 28:6
manor 11:1
March 8:13
marked 6:7
Massachusetts 1:4,13 37:12
match 7:7,12 8:4,16,16 23:7 24:5
matched 7:25
matches 7:13
matching 8:8 22:25
Matter 37:4
McDonald's 20:15
measuring 23:4
medal 16:1
Medina 8:2,14 10:12 21:11 22:20
meeting 27:16 27:18,20
meetings 27:11
member 34:14

36:1
members 26:23 29:17
memorandum 19:8
mentions 18:14
met 33:10
metal 14:22 15:3 36:8
Middlesex 12:22
minds 28:25
minutes 24:18 28:23 29:19 33:23
morning 14:4 18:23 19:23 20:1,6 27:4,8 28:2 33:10
moved 3:22 22:15
Mr.Medina 22:3 32:7,9 33:2
Mr.Peguero 32:6
Mr.Perez 21:15 23:10,18 24:20 26:10,12 27:2 27:13,15,25 28:7,18 33:16 33:25 34:16,18 34:21

N

N 2:1 3:1
N-O-E 33:8
name 3:7 15:9 18:2,11,12,13 18:16 33:9
names 8:6
national 7:8
Nationality 4:1 4:19 5:2
nature 4:17
neck 13:20
needed 12:17 15:11
never 5:22,24 27:6
new 22:19
Newton 7:4,17 7:20,25 8:9 9:4 10:7,11 12:23 12:24 14:3,5 17:7,11,13,21 18:1,15 28:9 28:14 33:24 35:23 36:4,10
Niguel 6:25 7:2 7:11 9:20
Noe 33:8
normally 5:16
Notice 6:13 7:14 10:8 35:20
notification 7:9
notified 9:13
notifying 9:5
nowadays 23:4
number 6:21

O

O 3:1
oath 32:23
observe 20:25 21:1
obtain 35:14
office 1:3 3:14 3:19,20,21 5:9 13:5 24:16 26:22 27:18
officer 3:5,11,16 3:17,24 4:1,7 5:19 9:18 11:2 11:10 12:7 14:22,25 15:12 17:5,11,13,16 17:18,22,23 18:1,7,15,24 19:2,6,12 26:19,25 28:10 28:14 32:1,4 32:14,22 33:4 33:6 34:1,2,5 35:17 36:5,6,7 36:14
officers 12:21 16:5 29:11 30:7
offices 31:16
official 10:13 37:20
Oh 31:4
Okay 7:1 8:25 11:17 12:24 15:2 19:14 21:13 22:10,13 29:5,12,25 30:22 34:20 35:4 36:14
once 21:2 29:17
ones 5:10
operation 4:2
operations 3:13 3:14 4:2 12:13
opinion 21:21
option 29:6
order 8:23 9:5 10:13
original 37:15
Oscar 8:2
outcome 5:7
outer 13:23
outside 19:12,13 28:19 32:2 34:3,9
overhead 21:5

P

P 3:1
p.m 3:2 21:9 30:1 32:17,19 36:18
P17 15:21,22 22:11
P4 15:2
P8 17:1,15,23
P86 25:23 29:23 30:9 34:4
P88 15:13,19 28:19
P9 16:20 25:1
P91 14:12,13
Pacific 6:24 7:10 9:1,19
page 2:2,5 6:10 9:21 10:3,16
paper 13:5
paperwork 18:17,21
parked 14:15
part 4:1,1 12:19 18:23 19:22 31:9 35:23
particular 6:21 6:24 7:16 10:6 12:10,12,14,20 13:8,25 35:17
partner 14:9
pass 14:23
Peguero 8:2 32:8
Pennsylvania 21:21,25 23:1 26:5
people 4:4 5:2 7:5 16:24 17:3 23:3 27:1
PERC 7:2
percent 23:22
Perez 8:2,14 10:12 18:13,14 21:11 22:3,20 22:22 28:4 31:14,17,19 32:7,9 33:2 34:25
person 6:17 8:14 10:10 11:8,9 11:12,14 21:22 21:24,25 22:25 23:18,22 24:25 26:7 34:21
personnel 33:25
phone 12:15 23:25 34:21
photo 15:21 34:24,24,25 35:5,8,22
photograph 10:21 23:24
photographed 11:9
photographs 8:5 35:11
physical 22:24 23:2,5,21
physically 5:24
picked 20:14
picture 14:12 16:8,19 17:2,6 24:2 34:25 35:2,5
Place 37:12
placed 11:15
plain 13:9
plane 10:23 11:15,15
please 3:7
plus 16:14
point 5:24 19:15 21:16 23:16 26:25 31:8 34:15 35:4,14
police 7:4,15,18 7:20,25 9:4 10:7,11 12:17 13:2 17:11,12 17:13,21 18:1 18:15 28:14 35:23 36:10
policies 28:14
policy 19:8
position 3:15 34:20
possible 9:14 15:12 19:4
potentially 6:16 10:24
present 14:24
presented 24:15
presenting

12:25 18:8
previously 8:17 22:1
print 10:22
printed 11:9
prior 8:23 24:1 35:3
probably 36:9
problem 19:20
procedure 35:15
proceeded 16:3
proceeding 4:21 4:24,25,25 5:15,16 11:6 11:21,25 37:2
proceedings 4:14,16 5:6,20 8:11 19:22 24:14
process 5:23 6:1
processing 23:8
prosecution 5:8 24:15,15
public 36:2
pursuant 32:9
put 6:4 10:24 27:9

Q

question 11:24 32:25 36:1
questioning 36:16
questions 32:16 36:15

R

R 3:1
R-I-C-H-A-R-D 3:9
rail 19:15,16
railing 17:9
rarely 23:3
really 27:9 35:21
reasons 19:6
recall 12:11,14 14:15 17:6 18:1,5,23 19:11,17 21:10 23:16 31:3,20 33:1,17,23,24 34:3,4,6,7,15 34:18 35:8 36:15
receive 36:9
received 18:22
receiving 12:15
recess 19:1
recognize 14:12 15:14,21 16:20 17:1
recollection 16:12 20:6 21:14 28:17 30:23,24
record 3:8 7:13
records 8:5 9:25 10:10 35:22
reentered 22:8 22:10
reentry 24:16
refer 33:18
referred 26:13
referring 26:10 27:12
regarding 12:16
regular 5:17
relation 17:6
release 28:12,25 29:2,5,9
released 9:14 19:4 26:6,7,10 28:18,19,21 30:20 31:23 32:6,8 33:2,12 33:13,16 34:1
releasing 30:4,5
relief 5:13
remember 18:13,25
remind 32:22
removal 3:13 4:6,21,24,25 5:3,15,20 6:25 7:10 8:10,11 8:19,22,23 9:5 10:5,12,17 11:6,20,25 13:4 23:8,19 35:3
removed 5:14 8:17,20 10:20 11:1,18 12:4 22:1 23:9 24:1
REPORTER 37:1,20
representing 22:20
request 6:15 9:11,12,13 19:11,17
responded 12:23 29:19
responding 12:16
response 19:18
responsibilities 3:23
result 32:6
returned 31:18 32:19
Richard 1:23 2:3 3:3,9
right 7:2 10:21 16:8,10,23 17:10 22:9 27:17,18,19 29:7,14 30:8,9 32:4
right-hand 6:22
role 12:18,19
room 15:16,16 27:17 32:18,20

S

S 3:1
S-I-M-M-O-N-S 3:10
safer 19:7
safety 19:6 26:19 36:2,6,6 36:7
sat 18:6 27:7
saw 34:5
says 6:23
Scot 33:8
seated 17:7 24:25
second 9:21 31:2
secure 17:3
secured 35:1
security 3:12 4:8 6:23 14:22 15:6,7,19 27:18 28:8 29:15 34:1 36:5,7
see 21:6 26:23 27:19 31:17,17 31:18 32:15
send 10:8 21:2
sent 7:6,10 9:4 13:1,2 23:24 35:23
separated 20:1
session 15:15,23 19:23,24 20:1 20:2,6 24:18 26:14 27:10 28:2,3 30:14
share 35:11,11 35:21
sheriff's 32:2
shirt 13:10
short 19:1 30:11
shorthanded 19:20
shortly 18:25 25:11 29:19 31:17
show 7:1 10:3 14:11 15:13 17:1
showed 15:8 35:4
showing 15:2,19 15:21 22:11,11 23:16 30:9
shown 6:18 17:23 25:1,23 28:19 29:23 34:4
side 16:8 31:25
sign 11:3
signed 9:17 10:13
signify 11:20
signs 11:2,9,10
Simmons 1:23 2:3 3:3,5,9,10 3:11 12:7 17:5 17:23 26:25 32:22 36:14
sir 32:24
sit 16:5
sitting 15:24 16:18 17:10,16 22:14 27:3,5 27:22 28:2 32:3
situations 12:16
sixties 36:9
slowly 14:19
somebody 4:17 6:17 7:8 11:15 15:10
soon 15:16 31:5 31:7
sort 35:19
space 36:10
speak 15:11
speaking 13:24
spell 3:7
spoke 33:21
spread 12:21
stairs 29:3,10 31:14
stairwell 34:12
standing 19:12

start 7:18
started 27:10
state 3:7
States 1:2,3,6 5:5,14 8:17 22:1 23:9 24:1 35:3 37:6
stationed 18:24
status 5:5,5
stay 5:13 20:13
step 11:6
strange 30:19
Street 14:6
subject 5:12 7:3 8:1,10,14 10:6 10:12,20,22 19:4 21:10,20 21:22 22:25 23:18 24:2,2 24:13 26:5,5,6 28:12 29:1 31:17,23 33:11 33:22 34:12,25 35:2,19
subject's 21:24
subjects 23:8
submit 7:5
subsequently 32:1
Suffolk 4:3 12:21
Summers 37:19
support 34:20
supposed 31:14
sure 33:7,19
Sworn 3:3
system 7:7

T

take 6:17 19:4,5 20:9 32:9
taken 10:11 30:16
talk 6:1
talked 23:20 27:21
talking 21:6 32:2
tape 23:4
target 4:17
team 12:13 26:23 29:17
teams 12:21,22
tell 4:14,23 6:12 14:2 15:25 17:5,25 21:13 21:14 22:23 25:3,15,25 31:2
ten 24:18
testify 5:24
Thank 36:16
thereof 37:16
they'd 16:24
think 16:15,16 18:9,14 33:20
third 10:3
thought 28:5 30:15,20
three 27:3,16 28:6 36:11
Thursday 1:14
time 12:20 13:9 13:11 18:25 20:2 21:19 22:14 23:25 24:9,11 25:13 26:22 28:20,21 29:21 30:3,11 31:1,8,20,22 33:6,11,11,20 33:20,21 34:15 35:9,14 36:15 36:16
times 27:21
today 19:5
told 15:8 19:19 21:22 23:6,14 23:21 24:7 28:11,18 29:8 30:3 32:4 34:9
top 6:22 10:17 11:2 19:1
transcript 37:16
transfer 36:3
transport 32:3
trial 19:9
trouble 28:15
try 12:23
trying 21:19
two 13:19
type 35:15
types 5:20 12:16
typically 4:16,18 13:20 16:5

U

U.S 1:12,22 24:16
ultimate 11:5,5
ultimately 8:21 21:4
unavailable 33:10
understanding 9:15
uniform 13:8,10
United 1:2,3,6 5:5,14 8:17 22:1 23:9 24:1 35:3 37:6
unobstructed 17:22
untucked 13:11
upstairs 29:12
usually 12:13

V

vehicle 20:12
verified 11:14
verify 8:4
vest 13:12
victim 31:9,13
view 17:22
VS 1:7 37:7

W

wait 11:15 30:8
waiting 28:7 34:3,9,12 36:11
walk 6:18 14:19 15:16,25 16:19 26:8 29:3,10 29:12
walked 15:18,20 18:6 24:10 25:4,6,19,20 26:1,8 28:20 28:23 29:21 30:6,14 31:15 31:24
walking 27:5
wall 16:5,10 17:10,10 22:15
wallet 13:21
want 10:3 11:23 12:6 20:20 21:8 22:5 24:17 25:10,13 25:16 29:25 32:15
wanted 21:20,25 23:1 26:5
wants 35:14
warrant 8:19,22 10:5,8,16 13:4 18:19 23:19 25:8
Washington 14:6
wasn't 21:24 23:6 28:2 35:10 36:9
way 1:13 11:13 17:9 36:12
ways 6:20
we're 4:18 14:1 36:16
We've 10:8
wear 13:20
wearing 13:7
week 12:14
weird 30:17
went 14:10 16:1 16:3 20:12,12 20:16 27:21
weren't 23:2 26:4
WICHERS 1:22
window 17:14
witness 1:23 2:2 5:23 11:10 31:9,13 32:17 32:19 36:18
words 18:10 20:6 24:12 30:19 33:3
work 3:12 12:13 14:8
worked 3:17
working 3:11 12:7 36:7
works 31:9

X

X 2:1

Y

yeah 9:3 16:24 18:25 20:25 22:21 24:10 28:1 30:3 34:2 36:5
year 13:11
years 3:18 10:9
young 31:12

Z

0

1

1 1:1,13
1:30 22:6
100 23:22
12 3:18
12:07 3:2
12:30 20:3,7 21:9

12:45 32:17
12:49 32:19
12:54 36:18
1309 14:5

2

2:00 20:3 22:6,6 22:9
2:50 30:1
20 1:15 37:13
2007 3:18,21
2009 3:22
2018 1:15 8:13 12:7 13:7,25 14:20 16:12 19:23 37:13
25/30 29:19
2nd 12:6 13:7,25 14:19 16:12 19:22

3

3 2:4
3:00 30:1 33:11
30th 8:13
37 1:1

4

48 9:14

5

6

6 2:6

7

7th 17:8

8

8 2:6 6:5,6,10,19 7:17 9:1 10:4

9

9:30 14:4,18 16:11 20:7

APPENDIX R

I

1 - 14

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	
VS.	Case No.
JOHN DOE.	

Federal Grand Jury
U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts

Thursday
December 20, 2018

APPEARANCE: CHRISTINE WICHERS
Assistant U.S. Attorney

WITNESS: DOMENICO FEDERICO

I N D E X

WITNESS PAGE
Domenico Federico
Examination by Ms. Wichers 3
EXHIBITS DESCRIPTION PAGE
None

P R O C E E D I N G S

(10:30 a.m.)

DOMENICO FEDERICO, Sworn

EXAMINATION BY MS. WICHERS:

Q Good morning, sir.

A Good morning.

Q Would you state your name and spell it please?

A My name is Domenico Federico. It is D-O-M-E-N-I-C-O and Federico is F-E-D-E-R-I-C-O.

Q And I hear a slight accent; is English your first language?

A No.

Q What is your first language?

A Italian.

Q And I'd ask you to slow down, you're a fast speaker.

A Sure.

Q The grand jury is conducting an investigation of possible violations of federal criminal laws. You may refuse to answer any question if a truthful answer to the question would tend to incriminate you. Anything that you do say may be used against you by the grand jury or in a subsequent legal proceeding.

If you have retained counsel, the grand jury will permit you a reasonable opportunity to step outside the

grand jury room to consult with counsel if you so desire.
Do you understand these rights?
A Yes, I do.
Q And have you retained counsel for purposes of your testimony here today?
A No.
Q Where do you work, sir?
A I work for Homeland Security, Department of Homeland Security, Immigration and Customs Enforcement and more precisely with the Enforcement and Removal Operations.
Q Enforcement and Removal Operations?
A Operations, yes.
Q What is your job title?
A I'm a deportation officer.
Q How long have you been a deportation officer?
A I started in this position in 2006.
Q I'm sorry, 2006?
A 2006, yes.
Q What town are you based in, your work?
A Our office is located in Burlington, Massachusetts.
Q And what are you job responsibilities, generally?
A We enforce immigration laws and I'm assigned to a fugitive operation team.
Q Fugitive?

A Fugitive Operation Team.
Q What does that mean?
A Like I said, we enforce immigration laws, we locate and apprehend criminal aliens in different ways.
Q Did you go to the Newton courthouse in Newton Massachusetts on April 2nd in your official capacity?
A Yes, I did.
Q Why did you do that?
A On that day I was asked by my first line supervisor to assist Officer Simmons at that particular address and so I grabbed my gear and my vehicle and proceeded to go there.
Q And what did you do when you arrived there?
A I arrived in the afternoon about 2:51 and checked in with the security officer at the court, in the entrance, the main entrance. I showed my I.D., my credentials, I identified myself and I told him I was on official business and I proceeded to meet with Officer Simmons.
Q And did you I.D. yourself at the front, where the magnetometer is, as an ICE agent?
A That is correct.
Q Were you in plain clothes?
A Civilian clothes, yes, plain.
Q You went to the main front entrance at the courthouse?

A That is correct.
Q So you walked through the security and you saw Officer Simmons?
A Yes, I did.
Q And this is in the front lobby area?
A Yes. It is a small area. He was right in the front, in the lobby, in front of the courtroom.
Q What happened after you saw Officer Simmons?
A I met with Officer Simmons. I asked him about the case, what was going on with the case, and he had told me that the subject was going to be released and he was downstairs in lockup and we were just waiting for him to come up.
Q Okay.
A And we just waited there in the lobby area.
Q And what was the name of the subject?
A Peguero.
Q Do you remember his first name?
A Oscar.
Q Oscar Peguero?
A Yes, I believe so.
Q And he was an alien or an immigrant who had been in Newton Court that day for a court proceeding?
A That is correct.
Q So, did you join Officer Simmons in waiting in the

lobby area for Mr.Peguero to come up from lockup?
A That is correct.
Q And where did you understand he was going to come up from, or, how he was going to come to the lobby?
A Lockup is downstairs in the building. There was a set of stairways that were leading down, I believe to the first floor, I believe the basement, whatever it was. So, we were waiting in the lobby where supposedly he was going to be coming up.
Q It was your understanding he was going to come up from lockup, up that set of stairs, into the lobby?
A Correct. That is correct.
Q Now, as you and Officer Simmons were standing in the lobby did anyone approach you?
A Yes. The ADA, the Assistant District Attorney, she seemed to be familiar with the case and she met us in the lobby, and she was just talking to us.
Q Did she know why you were waiting, or did you tell her why you were waiting?
A She was aware of the case and she was aware that we were there waiting for Mr.Peguero to come up.
Q Did she say anything about it taking a long time?
A She did. She thought it was taking a long time. And while we were there, a male employee from the court told us that it was going to take a few minutes or so for the

subject to come up. An additional --
Q Could you -- sorry, go-ahead.
A An additional few minutes for him to come up.
Q Up to ten minutes you said?
A Yeah, from lockup, correct.
Q Could you describe this male employee?
A Yes. He was about 5' 8", 150, male, dark hair.
Q And what happened after the ADA said that it seemed to be taking a long time and after this male employee approached you?
A Actually, the ADA, she asked an employee of the court to also go downstairs and check to see what was taking so long.
Q This is a different employee from the man you were just describing?
A That is correct.
Q And what happened then?
A The male employee went downstairs to the lockup. Within a few minutes he came up, he said, "I don't see Mr.Peguero in the lockup area. I doubt that he got released, but I don't see him."
Q Did he say anything else about why he doubted he got released?
A He just stated, "I don't believe that the court officer would have released him."

Q Released him out the back of the courthouse?
A Yes.
Q Did the ADA say anything about that?
A She also made a statement, like a similar statement, "I don't believe they would do that, release him from the back."
Q What did you do next?
A At this point I was kind of suspicious and I told Officer Simmons I was going to the rear of the building where the lockup was, so, I did that. I just walked to the rear of the building.
Q And what did you discover there?
A I remember going to the parking lot, I went to the back. There was a sallyport area. I saw this court officer talking to the Sheriff's department, I can't remember which Sheriff's department.
Q Let me stop you. You saw a sallyport?
A Yes.
Q Was there a vehicle in the sallyport?
A Correct.
Q And you said that was a Sheriff's -- was that a Sheriff's vehicle?
A Sheriff's Department, yes. Definitely.
Q And aside from the vehicle, was there any person down there?

A Yes, a court officer with a white shirt.
Q And did you talk to that court officer?
A Yes, I did.
Q Tell us about that.
A I identified myself as a deportation officer. I showed him my credentials. I explained to him that we were upstairs waiting for Mr.Peguero to be brought up to the lobby but he just told me that he released Mr.Peguero from the back of the -- from downstairs in the lockup.
Q The court officer said this?
A Yes.
Q And how was his tone, how would you describe his tone?
A He was pretty sarcastic almost like proud of it.
Q Did he say anything other than the fact that he had released Mr.Peguero?
A I asked why he did so knowing that we were there, we had the detainer, a warrant of arrest and also we were there all day and he said, "I just let him go."
Q I'm sorry, he said?
A He said, "I just let him go from the back."
Q Did he deny knowing that there was one or more ICE agents in the courthouse?
A He didn't say that.
Q Did he deny knowing that there was an ICE detainer

or an immigration detainer for this man?
A He did not say anything about that either.
Q Alright. I'm going to ask you to step outside for a moment, please?
A Sure.
Q Oh, actually, I'm going to ask you one more question.
A Sure.
Q After you spoke with this court officer, what did you do next?
A I informed Officer Simmons of what happened and we just left.
Q Did ICE take custody of Oscar Peguero that day?
A No.
Q Did ICE take custody of Mr.Peguero on a later day?
A Yes.
Q And roughly how much time passed from April 2, until that day?
A It could have been a few week, I'm not 100 percent sure. I did not make the arrest.
Q You did not make the arrest?
A No.
Q Alright. If you would step out just for a moment please?

A Sure.

(Whereupon, the witness left the grand jury room briefly.)

BY MS. WICHERS:

Q Officer Federico, the grand jury has a couple more questions for you which I will ask you. One question is, was it your expectation, arriving there that day, that Oscar Peguero would be released to your custody, your or Mr.Simmons' custody?

A Yes.

Q The other question is, when you were down by the sallyport, you said you saw a Sheriff's van; correct?

A Correct.

Q And a court officer whose name you do not know?

A Correct.

Q Did you see any people in the Sheriff's van?

A I recall seeing, on the passenger side, there was a Sheriff's Department officer.

Q And did you hear anybody in the Sheriff's van say anything?

A No.

Q Could you step outside?

(Whereupon, the witness left the grand jury room briefly.)

BY MS. WICHERS:

Q Officer Federico, the grand jurors would like to know if you could explain a little bit more why you described the court officer's tone as sarcastic.

A He simply, when he said that Mr.Peguero left, he just had like a smirk, like a smart alec, and his tone was just like, you know.

Q You said he smirked at you?

A Yeah.

And the second time when he said, "Yeah, I let him go." He was pretty sarcastic about it, his attitude. That is the best I can describe it.

MS. WICHERS: Any other questions for this witness?

May the witness be excused?

(Whereupon, at 10:52 p.m. the witness was excused.)

CERTIFICATE OF REPORTER

This is to certify that the attached proceeding before: A FEDERAL GRAND JURY in the Matter of:

UNITED STATES OF AMERICA
VS.
JOHN DOE

Place: Boston, Massachusetts
Date: December 20, 2018

were held as herein appears, and that this is the original transcript thereof.

Carol Summers
OFFICIAL REPORTER

A
a.m 3:2
accent 3:10
ADA 7:15 8:8 8:11 9:3
additional 8:1,3
address 5:11
afternoon 5:14
agent 5:20
agents 10:23
alec 13:5
alien 6:22
aliens 5:4
Alright 11:3,24
AMERICA 1:6 14:6
answer 3:20,20
anybody 12:19
APPEARANCE 1:22
appears 14:15
apprehend 5:4
approach 7:14
approached 8:10
April 5:6 11:18
area 6:5,6,15 7:1 8:20 9:14
arrest 10:18 11:21,22
arrived 5:13,14
arriving 12:7
aside 9:24
asked 5:9 6:9 8:11 10:17
assigned 4:23
assist 5:10
Assistant 1:22 7:15
attached 14:2
attitude 13:10
Attorney 1:3,22 7:15
aware 7:20,20

B
back 9:1,6,14 10:9,21
based 4:19
basement 7:7
believe 6:21 7:6 7:7 8:24 9:5
best 13:11
bit 13:2
Boston 1:13 14:12
briefly 12:3,24
brought 10:7
building 7:5 9:9 9:11
Burlington 4:20
business 5:17

C
C 3:1
capacity 5:6
Carol 14:19
case 1:7 6:10,10 7:16,20
CERTIFICA... 14:1
certify 14:2
check 8:12
checked 5:14
CHRISTINE 1:22
Civilian 5:23
clothes 5:22,23
come 6:13 7:1,3 7:4,10,21 8:1,3
coming 7:9
conducting 3:18
consult 4:1
correct 5:21 6:1 6:24 7:2,12,12 8:5,16 9:20 12:12,13,15
counsel 3:24 4:1 4:4
couple 12:5
court 5:15 6:23 6:23 7:24 8:12 8:24 9:14 10:1 10:2,10 11:9 12:14 13:3
courthouse 1:12 1:13 5:5,25 9:1 10:23
courtroom 6:7
credentials 5:16 10:6
criminal 3:19 5:4
custody 11:13 11:15 12:8,9
Customs 4:9

D
D 2:1 3:1
D-O-M-E-N-I... 3:9
dark 8:7
Date 14:13
day 5:9 6:23 10:19 11:13,16 11:19 12:7
December 1:15 14:13
Definitely 9:23
deny 10:22,25
department 1:2 4:8 9:15,16,23 12:18
deportation 4:14,15 10:5
describe 8:6 10:12 13:11
described 13:3
describing 8:15
DESCRIPTI... 2:5
desire 4:1
detainer 10:18 10:25 11:1
different 5:4 8:14
discover 9:12
District 1:4 7:15
DOE 1:9 14:8
Domenico 1:23 2:3 3:3,8
doubt 8:20
doubted 8:22
downstairs 6:12 7:5 8:12,18 10:9

E
E 2:1 3:1,1
either 11:2
employee 7:24 8:6,9,11,14,18
enforce 4:23 5:3
Enforcement 4:9,10,11
English 3:10
entrance 5:15 5:16,24
Examination 2:4 3:4
excused 13:14 13:16
EXHIBITS 2:5
expectation 12:7
explain 13:2
explained 10:6

F
F-E-D-E-R-I-... 3:9
fact 10:15
familiar 7:16
fast 3:15
federal 1:12 3:19 14:3
Federico 1:23 2:3 3:3,8,9 12:5 13:1
first 3:10,13 5:9 6:18 7:7
floor 7:7
front 5:19,24 6:5,7,7
fugitive 4:24,25 5:1

G
G 3:1
gear 5:11
generally 4:22
go 5:5,12 8:12 10:19,21 13:10
go-ahead 8:2
going 6:10,11 7:3,4,8,10,25 9:9,13 11:3,6
Good 3:5,6
grabbed 5:11
grand 1:12 3:18 3:22,24 4:1 12:2,5,23 13:1 14:3

H
hair 8:7
happened 6:8 8:8,17 11:11
hear 3:10 12:19
held 14:15
Homeland 4:8,9

I
I.D 5:16,19
ICE 5:20 10:22 10:25 11:13,15
identified 5:17 10:5
immigrant 6:22
immigration 4:9 4:23 5:3 11:1
incriminate 3:21
informed 11:11
investigation 3:18
Italian 3:14

J
job 4:13,22
JOHN 1:9 14:8

join 6:25
jurors 13:1
jury 1:12 3:18 3:22,24 4:1 12:2,5,23 14:3
JUSTICE 1:2

K

kind 9:8
know 7:18 12:14 13:2,6
knowing 10:17 10:22,25

L

language 3:11 3:13
laws 3:19 4:23 5:3
leading 7:6
left 11:12 12:2 12:23 13:4
legal 3:23
line 5:9
little 13:2
lobby 6:5,7,15 7:1,4,8,11,14 7:17 10:8
locate 5:4
located 4:20
lockup 6:12 7:1 7:5,11 8:5,18 8:20 9:10 10:9
long 4:15 7:22 7:23 8:9,13
lot 9:13

M

magnetometer 5:20
main 5:16,24
male 7:24 8:6,7 8:9,18
man 8:14 11:1
Massachusetts 1:4,13 4:21 5:6 14:12
Matter 14:4
mean 5:2
meet 5:18
met 6:9 7:16
minutes 7:25 8:3 8:4,19
moment 11:4,24
morning 3:5,6
Mr.Peguero 7:1 7:21 8:20 10:7 10:8,16 11:15 13:4
Mr.Simmons' 12:9

N

N 2:1 3:1
name 3:7,8 6:16 6:18 12:14
Newton 5:5,5 6:23

O

O 3:1
office 1:3 4:20
officer 4:14,15 5:10,15,18 6:3 6:8,9,25 7:13 8:25 9:9,14 10:1,2,5,10 11:9,11 12:5 12:14,18 13:1
officer's 13:3
official 5:6,17 14:20
Oh 11:6
Okay 6:14
operation 4:24 5:1
Operations 4:10 4:11,12
opportunity 3:25
original 14:15
Oscar 6:19,20 11:13 12:7
outside 3:25 11:3 12:22

P

P 3:1
p.m 13:15
PAGE 2:2,5
parking 9:13
particular 5:10
passed 11:18
passenger 12:17
Peguero 6:17,20 11:13 12:8
people 12:16
percent 11:20
permit 3:25
person 9:24
Place 14:12
plain 5:22,23
please 3:7 11:4 11:25
point 9:8
position 4:16
possible 3:19
precisely 4:10
pretty 10:14 13:10
proceeded 5:12 5:18
proceeding 3:23 6:23 14:2
proud 10:14
purposes 4:4

Q

question 3:20,21 11:7 12:6,11
questions 12:6 13:12

R

R 3:1
rear 9:9,11
reasonable 3:25
recall 12:17
refuse 3:20
release 9:5
released 6:11 8:21,23,25 9:1 10:8,16 12:8
remember 6:18 9:13,15
Removal 4:10 4:11
REPORTER 14:1,20
responsibilities 4:22
retained 3:24 4:4
right 6:6
rights 4:2
room 4:1 12:2 12:23
roughly 11:18

S

S 3:1
sallyport 9:14 9:17,19 12:12
sarcastic 10:14 13:3,10
saw 6:2,8 9:14 9:17 12:12
second 13:9
security 4:8,9 5:15 6:2
see 8:12,19,21 12:16
seeing 12:17
set 7:6,11
Sheriff's 9:15,16 9:21,22,23 12:12,16,18,19
shirt 10:1
showed 5:16 10:6
side 12:17
similar 9:4
Simmons 5:10 5:18 6:3,8,9,25 7:13 9:9 11:11
simply 13:4
sir 3:5 4:7
slight 3:10
slow 3:15
small 6:6
smart 13:5
smirk 13:5
smirked 13:7
sorry 4:17 8:2 10:20
speaker 3:16
spell 3:7
spoke 11:9
stairs 7:11
stairways 7:6
standing 7:13
started 4:16
state 3:7
stated 8:24
statement 9:4,5
STATES 1:2,3,6 14:6
step 3:25 11:3 11:24 12:22
stop 9:17
subject 6:11,16 8:1
subsequent 3:23
Summers 14:19
supervisor 5:10
supposedly 7:8
sure 3:17 11:5,8 11:21 12:1
suspicious 9:8
Sworn 3:3

T

take 7:25 11:13 11:15
talk 10:2
talking 7:17 9:15
team 4:24 5:1
tell 7:18 10:4
ten 8:4

tend 3:21
testimony 4:5
thereof 14:16
thought 7:23
Thursday 1:14
time 7:22,23 8:9 11:18 13:9
title 4:13
today 4:5
told 5:17 6:10 7:24 9:8 10:8
tone 10:12,13 13:3,5
town 4:19
transcript 14:16
truthful 3:20

U

U.S 1:12,22
understand 4:2 7:3
understanding 7:10
UNITED 1:2,3,6 14:6
upstairs 10:7

V

van 12:12,16,19
vehicle 5:11 9:19,22,24
violations 3:19
VS 1:7 14:7

W

waited 6:15
waiting 6:12,25 7:8,18,19,21 10:7
walked 6:2 9:10
warrant 10:18
Way 1:13
ways 5:4
week 11:20
went 5:24 8:18 9:13
white 10:1
Wichers 1:22 2:4 3:4 12:4,25 13:12
witness 1:23 2:2 12:2,23 13:13 13:14,15
work 4:7,8,19

X

X 2:1

Y

Yeah 8:5 13:8,9

Z

0

1

1 1:1,13
10:30 3:2
10:52 13:15
100 11:20
14 1:1
150 8:7

2

2 11:18
2:51 5:14
20 1:15 14:13
2006 4:16,17,18
2018 1:15 14:13
2nd 5:6

3

3 2:4

4

5

5' 8:7

6

7

8

8 8:7

9

APPENDIX S

(1)

11/08/2018 @ 1112

Proffer session w/ AUSA Wickers, SA Skutnik Atty Robert Peabody and David Jellinek

- AUSA Wickers explained the proffer agreement to DJ.

- DJ 1st met Medina Perez the morning of the incident

- Communicated w/ MP thru interpreter.

- MP spoke some broken english

- Was called by MP's boss and was an retainer, bosses name is Pablo Oliva

- DJ was already in Newton District Court was not called by PO

- PO was going to pay for DJ's services

- DJ was aware of ICE presence after being retained and after reviewing the file for MP.

- AAA was Shannon Sugens.

- AAA + DJ had copy of ICE detainer.

- DJ had mtg w/ MP prior to afternoon court session.

- DJ 1st aware of ICE presence @ around 1030-1100

- DJ spoke to ICE agent prior to court proading

- Probation provided NCIC III to DJ and DJ reviewed it to discern identity for fugitive charge.

- DJ then spoke to MP, and went upstairs to and spoke to PO and was shown a Puerto Rican

birth cert for MP by PO.

- DJ was able to establish that MP was not the person wanted in PA.

- DJ believed there was a mistaken identity

- DJ was told by ICE agent there was a biometric match for MP. DJ was not convinced that MP was the individual in the NCIC III report. this occured @ approx 1200

- DJ spoke to MP and told him he'd be back after lunch break

- MP told DJ he was not the guy wanted by ICE or in PA.

- DJ Knew Court Officer Wes McGregor and thinks he's a good officer

- DS expressed to CO W McG that he didn't think MP was the guy wanted by ICE.

- Judge Mary Beth Hefferman is usual drug court judge, but not this time 4/2/10

- DS remebers other CO's but not names.

- DS was under the impression that defendants don't necessarily leave through the main entrance that people can leave through the lockup. DS believed this because defendants property is in the lockup.

- CO W McG may have told DS that defendant could leave out back.

- DS does not recall showing McG the detainer

- DS says W McG knew of detainer

- DJ doesn't know for sure that WMcG knew of detainer.

- DJ + ADA had side bar to establish that MP was not fugitive wanted in PA.

- DJ requested permission to speak to MP in lockup prior to his release.

- DJ was granted permission to speak to MP.

- DJ went down stairs w/ CO WMcG and later interpreter.

- DJ stated MP was being released and CO WMcG released MP out lockup door

- DJ informed MP that ICE was looking for him upstairs

- DJ heard W McG tell MP that ICE is waiting for MP.

- DJ cannot recall specifically hearing W McG mention the presence of ICE or having knowledge of ICE detainer

- DJ did show MP the ICE detainer.

- DJ stated discussed the fugitive warrant from PA and other charges w/ judge @ side bar

- DJ says he and judge discussed DJ speaking to MP in lockup because DJ thought MP could be released from lockup

- DJ suggested that MP be released through lockup.

- DJ never heard ICE agents be asked to leave the courtroom

- DJ did not request to have the sidebar be off the record. DJ does not remember who requested to off the record. DJ doesn't remember why they went off the record.

- DJ does not know why WMcG knew to let MP out the lockup door.

- DJ states that it is rare to have someone let out the lockup door. DJ has seen it happen a few times.

- DJ does not recall having a previous client leave thru the lockup.

- believes he was let out the back door to avoid encountering ICE agents. it was DJ intent to have MP leave out back door and avoid ICE

- DS states he knows W MeG is a recovering addict / alcoholic.

- meeting ended approx 1206.

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(2)

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11/27/2018 10:24 EST

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Proffer/interview of David Jellinek on 11-08-2018

REPORTED BY
Peter Skutnik
SPECIAL AGENT

APPROVED BY
Michael Krol
SPECIAL AGENT

DATE APPROVED
11/19/2018

SYNOPSIS

On Thursday, November 08, 2018, Assistant United States Attorney (AUSA) Christine Wichers interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. Prior to the interview Jellinek was offered a proffer letter by AUSA Wichers. AUSA Wichers explained the purpose and conditions of the proffer letter to Jellinek. Jellinek and his Attorney Robert Peabody willingly signed the proffer letter

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DETAILS OF INVESTIGATION

On Thursday, November 08, 2018, Assistant United States Attorney (AUSA) Christine Wichers interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. Prior to the interview Jellinek was offered a proffer letter by AUSA Wichers. AUSA Wichers explained the purpose and conditions of the proffer letter to Jellinek. Jellinek and his Attorney Robert Peabody willingly signed the proffer letter.

The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero aka Jose MEDINA-Perez whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

Jellinek stated the following in sum and substance:

Jellinek stated that he first met MEDINA-Perez the morning of MEDINA-Perez's court appearance. Jellinek stated that he communicated with MEDINA-Perez via a state employed Spanish speaking interpreter. Jellinek stated that MEDINA-Perez was also capable of communicating in some broken English.

Jellinek stated that he was contacted by Pablo Olivo, the boss of MEDINA-Perez, while at the Newton District Court the morning of MEDINA-Perez's court appearance. Jellinek stated that Olivo was going to pay Jellinek for his services for representing MEDINA-Perez.

Jellinek stated that he was aware that an ICE/ERO Officer was present at the Newton District Court after his services were retained and after Jellinek had a chance to review the court file for MEDINA-Perez.

Jellinek stated that the Assistant District Attorney representing the Commonwealth of Massachusetts in the criminal case against MEDINA-Perez was Shannon Jurgens. Jellinek stated that he and ADA Jurgens both had a copy of an ICE Detainer for MEDINA-Perez.

Jellinek stated that he had met with MEDINA-Perez prior to the afternoon court session. Jellinek stated that he first became aware of the presence an ICE/ERO Officer sometime around 10:30 AM.

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Jellinek stated that he did meet with an ICE/ERO Officer inside the courtroom to speak to him about MEDINA-Perez's identity and criminal history. Jellinek did not know the name of the ICE /ERO Officer that he spoke to.

Jellinek stated that he was provided a copy of the NCIC III criminal history report to review from a probation officer at the court. Jellinek stated that MEDINA-Perez had been charged with a fugitive warrant out of the state of Pennsylvania. Jellinek stated that the NCIC III report had several names and FBI numbers on it and it was difficult to determine whose true identity was associated with the NCIC report.

Jellinek stated that he did not believe that MEDINA-Perez was the same person that was wanted in Pennsylvania or the person wanted by ICE.

Jellinek stated that he was shown a Puerto Rican birth certificate by Pablo Olivo supposedly belonging to MEDINA-Perez.

Jellinek stated that he and ADA Jurgens had concluded that MEDINA-Perez was not the same individual wanted in Pennsylvania after Pennsylvania faxed over a photo of the fugitive and the photo did not match MEDINA-Perez.

Jellinek stated that he was told by the ICE/ERO Officer that there was a biometric match for MEDINA-Perez between his fingerprints from MEDINA-Perez's arrest in Newton and a previous arrest by ICE. Jellinek stated that he was not convinced that MEDINA-Perez was the same person in the NCIC report and the same person wanted by the ICE/ERO Officers.

Jellinek stated that he spoke to MEDINA-Perez prior to taking a break for lunch, at this time MEDINA-Perez told Jellinek that he was not the guy wanted by ICE or the guy wanted in Pennsylvania.

Jellinek stated that he was familiar with Court Officer Wesley MacGregor because Jellinek had been working in the Newton District Court for a few years. Jellinek stated that he believed MacGregor to be a good person and good court officer. Jellinek stated that MacGregor is a recovering alcoholic and has been sober for at least 20 years. (Agent's note: this information was provided by Jellinek in response to a reported statement made by MEDINA-Perez in an interview with ICE Officers following MEDINA-Perez's arrest by ICE.)

Jellinek stated that he expressed to MacGregor that he did not think that MEDINA-Perez was the guy wanted by ICE. Jellinek stated that he remembers other court officers being present, but he did not know any of them by name other than MacGregor.

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Jellinek stated that he was under the impression that defendants did not necessarily need to be released from the courthouse through the main entrance. Jellinek stated that he did not think it was unusual for defendants to be released from the courthouse through an exit in the lock up downstairs. Jelinek thought it was normal for a defendant to be released from the courthouse downstairs through the lock up because the defendant's property was downstairs, and it would help expedite the release. Jellinek stated that MacGregor may have told him that it was ok for defendants to be released through the lock up downstairs.

Jellinek stated that he does not remember showing the ICE detainer to MacGregor. Jellinek believes that MacGregor was aware of the ICE detainer for MEDINA-Perez, but Jellinek does not know for sure that MacGregor had seen or was even aware off the presence of an ICE detainer.

Jellinek stated that he, ADA Jurgens and Judge Joseph had a sidebar to discuss that MEDINA-Perez was not the individual wanted in Pennsylvania. Jellinek stated that the fugitive warrant charge was dropped for MEDINA-Perez. Jellinek stated that the criminal case against MEDINA-Perez was continued and MEDINA-Perez was to be released until his upcoming hearing. Jellinek stated that he requested from Judge Joseph that MEDINA-Perez be released through the lock up area because Jellinek thought it was ok for a defendant to be released from the lock up area.

Jellinek stated that he requested permission to speak with MEDINA-Perez in the lock up area prior to MEDINA-Perez being released. Jellinek stated that the judge granted him permission to go downstairs to the lockup and Jellinek was escorted to the lock up area by Court Officer MacGregor.

Jellinek stated that he informed MEDINA-Perez that ICE Officers were looking for him and that the ICE Officers were upstairs in the courthouse.

Jellinek stated that Court Officer MacGregor returned MEDINA-Perez's property to him and released him from the courthouse through the exit in the lock up area downstairs. Jellinek stated that he thought he heard Court officer MacGregor tell MEDINA-Perez that ICE Officers were waiting for him upstairs, but Jellinek stated we was not certain that MacGregor told MEDINA-Perez that. Jellinek stated that he did not know why Court Officer MacGregor knew to release MEDINA-Perez through the lock up area or who may have instructed Court Officer MacGregor to do so.

Jellinek stated that he did not believe it to be unusual that a defendant would be let out of the courthouse through the lock up area downstairs, Jellinek does remember seeing some defendants being released through the lock up area.

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REPORT OF INVESTIGATION

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Jellinek stated that he does not recall ever having one of his previous clients ever be allowed to be released from the courthouse through the lock up area downstairs.

Jellinek stated that he believes MEDINA-Perez was released through the lock up area downstairs to avoid any contact with the ICE Officers waiting for him. Jellinek stated that it was his intent to have MEDINA-Perez be released through the lock up area downstairs to have MEDINA-Perez avoid having to encounter the ICE Officers.

The interview was concluded at approximately 12:06 PM.

Investigation continues.

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(3)

1/14/2019

Interview w/ David Jellinek, AUSA's A Chao, C. Wichers HSI SA P. Skotnik, Jellinek repres. R. Peabody.

- Start approx 1350

- Explanation of proffer letter to DJ by DC.

- DJ - [redacted]75 DoB, born in Bronx, Brighton to Guyana Newton 5-11 yrs, lives in Newton 1163 Walnut St #1, Newton, Office 2000 BC Law graduate, State Court Appeals in NZ Public defender Off 2003-04, 06, BFA 06-08, Obama campaign in 08 Own practice in 08-09, 09-12 private Own shop 12 - present, state appointed defender Bar advocate system, Newton + Waltham cases Since 09-10 regularly appear in NDC for criminal cases approx 50 open cases at any time, majority from Waltham

- Meet SJ in 2011, had coffee w/ SJ. Talked about own practice SJ was private attorney at the time

- DJ has a case currently that SJ had two lawyers ago. Catherine Hatch was second Atty then DJ got case from

- DJ no referrals from SJ.
- No consistent connect w/ SJ, apparently attend same temple on Wellesley. Some social contact.
- DJ approx 4-5 appearances in court in front of SJ.
- SJ not assigned to NDC, DJ hasn't seen SJ on NDC since April.
- DJ Know WMc as CO @ NDC. WMc was not there @ NDC when DJ started.
- DJ met WMc approx 4yrs ago.
- DJ Knew judges select CO's for court.
- DJ has a familiar relationship w/ WMc from interaction in court.
- DJ - WMc helped get access to lockup for client meetings and other assistance while in court.
- DJ - WMc has a large personality, friendly with most other employees.

- NJ - W Mc never asked for free legal advise
- NJ gifted WMc a blue tooth speaker around the Holidays approx 2-3 yrs ago, intended to be used for the lockup area in general
- NJ has gifted people in Waltham Court previous, pasteries etc. not as often in NAC.
- listening to court recordings
- NJ shown photo of courtroom, NJ stands near clock when involved in a proceeding.
- Peguero had an employer + friend in court, didn't like assigned Atty, Bostwick charged $1000 retainer, employer paid w/ check.
- NJ possibly informed by employer about ICE being present
- NJ gets paperwork from DA, clerk, prior defense atty
- NJ verified paperwork from court.
- NJ went to lockup to speak to Peguero.
- NJ allowed into lockup by CO to speak to Peguero w/ interpr.

- Court usually breaks for lunch from 1245 - 215, court room usually left open

- IJ spoke to ICE agent in the courtroom, asked ICE how they ID'd Peguero; ICE agent showed picture of Peguero to IJ

- IJ states FBI III had approx 12 IDs on FBI III printout.

- IJ agrees photo shown to him by ICE looked like Peguero ("the guy in court that day")

- IJ saw birth certificate from PR in the name Medina Perez from employer.

- IJ agrees he does make decision in court about whether or not someone is removable or not, responsibility lies w/ IJ.

- IJ recalls speaking to RA + WMC about ID of Peguero.

- IJ approached ICE not vice versa.

- IJ expresses ID issue w/ others in court that Peguero not guy wanted by PA or ICE.
  Various descriptions of individual in III, ie tats, amputation etc

- DJ corrects transcript, DJ says there is a warrant.
  - pg 4 conv at 14:48:48
  - pg 5 "hope that he can avoid ICE"
  - pg 5 "Inaudible = "had with ID"
  - pg 5 "bailed out from Billerica ICE"
- DJ asked to go off the record to request Peguero be released thru lockup
- DJ Knew ICE was in the lobby waiting for Peguero
- DJ Knew others had been released through lockup
- DJ didn't think there was a rule about releasing thru lockup
- DJ spoke to WMc about releasing Peguero thru lockup
- DJ expressed to WMc that he didn't think Peguero was the guy wanted
- DJ recalls discussing releasing Peguero at the lockup doesn't remember who's idea it was to get release out thru lockup.
- DJ remembers WMc expressing to him that if Peguero gets downstairs they can release him thru lockup
- DJ says to SJ its possible to get Peguero released thru basement can I speak to Peguero downstairs to avoid ICE "this part was off the record"

- DJ believes sidebar convo was shorter than the lapse shown on transcript.

- DJ felt that sidebar convo should be off record when requesting release out back to protect self and judge.

- DJ could do post lobby conference off record, has done lobby conference @ sidebar in past.
  When asking to go off the record states doesn't know if intent was to stop the recording. Knew what he was asking appeared "shady".

- DJ followed by interpreter downstairs thru dock downstairs to the lockup.

- DJ CO let him into the dock, doesn't remember long convo w/ interpreter and Reguero.

- DJ may have said to interp. "you ok w/ this" but doesn't believe in was in reference to the release.

- DJ doesn't remember convo w/ WMc in lockup, both knew intent to release Reguero thru lockup.

- DJ states WMc gives property to Reguero then let Reguero out.

- DJ doesn't remember WMc having said anything to Peguero other than "Good Luck" or something similar.

- DJ doesn't remember WMc saying "that didn't look good", but sounds like something WMc would say.

- DJ doesn't remember how Peguero walked away from lockup, couldn't see past the exit door.

- DJ states AMA was upset, spoke to her afterward, AMA told DJ ICE was pissed @ her.

- DJ told her she said ICE wasn't her business why is she upset.

- DJ speculates ICE may have yelled @ AMA.

- DJ spoke to WMc after release doesn't remember specific convo, probably said "thanks" to WMc

- DJ spoke to WMc couple days later to express thanks to WMc

- DJ spoke to WMc about WMc going to GJ. approx August

- NJ brief convo w/ WMc about GJ just that it was a good idea to have atty.
- NJ no contact w/ SS after April, spoke to K. Hatch about SS's well being in December 2018
- NJ doesn't approve of what happening to WMc + SS
- NJ thinks he was doing his job due to ID questions
- NJ believes defendants are already downstairs have been released 1-2 times in 6-7 years.
- NJ doesn't remember speaking to employer + or friend after release.
- NJ NDC may have old recording system named Colorado that does not cut out, unknown if NDC still has it.
- 1615 ended.

DEPARTMENT OF HOMELAND SECURITY

(4) HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview/Proffer of Daved Jellinek on January 14, 2019

REPORTED BY
Peter Skutnik
SPECIAL AGENT

APPROVED BY
Michael Krol
SPECIAL AGENT

DATE APPROVED
1/25/2019

SYNOPSIS

On Monday, January 14, 2019, Assistant United States Attorneys (AUSA) Christine Wichers and Dustin Chao interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. Prior to the interview all parties confirmed that the terms of the proffer letter offered in November 2018 still applied. AUSA Chao reviewed the purpose and conditions of the proffer letter to Jellinek.

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

DETAILS OF INVESTIGATION

On Monday, January 14, 2019, Assistant United States Attorneys (AUSA) Christine Wichers and Dustin Chao interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. Prior to the interview all parties confirmed that the terms of the proffer letter offered in November 2018 still applied. AUSA Chao reviewed the purpose and conditions of the proffer letter to Jellinek.

The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero aka Jose MEDINA-Perez whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

Jellinek stated the following in sum and substance:

Jelinek stated that his date of birth is [redacted] 1975 and that he was born in the Bronx, NY. Jellinek stated that he has lived in Brighton and Newton as a child and currently resides in Newton, MA. Jellinek stated that his current office is located at 1163 Walnut Street, Newton, MA. Jellinek stated that he got his Juris Doctorate Degree at Boston College in 2000. Jellinek stated that he had previously worked for the Arizona State Court of Appeals, then as a public defender during the years 2003 through 2006, with the Boston Police Department from 2006 through 2008, on the Barack Obama presidential campaign in 2008 and has been in private practice as an attorney since 2008 to present time. Jellinek stated that he also works as a Massachusetts state appointed defender and is part of the bar advocate system. Jellinek stated that he works primarily in the Newton and Waltham District Courts and has appeared in Newton District Court regularly since 2009. Jellinek stated that he has approximately 50 open cases at any time and that most of his cases are from the Waltham District Court.

Jellinek stated that he first met Judge Shelley Joseph approximately seven to eight years ago when he had coffee with her to talk about having his own private practice. Jellinek stated that Judge Joseph was a private attorney when he initially met her.

Jellinek stated that he currently has a case that had been Judge Joseph's two attorneys prior to him. Jellinek stated that he received the case from Attorney Catherine Hatch and that Catherine Hatch had received the case from Judge Joseph. Jellinek stated that he has had no direct case referrals from Judge Joseph.

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Jellinek stated that has no consistent social or work connection with Judge Joseph other than some infrequent social contact. Jellinek stated that he and Judge Joseph attend the same synagogue in Newton but Jellinek has never seen Judge Joseph there.

Jellinek stated that he believes he has had approximately four or five appearances in court in front of Judge Joseph. Jellinek stated that Judge Joseph is not typically assigned to the Newton District Court. Jellinek stated that he hasn't seen Judge Joseph in the Newton District Court since April 02, 2018.

Jellinek stated that he knows that Court Officers are selected to work courts by the sitting District Judge for that court.

Jellinek stated that he knows Court Officer Wesley MacGregor from working in the Newton District Court. Jellinek stated that Court Officer MacGregor was not working at the Newton District Court when Jellinek first started working there. Jellinek stated that he met Court Officer MacGregor approximately four years ago. Jellinek stated that he is personally familiar with Court Officer MacGregor from their interactions at the Newton District Court. Jellinek stated that Court Officer MacGregor has a large personality and is friendly with most of the employees at the Newton District Court. Jellinek stated that because of his familiarity with Court Officer MacGregor over the years Jellinek gets assistance from Court Officer MacGregor when Jellinek is in Court with such things as getting in to the lockup area to speak with clients and other court matters.

Jellinek stated that Court Officer MacGregor has never asked for free legal advice.

Jelinek stated that he once gifted a blue tooth speaker worth approximately $20 to Court Officer MacGregor around the Christmas holiday approximately two to three years ago. Jellinek stated that the gift was intended to be used by the entire Court Security staff in the lockup area that it was not a personal gift for MacGregor alone.

Jellinek stated that he has gifted other people in the Waltham and Newton District Courts with things such as pastries, coffee or donuts. Jellinek said that he has brought pastries, coffee and donuts to Waltham more often than Newton mostly because he is in the Waltham District Court more often.

Jellinek was played a recording of the court proceedings from Newton District Court on April 02, 2018 to refresh his memory of the proceedings. Jellinek was shown a photo of the Newton District Session One Courtroom and Jellinek showed where he typically stands near the dock during a court proceeding.

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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Jellinek stated that Medina-Perez aka Peguero had his employer and another friend at the Newton District Court on April 02, 2018. Jellinek stated that Medina-Perez aka Peguero's employer and friend did not like the court assigned defense attorney. Jellinek stated that Medina-Perez aka Peguero's employer paid Jellinek $1000.00 by check to retain Jellinek's services for court on April 02, 2018.

Jellinek stated that he believes he may have been informed about ICE officers being present in Newton District Court on April 02, 2018 by Medina-Perez aka Peguero's employer.

Jellinek stated that he received court related paperwork pertaining to Medina-Perez aka Peguero from the Assistant District Attorney, the court clerk and the previous Defense Attorney. Jellinek stated that his initial encounter with Medina-Perez aka Peguero prior to representing Medina-Perez aka Peguero was in the lockup area. Jellinek stated that he was allowed into the lockup area by a court officer so Jellinek could speak to Medina-Perez aka Peguero with an interpreter.

Jellinek stated that the court usually breaks for lunch from 12:45 PM to 2:25 PM and the court room is usually left open.

Jellinek stated that he spoke to an ICE Officer in the courtroom and asked how the ICE Officer identified Medina-Perez aka Peguero as the person that ICE was looking for. Jellinek stated that he was the one to initiate contact with the ICE Officer to establish the true identity of Medina-Perez aka Peguero. Jellinek stated that the ICE Officer showed Jellinek a photo of Medina-Perez aka Peguero. Jellinek stated that the photo that the ICE Officer showed Jellinek did resemble Medina-Perez aka Peguero as the person that was in Newton District Court on April 02, 2018. Jellinek stated that the NCIC criminal history printout that was associated with Medina-Perez aka Peguero had approximately 12 separate identities. Jellinek stated that he was shown a Puerto Rican Birth Certificate in the name of Medina-Perez by Medina-Perez aka Peguero's employer. Jellinek stated that because of the different identities associated with Medina-Perez aka Peguero Jellinek did not believe that the person in Newton District Court was the person that ICE Officers were seeking.

Jellinek stated that he remembers speaking to the Assistant District Attorney and Court Officer MacGregor about the confusion concerning the identity of Medina-Perez aka Peguero.

Jellinek stated that he agreed that it is not his responsibility to decide immigration matters in criminal court proceedings. Jelinek stated that he knows immigration matters are settled in separate immigration court proceedings.

During the playback of the court recording Jellinek advised of some corrections to the transcript of the recording.

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- Page 4 of the transcript in the recording that begins at 2:48:48 PM Jellinek stated that he said to Judge Joseph that there is a warrant, the transcript reads that Jellinek stated that there is no warrant.
- Page 5 of the transcript in the recording that begins at 2:48:48 PM Jellinek stated that the part of the transcript reads "So something's bad (inaudible)", the inaudible part Jelinek states that he said, "So something's bad with the identification."
- Page 5 of the transcript in the recording that begins at 2:48:48 PM Jellinek stated that the sentence that reads "and hope that we can avoid ICE." Should read "and hope that he can avoid ICE."
- Page 5 of the transcript in the recording that begins at 2:48:48 PM Jellinek stated that the sentence that reads "So if he's bailed out…(inaudible)…. ICE" should read "so if he's bailed out from Billerica, ICE."

Jellinek stated that he asked Judge Joseph to go off the record to request that Medina-Perez aka Peguero be released from the lockup. Jellinek stated that he knew that it would potentially make him, and Judge Joseph look bad if that type of request was included in the court recording. Jellinek stated that he ultimately needed Judge Joseph's blessing to be allowed downstairs to speak to MEDINA-Perez aka Peguero and get him released out the back door and that was the main purpose of the sidebar.

Jellinek stated that he knew ICE was in the lobby of the Newton District Court waiting for Medina-Perez aka Peguero.

Jellinek stated that he knew other defendants had been released through the lockup area from the Newton District Court. Jellinek stated that he didn't think was any rule about releasing defendants out through the lockup area. Jellinek stated that he believes that defendants that are already downstairs in the lockup that do not come up to the courtroom due to extenuating circumstances (i.e. disagreeable or noncompliant defendant) are released from the lockup downstairs. Jellinek stated that he remembers that happening one to two times in the six to seven years he has been working at the Newton District Court.

Jellinek stated that he spoke to Court Officer MacGregor about the possibility of releasing Medina-Perez aka Peguero through lockup and out the back door. Jellinek stated that he expressed to Court Officer MacGregor that Jellinek did not think Medina-Perez aka Peguero was the guy that ICE wanted. Jellinek expressed to Court Officer MacGregor that one of the identities associated with the FBI III criminal history printout showed the person missing their left arm and having a tattoo on their upper left arm. Jellinek stated that he understood from Court Officer MacGregor that to facilitate Medina-Perez aka Peguero's release through the lockup all Jellinek needed to do was to get Medina-Perez aka Peguero downstairs from the courtroom. Jellinek stated that getting Medina-Perez aka Peguero downstairs was necessary

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because defendants were typically released from the court room. Jellinek stated that he recalls discussing the release of Medina-Perez aka Peguero through the lockup with Court Officer MacGregor, but Jellinek does not remember whose idea it was to get Medina-Perez aka Peguero released through the lockup.

Jellinek stated that during the sidebar conversation with Judge Joseph he told Judge Joseph that it was possible to get Medina-Perez aka Peguero released through the lockup in the basement if they could get Medina-Perez aka Peguero downstairs after the court proceeding. Jellinek stated that he asked Judge Joseph to speak to Medina-Perez aka Peguero with the interpreter to get Medina-Perez aka Peguero downstairs to be released through the lockup and ultimately avoid contact with the ICE Officers. Jellinek stated that this sidebar conversation with Judge Joseph is the part of the court recording that was taken off the record. Jellinek stated that his suggestion to Judge Joseph to release Medina-Perez aka Peguero through the back door was subtle enough that ADA Jurgens did not understand that Medina-Perez would actually be released through the back door downstairs in the lockup.

Jellinek stated that he does not remember Court Officer MacGregor saying anything to Medina-Perez aka Peguero other than something like 'Good Luck' at the time Medina-Perez aka Peguero was allowed to leave the courthouse through the lockup exit. Jellinek stated that he does not remember Court Officer MacGregor saying "that didn't look good" when Medina-Perez aka Peguero was allowed to leave through the lockup exit, but Jellinek stated he thinks that sounds like something Court Officer MacGregor would say.

Jellinek stated that he does not know how Medina-Perez aka Peguero walked away from the courthouse after being released. Jellinek stated that his view of the outside past the immediate area outside the door was blocked.

Jellinek stated that Assistant District Attorney (ADA) Jurgens was upset about Medina-Perez aka Peguero being released through the lockup. Jellinek stated that ADA Jurgens told him that the ICE Officers were pissed at her that Medina-Perez aka Peguero was released through the lockup. Jellinek stated that he thinks the ICE Officers may have yelled at ADA Jurgens over Medina-Perez aka Peguero being released.

Jellinek stated that he spoke to Court Officer MacGregor after the release of Medina-Perez aka Peguero but does not remember the exact conversation. Jellinek stated that he thinks he probably said thanks to Court Officer MacGregor during that conversation. Jellinek stated that he also expressed his thanks to Court Officer MacGregor a couple of days after April 02, 2018 when they spoke.

Jellinek stated that he does not remember talking to Medina-Perez aka Peguero's friend or employer following the court proceeding and the release of Medina-Perez aka Peguero.

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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Jellinek stated that he spoke to Court Officer MacGregor sometime in August about Court Officer MacGregor being summoned to Grand Jury. Jellinek stated that he did not discuss Court Officer MacGregor's testimony just that it would be a good idea for Court Officer MacGregor to have an attorney for his Grand Jury testimony.

Jellinek stated that he has had no contact with Judge Joseph since April 02, 2018. Jellinek stated that he had spoken to Katherine Hatch about how Judge Joseph was doing sometime in December of 2018.

Jellinek stated that he has been approached by several people for the media about what happened at Newton District Court on April 02, 2018, but Jellinek has given no comment to any media. Jellinek stated that he did feel a desire to speak about it because he did not like what was happening to Judge Joseph and Court Officer MacGregor.

Jellinek stated that he felt he was just doing his job as a defense attorney in trying to get Medina-Perez aka Peguero released because of the confusion and doubt about Medina-Perez aka Peguero's identity.

Jellinek stated that Newton District Court may have an old recording system by the name Colorado still in place that does not allow a recording to be stop doing a proceeding. Jellinek stated that he was not certain whether the Newton District Court still had that old system.

Investigation continues.

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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(5)

2/12/2019 @ 130

Interview w/ A. Jellinek, Attorney R. Peabody
C. Wichers, A. Chao, F. Skotnik

- Proffer agreement still applies.
- CPCS 5yrs crim defense 4th yr college, then BA job, feds Macon, GA
  people @ CPCS were angry that left early from CPCS
- believes blacklisted from bar advocacy because of early departure from CPCS
- Marcy Levington, Dan Sullivan, Middlesex board
- Seen Judge Joseph '09 to present couple times per year between NAC and WAC.
  - never saw JJ try a case as an attorney
- General practice has been to release defendant out the front door from courtroom in NAC since 2009.
- Reiterated that the intent of the sidebar was to get Reguero down stairs to be released to avoid lockup ICE
- JJ would not go thru the lockup in order to go to probation.

- DJ would speak to a defendant @ probation after they have been released thru courtroom, then met them at front desk in probation.

- DJ no idea what was in the judge's mind ok (2)

- DJ stated no terms of release for Reguera, no need to see probation.

- DJ no talk of probation during sidebar, unrecorded convo.

Ended 1410

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

(6) REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of David Jellinek on 02-12-2019

SYNOPSIS

On Tuesday, February 12, 2019, Assistant United States Attorneys (AUSA) Christine Wichers and Dustin Chao interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero aka Jose MEDINA-Perez whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

REPORTED BY
Peter Skutnik
SPECIAL AGENT

APPROVED BY
Michael Krol
SPECIAL AGENT

DATE APPROVED
3/5/2019

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DETAILS OF INVESTIGATION

On Tuesday, February 12, 2019, Assistant United States Attorneys (AUSA) Christine Wichers and Dustin Chao interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero aka Jose MEDINA-Perez whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

Jellinek stated the following in sum and substance:

Jellinek stated that he had previously worked for the Committee for Public Counsel Services (CPCS) for approximately five years. Jellinek stated that he attended the criminal defense college while employed by CPCS that was paid for by CPCS. Jellinek stated that he had left CPCS approximately one year after completing the criminal defense college to work for the Boston Police Department as a general counsel for the Internal Affairs Division. Jellinek stated that his employers at CPCS were angry with him for leaving shortly after completing the Criminal Defense College and taking employment with the Boston Police Department.

Jellinek stated that he believed he was blacklisted for the bar advocacy because of his early departure from the CPCS.

Jellinek stated that he has seen Judge Shelley Joseph approximately 2-3 times per year since 2009 between working at the Newton District Court and the Waltham District Court. Jellinek stated that he never saw Judge Joseph try a case while as an attorney.

Jellinek stated that the general practice for releasing defendants from the Newton District Court since 2009 has been to release them from the courtroom and allow them to leave through the front door.

Jellinek reiterated that the intent of the sidebar conversation in the courtroom with Judge Joseph and ADA Jurgens was to get MEDINA-Perez aka Peguero downstairs in the lock up to be released out the back door to avoid ICE Agents.

Jellinek stated that if were to go to the probation department to speak to a defendant about the conditions of their release he would not have gone through the dock and then through the lockup to get to the probation department. Jellinek stated that passing through the lockup to get to the probation department would require assistance from a Court Officer with a keycard. Jellinek

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stated that entering the probation department from the direction of the lock up would necessitate passing by the Chief Probation Officer's Office and potentially causing a disturbance.

Jellinek stated that he would speak to a defendant at probation after they have been released through the courtroom. Jellinek stated he would use the public stairway and meet the defendant at the front desk of the probation department downstairs.

Jellinek stated that it was absolutely not true that he requested from Judge Joseph to be allowed downstairs through the lock up to speak with MEDINA-Perez aka Peguero to clear up the Pennsylvania fugitive warrant with probation. Jellinek stated that the probation department does not have the authority to clear a fugitive warrant, therefore he would not ask to go to probation to have a fugitive warrant cleared.

Jellinek stated that there were no terms of release imposed on MEDINA-Perez aka Peguero by Judge Joseph therefore there was need to go to probation after MEDINA-Perez aka Peguero's release. Jellinek stated that there was no talk of going to probation during the unrecorded sidebar conversation with Judge Joseph.

Jellinek stated that he has no idea what was in Judge Joseph's mind during and after the sidebar conversation in the courtroom.

Investigation continues.

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(7)

March 12, 2019 @ USAO

Interview w/ D. Jellinek, B. Peabody
D. Chao, C. Wiehes, P. Skutnik

Immunity agreement in place.

- conversation w/ Heffernan following 4/2/18 incident on 4/3/18

- wasn't asked about it

- probably went to chambers or roundtable
  - no one else present, try to speak to her early in AM, remember: I being in chambers

- AJ initiated convo

- told MH about incident, ICE was there his client was the target and he went out back door, thought MH should be aware.

- ADA + ICE upset, brief conv.
  MH stated she already knew about it, don't worry
- no recollection of details being conveyed in conv
- @ approx 0845, believes it was then before she was on the bench
- roundtable includes PO, clerks, ADA
- Judge chambers on 1st Flor
- either asked and saw her before or caught her on the way out of roundtable.
- had 2 defendants sched. for AM court on 4/3/18.
- had subsequent encounters w/ MH, MH said she didn't want to talk about the matter after Globe article.

- After Globe article, approached MH asked if MH was OK w/ DS practing in her court and she said yes

- DS heard MH needed to obtain a lawyer said to MH asked if they were OK MH said yes don't worry about it.

- DS does not remember any substantive convo's

- has not relayed any details of the incident to anyone other than wife, father attorney, ~~&~~

- no court appearances on calendar for 4/4/18

- 4/5/18 in Waltham DC.

- 4/6/18 no cases

- approached MH about incident because he knew ADA was upset and ICE agent were upset and thought it prudent to talk to MH.

- MH did not say what her source was about her knowledge of the incident.

- DS say McGregor has submitted retirement paperwork

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

(8) REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of David Jellinek on March 12, 2019

REPORTED BY
Peter Skutnik
SPECIAL AGENT

APPROVED BY
Michael Krol
SPECIAL AGENT

DATE APPROVED
4/17/2019

SYNOPSIS

On Tuesday, March 12, 2019, Assistant United States Attorneys (AUSA) Christine Wichers and Dustin Chao interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero aka Jose MEDINA-Perez whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

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DETAILS OF INVESTIGATION

On Tuesday, March 12, 2019, Assistant United States Attorneys (AUSA) Christine Wichers and Dustin Chao interviewed Attorney David Jellinek at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik and Attorney Robert Peabody representing David Jellinek. The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero aka Jose MEDINA-Perez whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

Jellinek stated the following in sum and substance:

Jellinek stated that he had a conversation with Judge Heffernan on April 03, 2018 about the April 02, 2018 incident. Jellinek stated that he initiated the conversation with Judge Heffernan. Jellinek stated that he believes the conversation with Judge Heffernan took place in Judge Heffernan's chambers on the first floor of the courthouse. Jellinek stated that no one else was present during the conversation. Jellinek stated that he believes the conversation took place sometime around 8:45 AM before Judge Heffernan was seated on the bench.

Jellinek stated that he wanted to speak with Judge Heffernan early in the morning to inform her of what happened the previous day. Jellinek stated he approached Judge Heffernan about the incident in the court because he knew the ADA and the ICE Officer were upset about what happened and Jellinek thought it would be prudent to talk to Judge Heffernan about it.

Jellinek stated that Judge Heffernan told him that she already knew what had happened and that Jellinek did not need to worry about it. Jellinek stated that he does not remember details of the incident being conveyed to Judge Heffernan during the conversation.

Jellinek stated that he was at Newton District Court on April 03, 2018 because he had two defendants scheduled for court appearances that morning.

Jellinek stated that he had subsequent encounters with Judge Heffernan, but they never discussed the incident at Newton District Court.

Jellinek stated that after the Boston Globe article was published in December 2018 he approached Judge Heffernan to ask if he was ok to practice in the Newton District Court and Judge Heffernan said yes.

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Jellinek stated that he heard that Judge Heffernan needed to obtain a lawyer because of the Newton District Court incident. Jellinek stated that he asked Judge Heffernan again if they were ok and Judge Heffernan said yes and Jellinek shouldn't worry about it.

Jellinek stated that he does not remember any substantive conversations with Judge Heffernan about the incident at Newton District Court.

Jellinek stated that he has not relayed any details of the incident at Newton District Court to anyone other than his wife, his father and his attorney.

Jellinek stated that Judge Heffernan did not tell him from whom she had heard about the incident prior to talking to Jellinek.

Jellinek stated that he heard that Court Officer MacGregor had recently submitted paperwork for his retirement and may no longer be employed at the Newton District Court.

Investigation continues.

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(9)

Thursday, October 04, 2018 @ 1600

Phone Interview of ADA Shannon Surgens w/ AUSA Christine Wichers and HSI SA Peter Skutnik

- Incident 4/2/18 @ Newton District Court
- ADA for 3 years
- worked in Newton for one month prior there everyday
- encountered several defendants prior w/ ICE detainers. prior to incident.
- ~~on~~ no the def. w/ detainers in NDC.
- Court Off McGregor allowed def out back door
- Spoke w/ ICE Agents in courtroom
- Knew about fugitive warrant but didn't think it was a match out of P.A.
  - Oscar Pagero
- ICE Agent notified ADA of prior dupat.
- Knew ICE Agent wanted to take custody

- Did not know if CO McGregor knew of ICE Agents
- Does remember seeing detainer (I-247)
- Assume court personal knew of I-247
- CO's in lockup are usually aware of I-247's when defendants are brought to court
- Never worked w/ McGregor before NAC.
- Doesn't remember ICE Agents being asked to leave Courtroom, believe ICE Agent told her he was asked to leave Courtroom.
- Thinks she heard that ICE Agents were refused to take custody of O.P. in lockup.
- Doesn't know S.O.P for defendants release at NAC.
- Doesn't know of other C.O's in NAC that day.
- Didn't hear anyone tell McGregor to allow O.P. to leave

@ Sidebar

- Remembers defendant's Atty ask to speak to client in lockup and thinking it was odd. Dave Sellinek Def Atty. Defense Att. asked to speak to client in lockup. Thinks defendant should have been released upstair as is usually the case. Normally CO brings defendants property upstairs and returns to defendant and then defendant is released from court upstairs not lockup.

- Defendant had an acquaintence in the courtroom, never was introduced and doesn't know the person.

- Doesn't know why Defense Atty asked for sidebar but believes it was because ICE Agent was in courtroom.

- Interview ended @ 1618

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

(10) REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of ADA Jurgens on 10-04-2018

SYNOPSIS

On Thursday, October 04, 2018, Middlesex County Assistant District Attorney (ADA) Shannon Jurgens was interviewed over the phone by Assistant United States Attorney (AUSA) Christine Wichers. Present via phone was Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik. The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

REPORTED BY
Peter Skutnik
SPECIAL AGENT

APPROVED BY
Peter Skutnik
SPECIAL AGENT

DATE APPROVED
10/5/2018

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DETAILS OF INVESTIGATION

On Thursday, October 04, 2018, Middlesex County Assistant District Attorney (ADA) Shannon Jurgens was interviewed over the phone by Assistant United States Attorney (AUSA) Christine Wichers. Present via phone was Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik. The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Oscar Peguero whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 4:00 PM. ADA Jurgens stated the following in sum and substance:

ADA Jurgens stated that she did remember the incident that took place on April 02, 2018, at the Newton District Court in Newton, MA.

ADA Jurgens stated that she has been working as an Assistant District Attorney in Middlesex County for approximately three (3) years. ADA Jurgens stated that she started working in the Newton District Court approximately one (1) month prior to the incident on April 02, 2018.

ADA Jurgens stated that she was familiar with Detainers that are lodged by ICE/ERO for individuals that are unlawfully present in the United States. ADA Jurgens stated that she has encountered several criminal defendants in District Court that have had ICE Detainers lodged.

ADA Jurgens stated that she was aware that there was an ICE Detainer lodged for Oscar Peguero by ICE/ERO. ADA Jurgens was not aware of any other criminal defendants in Newton District Court on April 02, 2018 that had an ICE Detainer lodged for them. ADA Jurgens stated that she had spoken to the ICE/ERO Officers that were in the Newton District Court to take Oscar Peguero into custody following his court appearance.

ADA Jurgens stated that she was aware that Middlesex County Court Officer MacGregor had released Oscar Peguero out the back door of the courthouse through the lock up area downstairs.

ADA Jurgens states that she knew about a fugitive warrant for Peguero out of Pennsylvania, but she did not think the photo that she saw was a match to the person in the courtroom.

ADA Jurgens stated that the ICE/ERO Officer notified her that Peguero had been previously deported from the United States. ADA Jurgens stated that she was aware that the ICE/ERO Officers wanted to take Peguero into custody following his court appearance. ADA Jurgens could not remember the name of the ICE/ERO Officer that she spoke to but stated that he was a tall white male.

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ADA Jurgens stated that she was not aware if Court Officer MacGregor knew that the ICE/ERO Officers were there to take custody of Peguero.

ADA Jurgens stated that she remembered seeing the ICE Detainer for Peguero. ADA Jurgens stated that she assumed that the other court personnel were aware of the ICE Detainer for Peguero. ADA Jurgens stated that as far as she knows the Court Officers are usually aware that Detainers are lodged for criminal defendants when they are brought to the courthouse.

ADA Jurgens stated that she had never worked with Court Officer MacGregor prior to being in the Newton District Court, Newton, MA.

ADA Jurgens stated that she does not remember the ICE/ERO Officers being asked to leave the courtroom, but ADA Jurgens believes that one of the ICE/ERO Officers told her that he was asked to leave the courtroom.

ADA Jurgens stated that she thinks she heard that the ICE/ERO Officers were refused to take custody of Peguero in the courthouse lock up area.

ADA Jurgens stated that she does not the specific standard operating procedure for the release of criminal defendants in the Newton District Court. ADA Jurgens stated that she did not know of any other Court Officers other than Court Officer MacGregor that were in the Newton District Court on April 02, 2018.

ADA Jurgens Stated that she did not hear anyone tell Court Officer MacGregor to Peguero to leave the courthouse through the lock up area downstairs.

ADA Jurgens stated that Peguero's Defense Attorney was Dave Jellinek. ADA Jurgens stated that she remembers Attorney Jellinek ask to speak to his Peguero in the lock up area. ADA Jurgens stated that she thought that it was odd for a defense attorney to request to speak to their client in the lock up area.

ADA Jurgens stated that she did not know why Defense Attorney Jellinek requested a sidebar with the Judge and her but ADA Jurgens believes it was because the ICE/ERO Officers were present in the courtroom.

ADA Jurgens stated that she thinks that defendants are usually released upstairs in the courthouse. ADA Jurgens stated that in the past she has seen Court Officers bring a defendant's property upstairs from the lock up area and return it to the defendant and then the defendant can leave the courthouse through the main entrance.

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ADA Jurgens stated that she believed that Peguero had an acquaintance at the courthouse. ADA Jurgens stated that she did not know the acquaintance of Peguero but saw that person in the lobby and in the courtroom with Peguero.

Investigations continues.

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(11)

(1)

1/9/19
DOB: [redacted]88
LS: 5/15
Middlesex: 9/15
↳Malden DC live ADA to 1/17
↳Lowell DC to 9/17
↳Malden as Deputy Sup. to 3/18 to end of July
↳Newton as Sup.

ADA Shannon Jergens

AUSA Dustin Chao
Atty. Paul Kelly

Jason Shlagel → Give Packet w/ PD report, CGIS, Detainer...

ICE detainer, doesn't ask to be held. Bring detainer to courts attention.

Had not seen booking photo of PA warrant

ADA sits next to dock
Def. will go next to speaker @ dock at times
sort off. beside dock, at times off. in dock → has seen both

In custody always escorted up by off.
court off. has view from comp. of lock up

Spoke w/ ICE agent and he showed photo which looked like photo in paperwork

Side bar would be to judges left
1:48 - Wes is going down to bring Δ up

Side bar
ADA found side bar discussion "weird/sketchy", Jellinek + Joseph discussed options (trying to avoid ICE) to avoid Δ being turned over to ICE
Jellinek asks to have him detained downstairs which ADA found odd and never happy

ADA speaks w/ Jellinek later:
Jell. appears to have property bag
ADA tells Jell "I know what you did and it was not the right thing to do"
↳ Jell smiles and says nothing

APP403

ICE agent requested to go to lock up and denied
ICE agent removed from court room by clerk court off.

Radio'd ICE present sometime after 1st call → Not sure when ICE was kicked out

ADA asked Michael Owens (v.i.t. w.i.t.) who's office is in basement, if you're able to get out from basement

~~##~~
·All paperwork, to include detainer, stays w/ subject

ADA has never had someone go off the record

Months after Wes would say "I guess I shouldn't have done that, I might get in trouble" told ADA when he was call to GJ, volunteering these statements

Larry said "Could be a career ender"

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

(12) REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of ADA Shannon Jurgens

REPORTED BY
Charles Haney
SPECIAL AGENT

APPROVED BY
Peter Skutnik
SPECIAL AGENT

DATE APPROVED
1/15/2019

SYNOPSIS

On Wednesday, January 09, 2019, Assistant United States Attorneys (AUSA) Dustin Chao interviewed Assistant District Attorney (ADA) Shannon Jurgens at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Charles Haney and Jackson /Lewis Attorney at Law Paul V. Kelly. The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Jose Medina-Perez aka Oscar Peguero whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 10:30AM.

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

DETAILS OF INVESTIGATION

On Wednesday, January 09, 2019, Assistant United States Attorneys (AUSA) Dustin Chao interviewed Assistant District Attorney (ADA) Shannon Jurgens at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Charles Haney and Jackson/Lewis Attorney at Law Paul V. Kelly. The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Jose Medina-Perez aka Oscar Peguero whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 10:30AM.

ADA Jurgens stated the following in sum and substance:

ADA Jurgens stated her date of birth is [redacted] 1988, and she graduated law school in May 2015. Jurgens stated she has worked as an ADA since September 2015. Jurgens stated she was assigned to Malden District Court as a line ADA until January 2017. Jurgens stated she was then assigned to Lowell District Court until September 2017. Jurgens stated she was then assigned to Malden District Court as Deputy Supervisor until March 2018 at which point she was assigned to Newton District Court as a Supervisor.

On April 02, 2018, Jurgens stated Jason Schlagel gave her a packet for Medina-Perez which included a police report, CJIS report, and an Immigration Detainer. Jurgens stated when there is an Immigration Detainer she does not ask for the subject to be held and the Detainer is brought to the courts attention. Jurgens stated that she had not seen the booking photo from the Pennsylvania warrant prior to court on April 02, 2018.

Jurgens stated the ADA sits next to the dock in the court room during court. Jurgens stated the Defense Counsel will go next to the speaker at the dock during court at times. Jurgens stated the Court Officer sets beside the dock and at times the Officer will be in the dock during court, she has seen both.

Jurgens stated the subjects who are in custody are always escorted from the holding area in the basement to the dock, via stairs in the dock, by an Officer. Jurgens stated the Court Officer has a view, from computers at their desk in the court room, of the lock up area.

Jurgens stated she spoke with an ICE Agent sometime during the day of April 02, 2018, in court. Jurgens stated the ICE Agent showed her a photograph which appeared to her to resemble the photograph in the paperwork that she had.

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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Jurgens stated that the side bar occurs to the judges left from the judge's point of view. Jurgens stated at the 2:48PM mark, Court Officer MacGregor is going down to bring Medina-Perez up from the lock up area to the dock.

Jurgens stated that during the side bar Judge Joseph and Defense Counsel Jellinek were discussing options to avoid turning Medina-Perez over to ICE. Jurgens stated she found it "weird /sketchy" that Judge Joseph and Jellinek were attempting to avoid ICE. Jurgens stated that Jellinek requests to have Medina-Perez taken downstairs which Jurgens found odd and never happens. Jurgens stated that she later notified her supervisor of the events that took place because she found these events so "weird."

Jurgens stated the ICE Agent requested to go to the lockup with Medina-Perez and he was denied. Jurgens stated at some point during the day the ICE Agent was removed from the courtroom which only the judge would have the authority to do. Jurgens stated she had noticed that ICE was present in court sometime after first call and she is not sure exactly when the ICE agent was removed from the courtroom.

Jurgens stated that she spoke with Jellinek later that same day after court and she noticed Jellinek had what she believed was a property bag for Medina-Perez. Jurgens stated that she told Jellinek "I know what you did, and it was not the right thing to do" and Jellinek smiled and did not say anything.

Jurgens stated that all paperwork, to include Immigration Detainers, stay with the subjects in custody.

Jurgens stated she has never seen a judge go off the record and stop recording.

Jurgens stated that months after April 02, 2018, Officer MacGregor made a voluntary statement to Jurgens, "I guess I shouldn't have done that, I might get in trouble" when he was called to grand jury for the events of April 02, 2018.

Jurgens stated that Larry stated, "could be a career ender." (Agent's note: Larry is Lawrence Okstein the Newton District Court Clerk)

Investigation continues.

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(13)

1/11/2019

Interview of Eric Mendoza w/ A. Chao AUSA, P. Skotnik HSI C. Wichers AUSA

- EM [redacted]68, Waltham, MA, been interp for courts for approx 2., 20yrs as interp., Vetted interp to become a certified interp.
- EM mostly Middlesex cty, PPD training period, to become certified interp
- EM appeared in NDC approx 10 times prior to 4/2/18
- EM started in courts about 9/2017.
- EM interpreting for Peguero at 10:34 AM.
- EM he speaks directly to defendant, not heard well on court recording
- EM showed photo #9 of court, showed where he stands in court next to dock, to speak thru hole in glass to defendant
- EM ID'd Peguero in NPA booking photo
- EM Says Photo from Chambersburg PA is not the one he saw in court on 4/2/18
- EM Knew of detainer and presence of ICE

- EM says Detainer was in packet.
- EM says he thought Sellinek was ADM, because he made decision to have Peguero go out back door.
- EM doesn't remember dealing w/ MacGregor.
- EM went down to lockup through the dock.
- EM reason went down stair to let him (Peguero) know he was going out the back
- EM doesn't know who was by the door, EM went first DO behind EM, AT asks EM if he is good w/ that
- EM heard someone say "Well that didn't look good", after Peguero walked out door. → thinks it was C.O holding the door.
- EM Knew ICE was there but not exactly where
- EM familiar w/ people being released at the front door not thru the lockup.
- EM went down stairs to interpret

- EM never went down to lockup before after defendant has been released.

- EM remembers convo between DJ and Reguero but doesn't want to repeat due to attorney privilege.

- EM DJ spoke to CO; doesn't know what was said

- EM understood that Reguero was going to be released thru lockup when he was in courtroom, because what he heard from sidebar and that recorder was turned off. Understood the Judge + DJ were getting him released.

- EM no convo w/ Reguero that wasn't between DJ and Reguero

- EM Reguero speaks no english.

- EM Knew ICE was in courtroom at some point.

- EM doesn't remember Reguero having anyone in court ie friends + family.

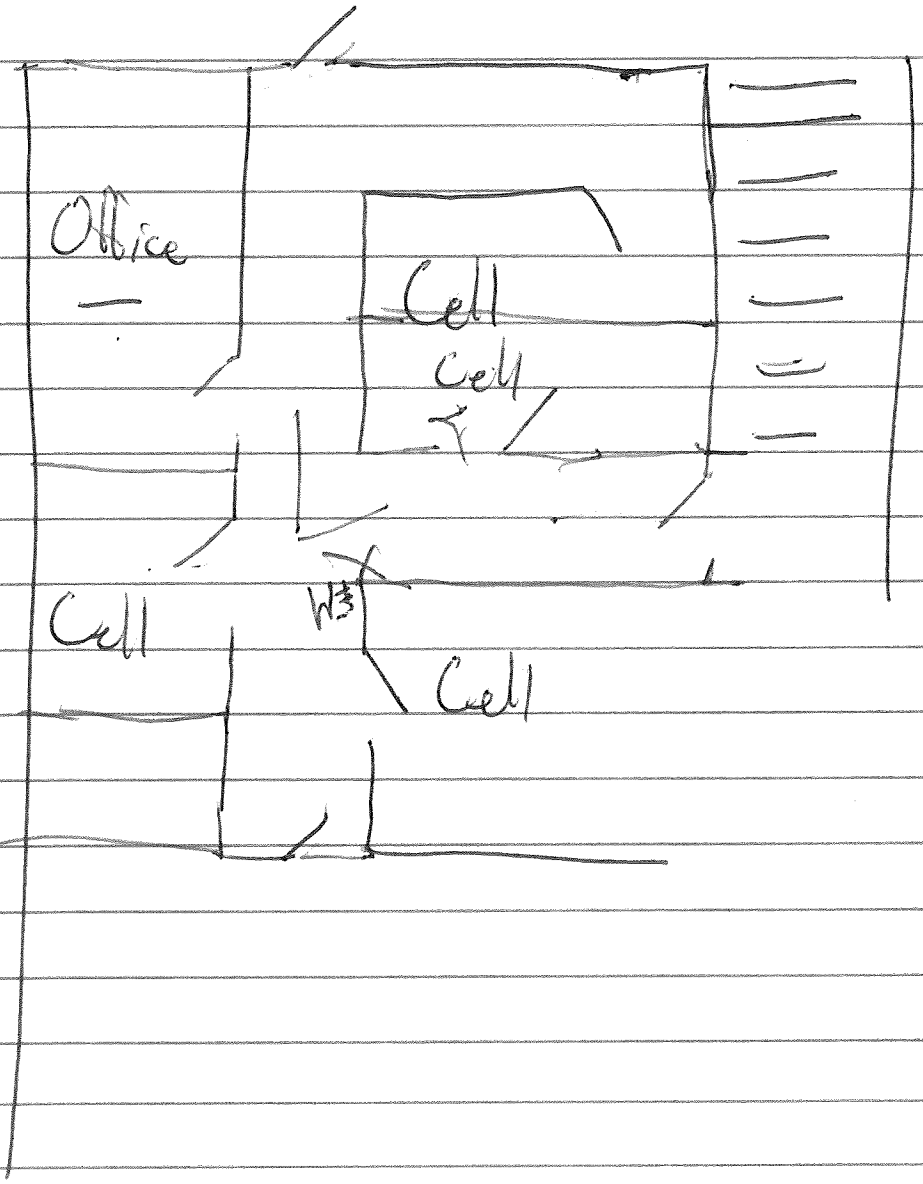
- EM didn't speak to MacGregor

- EM doesn't know DJ, thinks he is arrogant.

- EM no other interviews connected to this investigation

- EM DJ and ADA were in front of the judges bench for sidebar.
- EM does not remember any convo between CO + Reguera.
- EM detainer was passed around.
- EM to his understanding convo between Judge + DJ @ sidebar was to release Reguera thru lockup.
- EM remembers DJ confirming if EM was ok w/ what was happening.

ended @ approx 1215.


Office
Cell
Cell
Cell
W3
Cell

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

(14) REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE

CASE NUMBER
[redacted]

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of Eric Mendoza on January 11, 2019

SYNOPSIS

On Friday, January 11, 2019, Assistant United States Attorneys (AUSA) Dustin Chao and Christine Wichers interviewed Eric Mendoza at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik. The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Jose Medina-Perez aka Oscar Peguero whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 11:10 AM.

REPORTED BY
Peter Skutnik
SPECIAL AGENT

APPROVED BY
Michael Krol
SPECIAL AGENT

DATE APPROVED
1/22/2019

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DETAILS OF INVESTIGATION

On Friday, January 11, 2019, Assistant United States Attorneys (AUSA) Dustin Chao and Christine Wichers interviewed Eric Mendoza at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview was Homeland Security Investigations Special Agent (HSI SA) Peter Skutnik. The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named Jose Medina-Perez aka Oscar Peguero whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

Mendoza stated the following in sum and substance:

Mendoza stated he was born on [redacted] 1968 and he currently lives in Waltham, MA. Mendoza stated he has been working as an interpreter in the Massachusetts courts for approximately 2 years. Mendoza stated that he has worked as an interpreter outside the court system for approximately 20 years. Mendoza stated that since sometime around September 2017 he has worked as a vetted interpreter an is in the process of becoming a certified interpreter with the state court system.

Mendoza stated that he mostly works as an interpreter in Middlesex County Courts. Mendoza stated that he had worked as an interpreter in Newton District Court approximately 10 times prior to April 02, 2018.

Mendoza stated that on April 02, 2018, he started interpreting for Medina-Perez aka Peguero at approximately 10:34 AM. Mendoza stated that he speaks directly to the defendant he is interpreting for and for that reason Mendoza is not able to be heard very well on the court recording.

Mendoza was shown photo #9, of the First Session Courtroom at Newton District Court, Mendoza showed where he stands next to the dock in the courtroom when he is interpreting.

Mendoza identified Medina-Perez aka Peguero from the photo contained on the Newton Police booking page.

Mendoza stated that the photo received from the Chambersburg Police Department, Chambersburg, PA was not the same person that Mendoza interpreted for in the Newton District Court.

Mendoza stated that he was aware that there was an ICE Officer present at the Newton District Court but did not know exactly where the ICE Officer was. Mendoza stated that there was an ICE detainer in place for Medina-Perez aka Peguero. Mendoza stated that there was a detainer in the

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court packet for Medina-Perez aka Peguero. Mendoza stated that he remembers the detainer being passed around.

Mendoza stated that he thought David Jellinek was the Assistant District Attorney because Jellinek made the decision to get Medina-Perez aka Peguero released through the lock up area downstairs.

Mendoza stated that he does not remember having any interaction with Court Officer Wesley MacGregor.

Mendoza stated that he went down to the lock up area with Jellinek after the court proceeding through the dock. Mendoza stated that he believed the reason they went downstairs to lock up was to inform Medina-Perez aka Peguero that he was to be released out the back door of the lock up. Mendoza stated that he has never previously gone downstairs to the lock up to interpret for a defendant after the defendant has been released.

Mendoza stated that that he does not know who was by the exit door of the lock up. Mendoza stated that he was the first to go down the stairs to the lock up and that Jellinek was behind him. Mendoza stated that Jellinek asked him if he was "good with that" in reference to going down to the lock up.

Mendoza stated that he remembers someone saying "well that didn't look good" in reference to how Medina-Perez aka Peguero left after being let out the exit from the lockup. Mendoza stated that he thinks it was the court officer that made the statement, but Mendoza is not certain who it was.

Mendoza stated that he was familiar with defendants being released from court and going out the front door not through the lock up area.

Mendoza stated that he remembers conversation between Jellinek and Medina-Perez aka Peguero, but Mendoza does not what to repeat the conversation because of attorney client privilege.

Mendoza stated that he saw Jellinek speaking to a Court Officer but does not know what was said between the two.

Mendoza stated that he understood that Medina-Perez aka Peguero was going to be released through the lock up area when he was in the courtroom because of what Mendoza heard from the sidebar and because the recorder was turned off. Mendoza stated that he understood that the Judge and Jellinek were getting Medina-Perez aka Peguero released.

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Mendoza stated that he did not have any conversation with Medina-Perez aka Peguero that was not a translation between Medina-Perez and Jellinek. Medina stated that as far as he remembers Medina-Perez aka Peguero spoke little to no English.

Mendoza stated that he did not know of any friends or family of Medina-Perez aka Peguero being in the courtroom.

Mendoza stated that he does not know Jellinek personally. Mendoza stated that he believed Jellinek to be arrogant.

Mendoza stated that he has not participated in any other interviews related to the current investigation related to the events at the Newton District Court on April 02, 2018.

Mendoza stated that he remembers Jellinek and ADA Jurgens being in front of the Judges bench during the sidebar conversation.

Mendoza stated that he does not remember any conversation between Medina-Perez aka Peguero and a Court Officer.

Mendoza restated that to his understanding the conversation between the Judge and Jellinek at sidebar was to release Medina-Perez through the lock up area downstairs.

Mendoza stated that he remembers Jellinek confirming with Mendoza that Mendoza was ok with what was happening.

HSI SA Skutnik drew a rough diagram of the lock up area of the Newton District Court to use as a reference. Using the rough diagram, Mendoza showed where he was standing in the lock up area when Medina-Perez aka Peguero was let out the exit door of the lock up. The rough diagram is contained within the case file.

Investigation continues.

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APPENDIX T

(1)

11/08/2018 @ 1112

Proffer session w/ AUSA (b)(6); (b)(7)(C)

Atty (b)(6); (b)(7)(C)

- AUSA (b)(6); (b)(7)(C) explained the proffer agreement to (b)(6); (b)(7)(C).

- (b)(6); (b)(7)(C) 1st met (b)(6); (b)(7)(C) the morning of the incident

- Communicated w/ (b)(6); (b)(7)(C) the interpreter.

- (b)(6); (b)(7)(C) spoke some broken english

- (b)(6); (b)(7)(C) was called by (b)(6); (b)(7)(C) boss and was an retainer, bosses names (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) was already in Newton District Court was not called by (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) was going to pay for (b)(6); (b)(7)(C) services

- (b)(6); (b)(7)(C) was aware of ICE presence after being retained and after reviewing the file for (b)(6); (b)(7)(C)

- ADA was (b)(6); (b)(7)(C)

- ADA + (b)(6); (b)(7)(C) had copy of ICE detainer.

- (b)(6); (b)(7)(C) had mtg w/ (b)(6); (b)(7)(C) prior to afternoon court session.

- (b)(6); (b)(7)(C) 1st aware of ICE presence @ around 1030-1100

- (b)(6); (b)(7)(C) spoke to ICE agent prior to court proceeding

- Probation provided (b)(7)(E) to (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) reviewed it to discern identity for fugitive charge.

- (b)(6); (b)(7)(C) then spoke to (b)(6); (b)(7)(C), and went upstairs to and spoke to (b)(6); (b)(7)(C) and was shown a Puerto Rican

birth cert for (b)(6); (b)(7)(C) by (b)(6); (b)(7)(C).

- (b)(6); (b)(7)(C) was able to establish that (b)(6); (b)(7)(C) was not the person wanted in PA.

- (b)(6); (b)(7)(C) believed there was a mistaken identity

- (b)(6); (b)(7)(C) was told by ICE agent there was a biometric match for (b)(6); (b)(7)(C) was not convinced that (b)(6); (b)(7)(C) was the individual in the (b)(7)(E) report. this occured @ approx 1200

- (b)(6); (b)(7)(C) spoke to (b)(6); (b)(7)(C) and told him he'd be back after lunch break

- (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) he was not the guy wanted by ICE or in PA.

- (b)(6); (b)(7)(C) Knew Court Officer (b)(6); (b)(7)(C) and thinks he's a good officer

8

- (b)(6); (b)(7)(C) expressed to CO (b)(6); (b)(7)(C) that he didn't think (b)(6); (b)(7)(C) was the guy wanted by ICE.

- Judge (b)(6); (b)(7)(C) is usual drug court judge, but not this time 4/2/18

- (b)(6); (b)(7)(C) remembers other CO's but not names.

- (b)(6); (b)(7)(C) was under the impression that defendants don't necessarily leave through the main entrance that people can leave through the lockup. (b)(6); (b)(7)(C) believed this because defendants property is in the lockup.

- CO (b)(6); (b)(7)(C) may have told (b)(6); (b)(7)(C) that defendants could leave at back.

- (b)(6); (b)(7)(C) does not recall showing (b)(6); (b)(7)(C) the detainer

- (b)(6); (b)(7)(C) says W (b)(6); (b)(7)(C) knows of detainer

- (b)(6); (b)(7)(C) doesn't know for sure that (b)(6); (b)(7)(C) knew of detainer.

- (b)(6); (b)(7)(C) + ADA had side bar to establish that (b)(6); (b)(7)(C) was not fugitive wanted in PA.

- (b)(6); (b)(7)(C) requested permission to speak to (b)(6); (b)(7)(C) in lockup prior to his release.

- (b)(6); (b)(7)(C) was granted permission to speak to (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) went down stairs w/ CO (b)(6); (b)(7)(C) and later interpreter.

- (b)(6); (b)(7)(C) stated (b)(6); (b)(7)(C) was being released and CO (b)(6); (b)(7)(C) released (b)(6); (b)(7)(C) out lockup door

- (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) that ICE was looking for him upstairs

- (b)(6); (b)(7)(C) heard (b)(6); (b)(7)(C) tell (b)(6); (b)(7)(C) that ICE is waiting for (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) cannot recall specifically hearing (b)(6); (b)(7)(C) mention the presence of ICE or having knowledge of ICE detainer

- (b)(6); (b)(7)(C) did show (b)(6); (b)(7)(C) the ICE detainer.

- (b)(6); (b)(7)(C) stated drscussed the fugitive warrant from PA and other charges w/ judge @ side bar

- (b)(6); (b)(7)(C) says he and judge discussed (b)(6); (b)(7)(C) speaking to (b)(6); (b)(7)(C) in lockup because (b)(6); (b)(7)(C) thought (b)(6); (b)(7)(C) could be released from lockup

- (b)(6); (b)(7)(C) suggested that (b)(6); (b)(7)(C) be released through lockup.

- (b)(6); (b)(7)(C) never heard ICE agents be asked to leave the courtroom.

- (b)(6); (b)(7)(C) did not request to have the sidebar be off the record. (b)(6); (b)(7)(C) does not remember who requested to off the record. (b)(6); (b)(7)(C) doesn't remember why they went off the record.

- (b)(6); (b)(7)(C) does not know why (b)(6); (b)(7)(C) knew to let (b)(6); (b)(7)(C) out the lockup door.

- (b)(6); (b)(7)(C) states that it is rare to have someone let out the lockup door. (b)(6); (b)(7)(C) has seen it happen a few times.

- (b)(6); (b)(7)(C) does not recall having a previous client leave thru the lockup.

- believes he was let out the back door to avoid encountering ICE agents. it was (b)(6); (b)(7)(C) intent to have (b)(6); (b)(7)(C) leave out back door and avoid ICE

(5)

- (b)(6); (b)(7)(C) states he knows (b)(6); (b)(7)(C) is a recovering addict / alcoholic.

- meeting ended approx 1206.

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(2)

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

CASE NUMBER
(b)(7)(E)

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Proffer/interview of (b)(6); (b)(7)(C) on 11-08-2018

REPORTED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

APPROVED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

DATE APPROVED
11/19/2018

SYNOPSIS

On Thursday, November 08, 2018, Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(6); (b)(7)(C). Prior to the interview (b)(6); was offered a proffer letter by AUSA (b)(6); (b)(7)(C) explained the purpose and conditions of the proffer letter to (b)(6); (b)(7)(C) and his Attorney (b)(6); (b)(7)(C) willingly signed the proffer letter

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

DETAILS OF INVESTIGATION

On Thursday, November 08, 2018, Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C) Prior to the interview (b)(6); was offered a proffer letter by AUSA (b)(6); (b)(7)(C) explained the purpose and conditions of the proffer letter to (b)(6); (b)(7)(C) and his Attorney (b)(6); (b)(7)(C) willingly signed the proffer letter.

The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); stated the following in sum and substance:

(b)(6); stated that he first met (b)(6); (b)(7)(C) the morning of (b)(6); (b)(7)(C) court appearance. (b)(6); (b)(7)(C) stated that he communicated with (b)(6); (b)(7)(C) via a state employed Spanish speaking interpreter. (b)(6); stated that (b)(6); (b)(7)(C) was also capable of communicating in some broken English.

(b)(6); stated that he was contacted by (b)(6); (b)(7)(C) the boss of (b)(6); (b)(7)(C), while at the Newton District Court the morning of (b)(6); (b)(7)(C) court appearance. (b)(6); stated that (b)(6); was going to pay (b)(6); for his services for representing (b)(6); (b)(7)(C)

(b)(6); stated that he was aware that an ICE/ERO Officer was present at the Newton District Court after his services were retained and after (b)(6); had a chance to review the court file for (b)(6); (b)(7)(C)

(b)(6); stated that the Assistant District Attorney representing the Commonwealth of Massachusetts in the criminal case against (b)(6); (b)(7)(C) was (b)(6); (b)(7)(C) stated that he and ADA (b)(6); (b)(7)(C) both had a copy of an ICE Detainer for (b)(6); (b)(7)(C)

(b)(6); stated that he had met with (b)(6); (b)(7)(C) prior to the afternoon court session. (b)(6); stated that he first became aware of the presence an ICE/ERO Officer sometime around 10:30 AM.

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2021-ICLI-00041 109

(b)(6); stated that he did meet with an ICE/ERO Officer inside the courtroom to speak to him about (b)(6); (b)(7)(C) identity and criminal history. (b)(6); (b)(7)(C) did not know the name of the ICE /ERO Officer that he spoke to.

(b)(6); stated that he was provided a copy of the (b)(7)(E) criminal history report to review from a probation officer at the court. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) had been charged with a fugitive warrant out of the state of Pennsylvania. (b)(6); stated that the (b)(7)(E) report had several names and FBI numbers on it and it was difficult to determine whose true identity was associated with the (b)(7)(report.

(b)(6); stated that he did not believe that (b)(6); (b)(7)(C) was the same person that was wanted in Pennsylvania or the person wanted by ICE.

(b)(6); stated that he was shown a Puerto Rican birth certificate by (b)(6); (b)(7)(C) supposedly belonging to (b)(6); (b)(7)(C)

(b)(6); stated that he and ADA (b)(6); had concluded that (b)(6); (b)(7)(C) was not the same individual wanted in Pennsylvania after Pennsylvania faxed over a photo of the fugitive and the photo did not match (b)(6); (b)(7)(C)

(b)(6); stated that he was told by the ICE/ERO Officer that there was a biometric match for (b)(6); (b)(7)(C) between his fingerprints from (b)(6); (b)(7)(C) arrest in Newton and a previous arrest by ICE. (b)(6); stated that he was not convinced that (b)(6); (b)(7)(C) was the same person in the NCIC report and the same person wanted by the ICE/ERO Officers.

(b)(6); (b)(7)(C) stated that he spoke to (b)(6); (b)(7)(C) prior to taking a break for lunch, at this time (b)(6); (b)(7)(C) told (b)(6); that he was not the guy wanted by ICE or the guy wanted in Pennsylvania.

(b)(6); stated that he was familiar with Court Officer (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C) had been working in the Newton District Court for a few years. (b)(6); (b)(7)(C) stated that he believed (b)(6); (b)(7)(C) to be a good person and good court officer. (b)(6); stated that (b)(6); (b)(7)(C) is a recovering alcoholic and has been sober for at least 20 years. (Agent's note: this information was provided by (b)(6); in response to a reported statement made by (b)(6); (b)(7)(C) in an interview with ICE Officers following (b)(6); (b)(7)(C) arrest by ICE.)

(b)(6); stated that he expressed to (b)(6); (b)(7)(C) that he did not think that (b)(6); (b)(7)(C) was the guy wanted by ICE. (b)(6); (b)(7)(C) stated that he remembers other court officers being present, but he did not know any of them by name other than (b)(6); (b)(7)(C)

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(b)(6); stated that he was under the impression that defendants did not necessarily need to be released from the courthouse through (b)(6); (b)(7)(C); (b)(7)(E) stated that he did not think it was unusual for defendants to be released from the courthouse through an exit in the lock up downstairs. (b)(6); thought it was normal for a defendant to be released from the courthouse downstairs through the lock up because the defendant's property was downstairs, and it would help expedite the release. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) may have told him that it was ok for defendants to be released through the lock up downstairs.

(b)(6); stated that he does not remember showing the ICE detainer to (b)(6); (b)(7)(C) believes that (b)(6); (b)(7)(C) was aware of the ICE detainer for (b)(6); (b)(7)(C) but (b)(6); does not know for sure that (b)(6); (b)(7)(C) had seen or was even aware off the presence of an ICE detainer.

(b)(6); stated that he, ADA (b)(6); (b)(7)(C) had a sidebar to discuss that (b)(6); (b)(7)(C) was not the individual wanted in Pennsylvania. (b)(6); (b)(7)(C) stated that the fugitive warrant charge was dropped for (b)(6); (b)(7)(C) stated that the criminal case against (b)(6); (b)(7)(C) was continued and (b)(6); (b)(7)(C) was to be released until his upcoming hearing. (b)(6); stated that he requested from Judge (b)(6); that (b)(6); (b)(7)(C) be released through the lock up area because (b)(6); thought it was ok for a defendant to be released from the lock up area.

(b)(6); stated that he requested permission to speak with (b)(6); (b)(7)(C) in the lock up area prior to (b)(6); (b)(7)(C) being released. (b)(6); stated that the judge granted him permission to go downstairs to the lockup and (b)(6); was escorted to the lock up area by Court Officer (b)(6); (b)(7)(C)

(b)(6); stated that he informed (b)(6); (b)(7)(C) that ICE Officers were looking for him and that the ICE Officers were upstairs in the courthouse.

(b)(6); stated that Court Officer (b)(6); (b)(7)(C) returned (b)(6); (b)(7)(C) property to him and released him from the courthouse through the exit in the lock up area downstairs. (b)(6); (b)(7)(C) stated that he thought he heard Court officer (b)(6); (b)(7)(C) tell (b)(6); (b)(7)(C) that ICE Officers were waiting for him upstairs, but (b)(6); stated we was not certain that (b)(6); (b)(7)(C) told (b)(6); (b)(6); that. (b)(6); stated that he did not know why Court Officer (b)(6); (b)(7)(C) knew to release (b)(6); (b)(7)(C) through the lock up area or who may have instructed Court Officer (b)(6); (b)(7)(C) to do so.

(b)(6); stated that he did not believe it to be unusual that a defendant would be let out of the courthouse through the lock up area downstairs, (b)(6); (b)(7)(C) does remember seeing some defendants being released through the lock up area.

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2021-ICLI-00041 444

(b)(6); (b)(7)(C) stated that he does not recall ever having one of his previous clients ever be allowed to be released from the courthouse through the lock up area downstairs.

(b)(6); (b)(7)(C) stated that he believes (b)(6); (b)(7)(C) was released through the lock up area downstairs to avoid any contact with the ICE Officers waiting for him. (b)(6); (b)(7)(C) stated that it was his intent to have (b)(6); (b)(7)(C) be released through the lock up area downstairs to have (b)(6); (b)(7)(C) avoid having to encounter the ICE Officers.

The interview was concluded at approximately 12:06 PM.

Investigation continues.

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2021-ICLI-00041-112

(3)

On Thursday, November 08, 2018, Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). Prior to the interview (b)(6); was offered a proffer letter by AUSA (b)(6); (b)(7)(C) explained the purpose and conditions of the proffer letter to (b)(6); (b)(7)(C) and his Attorney (b)(6); (b)(7)(C) willingly signed the proffer letter.

The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); stated the following in sum and substance:

(b)(6); (b)(7)(C) stated that he first met (b)(6); (b)(7)(C) the morning of (b)(6); (b)(7)(C) court appearance. stated that he communicated with (b)(6); (b)(7)(C) via a state employed Spanish speaking interpreter. (b)(6); stated that (b)(6); (b)(7)(C) was also capable of communicating in some broken English.

(b)(6); stated that he was contacted by (b)(6); the boss of (b)(6); (b)(7)(C), while at the Newton District Court the morning of (b)(6); (b)(7)(C) court appearance. (b)(6); stated that (b)(6); was going to pay (b)(6); for his services for representing (b)(6); (b)(7)(C)

(b)(6); stated that he was aware that an ICE/ERO Officer was present at the Newton District Court after his services were retained and after (b)(6); had a chance to review the court file for (b)(6); (b)(7)(C)

(b)(6); stated that the Assistant District Attorney representing the Commonwealth of Massachusetts in the criminal case against (b)(6); (b)(7)(C) was (b)(6); (b)(7)(C) stated that he and ADA (b)(6); both had a copy of an ICE Detainer for (b)(6); (b)(7)(C)

(b)(6); stated that he had met with (b)(6); (b)(7)(C) prior to the afternoon court session. (b)(6); stated that he first became aware of the presence an ICE/ERO Officer sometime around 10:30 AM.

(b)(6); stated that he did meet with an ICE/ERO Officer inside the courtroom to speak to him about (b)(6); (b)(7)(C) identity and criminal history. (b)(6); did not know the name of the ICE/ERO Officer that he spoke to.

(b)(6); stated that he was provided a copy of the (b)(7)(E) criminal history report to review from a probation officer at the court. (b)(6); stated that (b)(6); (b)(7)(C) had been charged with a fugitive warrant out of the state of Pennsylvania. (b)(6); stated that the (b)(7)(E) report had several names and FBI numbers on it and it was difficult to determine whose true identity was associated with the (b)(7)(E) report.

(b)(6); (b)(7)(C) stated that he did not believe that (b)(6); (b)(7)(C) was the same person that was wanted in Pennsylvania or the person wanted by ICE.

(b)(6); (b)(7)(C) stated that he was shown a Puerto Rican birth certificate by (b)(6); (b)(7)(C) supposedly belonging to (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that he and ADA (b)(6); (b)(7)(C) had concluded that (b)(6); (b)(7)(C) was not the same individual wanted in Pennsylvania after Pennsylvania faxed over a photo of the fugitive and the photo did not match (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that he was told by the ICE/ERO Officer that there was a biometric match for (b)(6); (b)(7)(C) between his fingerprints from (b)(6); (b)(7)(C) arrest in Newton and a previous arrest by ICE. (b)(6); (b)(7)(C) stated that he was not convinced that (b)(6); (b)(7)(C) was the same person in the (b)(7)(E) and the same person wanted by the ICE/ERO Officers.

(b)(6); (b)(7)(C) stated that he spoke to (b)(6); (b)(7)(C) prior to taking a break for lunch, at this time (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) that he was not the guy wanted by ICE or the guy wanted in Pennsylvania.

(b)(6); (b)(7)(C) stated that he was familiar with Court Officer (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C) had been working in the Newton District Court for a few years. (b)(6); (b)(7)(C) stated that he believed (b)(6); (b)(7)(C) to be a good person and good court officer. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) is a recovering alcoholic and has been sober for at least 20 years. (Agent's note: this information was provided by (b)(6); (b)(7)(C) in response to a reported statement made by (b)(6); (b)(7)(C) in an interview with ICE Officers following (b)(6); (b)(7)(C) arrest by ICE.)

(b)(6); (b)(7)(C) stated that he expressed to (b)(6); (b)(7)(C) that he did not think that (b)(6); (b)(7)(C) was the guy wanted by ICE. (b)(6); (b)(7)(C) stated that he remembers other court officers being present, but he did not know any of them by name other than (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that he was under the impression that defendants did not necessarily need to be released from the courthouse through the main entrance. (b)(6); (b)(7)(C) stated that he did not think it was unusual for defendants to be released from the courthouse through an exit in the lock up downstairs. (b)(6); (b)(7)(C) thought it was normal for a defendant to be released from the courthouse downstairs through the lock up because the defendant's property was downstairs, and it would help expedite the release. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) may have told him that it was ok for defendants to be released through the lock up downstairs.

(b)(6); (b)(7)(C) stated that he does not remember showing the ICE detainer to (b)(6); (b)(7)(C) believes that (b)(6); (b)(7)(C) was aware of the ICE detainer for (b)(6); (b)(7)(C) but (b)(6); (b)(7)(C) does not know for sure that (b)(6); (b)(7)(C) had seen or was even aware off the presence of an ICE detainer.

(b)(6); (b)(7)(C) stated that he, ADA (b)(6); (b)(7)(C) and Judge (b)(6); (b)(7)(C) had a sidebar to discuss that (b)(6); (b)(7)(C) was not the individual wanted in Pennsylvania. (b)(6); (b)(7)(C) stated that the fugitive warrant charge was dropped for (b)(6); (b)(7)(C) stated that the criminal case against (b)(6); (b)(7)(C) was continued and (b)(6); (b)(7)(C) was to be released until his upcoming hearing. (b)(6); (b)(7)(C) stated that he requested from

Judge (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) be released through the lock up area because (b)(6); thought it was ok for a defendant to be released from the lock up area.

(b)(6); stated that he requested permission to speak with (b)(6); (b)(7)(C) in the lock up area prior to (b)(6); (b)(7)(C) being released. (b)(6); stated that the judge granted him permission to go downstairs to the lockup and (b)(6); was escorted to the lock up area by Court Officer (b)(6); (b)(7)(C)

(b)(6); stated that he informed (b)(6); (b)(7)(C) that ICE Officers were looking for him and that the ICE Officers were (b)(7)(E) in the courthouse.

(b)(6); stated that Court Officer (b)(6); returned (b)(6); (b)(7)(C) property to him and released him from the courthouse through the exit in the lock up area downstairs. (b)(6); stated that he thought he heard Court officer (b)(6); tell (b)(6); (b)(7)(C) that ICE Officers were waiting for him upstairs, but (b)(6); stated we was not certain that (b)(6); told (b)(6); (b)(7)(C) that. (b)(6); stated that he did not know why Court Officer (b)(6); knew to release (b)(6); (b)(7)(C) through the lock up area or who may have instructed Court Officer (b)(6); to do so.

(b)(6); stated that he did not believe it to be unusual that a defendant would be let out of the courthouse through the lock up area downstairs. (b)(6); does remember seeing some defendants being released through the lock up area.

(b)(6); stated that he does not recall ever having one of his previous clients ever be allowed to be released from the courthouse through the lock up area downstairs.

(b)(6); stated that he believes (b)(6); (b)(7)(C) was released through the lock up area downstairs to avoid any contact with the ICE Officers waiting for him. (b)(6); stated that it was his intent to have (b)(6); (b)(7)(C) be released through the lock up area downstairs to have (b)(6); (b)(7)(C) avoid having to encounter the ICE Officers.

The interview was concluded at approximately 12:06 PM.

Investigation continues.

(4) 1/14/2019

Interview w/ [redacted] HSI SA [redacted] repres. [redacted]

- Start approx 1350
- Explanation of proffer letter to [redacted] by [redacted]
- [redacted] DoB , born in Bronx, Brighton to Cyoa Newton 5-11 yoa, lives in Newton
[redacted], Newton, Office
2000 BC Law graduate, State Court to Appeals in AZ
Public defendr Off. 2003-04, 06,
BFA 06-08, Obama campaign in 08
Own practice in 08-09, 09-12 private
Own shop 12-present, state appointed defender
Bar advocate system; Newton + Waltham cases
Since 09-10 regularly appear in NDC for criminal cases
approx 50 open cases at any time, majority from Waltham
- Meet [redacted] in 2011, had coffee w/ [redacted]. Talked about own practice [redacted] was private attorney at the time
- [redacted] has a case currently that [redacted] had two lawyers ago - [redacted] was second Atty that [redacted] got case from

- (b)(6); (b)(7)(C) no referrals from (b)(6); (b)(7)(C)
- No consistent connect w/ (b)(6); (b)(7)(C), apparently attend same temple on Wellesley. Some social contact.
- (b)(6); (b)(7)(C) approx 4-5 appearances in court in front of (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) not assigned to NDC, (b)(6); (b)(7)(C) hasn't seen (b)(6); (b)(7)(C) on NDC since April.
- (b)(6); (b)(7)(C) Know (b)(6); (b)(7)(C) as CO @ NDC. (b)(6); (b)(7)(C) was not there @ NDC when (b)(6); (b)(7)(C) started.
- (b)(6); (b)(7)(C) met (b)(6); (b)(7)(C) approx 4yrs ago.
- (b)(6); (b)(7)(C) Know judges select CO's for court.
- (b)(6); (b)(7)(C) has a familiar relationship w/ (b)(6); (b)(7)(C) from interaction in court.
- (b)(6); (b)(7)(C) – (b)(6); (b)(7)(C) helped get access to lockup for client meetings and other assistance while in court.
- (b)(6); (b)(7)(C) – (b)(6); (b)(7)(C) has a large personality, friendly with most other employees.

- (b)(6); (b)(7)(C) never asked for free legal advise
- (b)(6); (b)(7)(C) gifted (b)(6); (b)(7)(C) a blue tooth speaker around the Holidays approx 2-3 yrs ago intended to be used for the lockup area in general.
- (b)(6); (b)(7)(C) has gifted people in Waltham Court previous, pasteries etc. not as often in NAC.
- listening to court recordings
- (b)(6); (b)(7)(C) shown photo of courtroom, (b)(6); (b)(7)(C) stands near dock when involved in a proceeding.
- (b)(6); (b)(7)(C) had an employer + friend in court, didn't like assigned Atty, (b)(6); (b)(7)(C) charged $1000 retainer, employer paid w/ check.
- (b)(6); (b)(7)(C) possibly informed by employer about ICE being present
- (b)(6); (b)(7)(C) gets paperwork from (b)(6); (b)(7)(C) clerk, prior defense atty
- (b)(6); (b)(7)(C) verified paperwork from court.
- (b)(6); (b)(7)(C) went to lockup to speak to (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) allowed into lockup by CO to speak to (b)(6); (b)(7)(C) w/ interp.

- Court usually breaks for lunch from 1245 - 215, court room usually left open

- (b)(6); (b)(7)(C) spoke to ICE agent in the courtroom, asked ICE how they ID'd (b)(6); (b)(7)(C), ICE agent showed picture of (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) states (b)(7)(E) had approx 12 IDs on (b)(7)(E) printout.

- (b)(6); (b)(7)(C) agrees photo shown to him by ICE looked like (b)(6); (b)(7)(C) ("the guy in court that day")

- (b)(6); (b)(7)(C) saw birth certificate from PR in the name (b)(6); (b)(7)(C) from employer.

- (b)(6); (b)(7)(C) agrees he does make decision in court about whether or not someone is removable or not, responsibility lies w/ IJ.

- (b)(6); (b)(7)(C) recalls speaking to DA + (b)(6); (b)(7)(C) about ID of (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) approached ICE not vice versa.

- (b)(6); (b)(7)(C) expresses ID issue w/ others in court that (b)(6); (b)(7)(C) not guy wanted by PA or ICE.
  Various descriptions of individual in III, ie tats, amputations etc

(b)(6); (b)(7)(C) corrects transcript, (b)(6); (b)(7)(C) says there is a warrant.
pg 4 comes at 14:48:48
pg 5 "hope that he can avoid ICE"
pg 5 "Inaudible: "had with ID"
pg 5 "bailed out from Billerica ICE"

(b)(6); (b)(7)(C) asked to go off the record to request (b)(6); (b)(7)(C) be released thru lockup.

(b)(6); (b)(7)(C) Knew ICE was in the lobby waiting for (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Knew others had been released through lockup.

(b)(6); (b)(7)(C) didn't think there was a rule about releasing thru lockup

(b)(6); (b)(7)(C) spoke to (b)(6); (b)(7)(C) about releasing (b)(6); (b)(7)(C) thru lockup.

(b)(6); (b)(7)(C) expressed to (b)(6); (b)(7)(C) that he didn't think (b)(6); (b)(7)(C) was the guy wanted

(b)(6); (b)(7)(C) recalls discussing releasing (b)(6); (b)(7)(C) at the lockup doesn't remember who's idea it was to get release out thru lockup.

(b)(6); (b)(7)(C) remembers (b)(6); (b)(7)(C) expressing to him that if (b)(6); (b)(7)(C) gets downstairs they can release him thru lockup

(b)(6); (b)(7)(C) says to (b)(6); (b)(7)(C) it's possible to get (b)(6); (b)(7)(C) released thru basement can I speak to (b)(6); (b)(7)(C) downstairs to avoid ICE
this part was off the record

(b)(6); (b)(7)(C) beleives sidebar convo was shorter than the lapse shown on transcript.

(b)(6); (b)(7)(C) felt that sidebar convo should be off record when requesting release at back to protect self and judge.

(b)(6); (b)(7)(C) could do post lobby conference off record, has done lobby conference @ sidebar in past.
When asking to go off the record states doesn't know if intent was to stop the recording. Knew what he was asking appeared "shady".

(b)(6); (b)(7)(C) followed by interpreter downstairs thru dock downstairs to the lockup.

(b)(6); (b)(7)(C) CO let him into the dock, doesn't remember long convo w/ interpreter and (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) may have said to interp. "you okw/ this" but doesn't beleive in was in reference to the release.

(b)(6); (b)(7)(C) doesn't remember convo w/ (b)(6); (b)(7)(C) in lockup, both Knew intent to release (b)(6); (b)(7)(C) thru lockup.

(b)(6); (b)(7)(C) states (b)(6); (b)(7)(C) gives property to (b)(6); (b)(7)(C) then let (b)(6); (b)(7)(C) out.

(b)(6); (b)(7)(C) doesn't remember (b)(6); (b)(7)(C) having said anything to (b)(6); (b)(7)(C) other than "Good Luck" or something similar.

(b)(6); (b)(7)(C) doesn't remember (b)(6); (b)(7)(C) saying "that didn't look good", but sounds like something (b)(6); (b)(7)(C) would say.

(b)(6); (b)(7)(C) doesn't remember how (b)(6); (b)(7)(C) walked away from lockup, couldn't see past the exit door.

(b)(6); (b)(7)(C) states ADA was upset, spoke to her afterward, (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) ICE was pissed @ her.

(b)(6); (b)(7)(C) told her she said ICE wasn't her business why is she upset.

(b)(6); (b)(7)(C) speculates ICE may have yelled @ ADA.

(b)(6); (b)(7)(C) spoke to (b)(6); (b)(7)(C) after release doesn't remember specific convo, probably said "thanks" to (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) spoke to (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) couple days later to express thanks

(b)(6); (b)(7)(C) spoke to (b)(6); (b)(7)(C) about (b)(6); (b)(7)(C) going to (b)(6); (b)(7)(C) approx August

- (b)(6); (b)(7)(C) brief convo w/ (b)(6); (b)(7)(C) about (b)(6); (b)(7)(C) just that it was a good idea to have atty.

- (b)(6); (b)(7)(C) no contact w/ (b)(6); (b)(7)(C) after April, spoke to (b)(6), (b)(7)(C) about (b)(6); (b)(7)(C) well being in December 2018

- (b)(6); (b)(7)(C) Doesn't approve of what happening to (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) thinks he was doing his job due to ID questions

- (b)(6); (b)(7)(C) believes defendants are already downstairs have been released 1-2 times in 6-7 years.

- (b)(6); (b)(7)(C) doesn't remember speaking to employer + or friend after release.

- (b)(6); (b)(7)(C) may have old recording system named Colorado that does not cut out, unknown if (b)(6); (b)(7)(C) still has it.

- 1615 ended.

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(5)

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CASE NUMBER
(b)(6); (b)(7)(C)

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview/Proffer of (b)(6); (b)(7)(C) on January 14, 2019

REPORTED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

APPROVED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

DATE APPROVED
1/25/2019

SYNOPSIS

On Monday, January 14, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). Prior to the interview all parties confirmed that the terms of the proffer letter offered in November 2018 still applied. AUSA (b)(6); reviewed the purpose and conditions of the proffer letter to (b)(6);.

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2021-ICLI-00041 438

DETAILS OF INVESTIGATION

On Monday, January 14, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). Prior to the interview all parties confirmed that the terms of the proffer letter offered in November 2018 still applied. AUSA (b)(6); (b)(7)(C) reviewed the purpose and conditions of the proffer letter to (b)(6); (b)(7)(C).

The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); (b)(7)(C) stated the following in sum and substance:

(b)(6); (b)(7)(C) stated that his date of birth is (b)(6); (b)(7)(C) and that he was born in the Bronx, NY. (b)(6); (b)(7)(C) stated that he has lived in Brighton and Newton as a child and currently resides in Newton, MA. (b)(6); (b)(7)(C) stated that his current office is located at (b)(6); (b)(7)(C), Newton, MA. (b)(6); (b)(7)(C) stated that he got his Juris Doctorate Degree at (b)(6); (b)(7)(C) in 2000. (b)(6); (b)(7)(C) stated that he had previously worked for the Arizona State Court of Appeals, then as a public defender during the years 2003 through 2006, with the Boston Police Department from 2006 through 2008, on the Barack Obama presidential campaign in 2008 and has been in private practice as an attorney since 2008 to present time. (b)(6); (b)(7)(C) stated that he also works as a Massachusetts state appointed defender and is part of the bar advocate system. (b)(6); (b)(7)(C) stated that he works primarily in the Newton and Waltham District Courts and has appeared in Newton District Court regularly since 2009. (b)(6); (b)(7)(C) stated that he has approximately 50 open cases at any time and that most of his cases are from the Waltham District Court.

(b)(6); (b)(7)(C) stated that he first met Judge (b)(6); (b)(7)(C) approximately seven to eight years ago when he had coffee with her to talk about having his own private practice. (b)(6); (b)(7)(C) stated that Judge (b)(6); (b)(7)(C) was a private attorney when he initially met her.

(b)(6); (b)(7)(C) stated that he currently has a case that had been Judge (b)(6); (b)(7)(C) two attorneys prior to him. (b)(6); (b)(7)(C) stated that he received the case from Attorney (b)(6); (b)(7)(C) and that (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) had received the case from Judge (b)(6); (b)(7)(C) stated that he has had no direct case referrals from Judge (b)(6); (b)(7)(C).

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2021-ICLI-00041 - 139

(b)(6); (b)(7)(C) stated that has no consistent social or work connection with Judge (b)(6); (b)(7)(C) other than some infrequent social contact. (b)(6); stated that he and Judge (b)(6); attend the same synagogue in Newton but (b)(6); has never seen Judge (b)(6); (b)(7)(C) there.

(b)(6); stated that he believes he has had approximately four or five appearances in court in front of Judge (b)(6); (b)(7)(C) stated that Judge (b)(6); is not typically assigned to the Newton District Court. (b)(6); (b)(7)(C) stated that he hasn't seen Judge (b)(6); in the Newton District Court since April 02, 2018.

(b)(6); stated that he knows that Court Officers are selected to work courts by the sitting District Judge for that court.

(b)(6); stated that he knows Court Officer (b)(6); (b)(7)(C) from working in the Newton District Court. (b)(6); stated that Court Officer (b)(6); (b)(7)(C) was not working at the Newton District Court when (b)(6); first started working there. (b)(6); stated that he met Court Officer (b)(6); (b)(7)(C) approximately four years ago. (b)(6); stated that he is personally familiar with Court Officer (b)(6); (b)(7)(C) from their interactions at the Newton District Court. (b)(6); stated that Court Officer (b)(6); (b)(7)(C) has a large personality and is friendly with most of the employees at the Newton District Court. (b)(6); stated that because of his familiarity with Court Officer (b)(6); (b)(7)(C) over the years (b)(6); gets assistance from Court Officer (b)(6); (b)(7)(C) when (b)(6); is in Court with such things as getting in to the lockup area to speak with clients and other court matters.

(b)(6); stated that Court Officer (b)(6); (b)(7)(C) has never asked for free legal advice.

(b)(6); stated that he once gifted a blue tooth speaker worth approximately $20 to Court Officer (b)(6); (b)(7)(C) around the Christmas holiday approximately two to three years ago. (b)(6); stated that the gift was intended to be used by the entire Court Security staff in the lockup area that it was not a personal gift for (b)(6); (b)(7)(C) alone.

(b)(6); stated that he has gifted other people in the Waltham and Newton District Courts with things such as pastries, coffee or donuts. (b)(6); (b)(7)(C) said that he has brought pastries, coffee and donuts to Waltham more often than Newton mostly because he is in the Waltham District Court more often.

(b)(6); was played a recording of the court proceedings from Newton District Court on April 02, 2018 to refresh his memory of the proceedings. (b)(6); was shown a photo of the Newton District Session One Courtroom and (b)(6); showed where he typically stands near the dock during a court proceeding.

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2022-ICLI-00041-448

(b)(6); stated that (b)(6); (b)(7)(C) had his employer and another friend at the Newton District Court on April 02, 2018. (b)(6); stated that (b)(6); (b)(7)(C) employer and friend did not like the court assigned defense attorney. (b)(6); stated that (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) employer paid (b)(6); $1000.00 by check to retain (b)(6); (b)(7)(C) services for court on April 02, 2018.

(b)(6); stated that he believes he may have been informed about ICE officers being present in Newton District Court on April 02, 2018 by (b)(6); (b)(7)(C) employer.

(b)(6); stated that he received court related paperwork pertaining to (b)(6); (b)(7)(C) from the Assistant District Attorney, the court clerk and the previous Defense Attorney. (b)(6); stated that his initial encounter with (b)(6); (b)(7)(C) prior to representing (b)(6); (b)(7)(C) was in the lockup area. (b)(6); (b)(7)(C) stated that he was allowed into the lockup area by a court officer so (b)(6); could speak to (b)(6); (b)(7)(C) aka (b)(6); with an interpreter.

(b)(6); stated that the court usually breaks for lunch from 12:45 PM to 2:25 PM and the court room is usually left open.

(b)(6); stated that he spoke to an ICE Officer in the courtroom and asked how the ICE Officer identified (b)(6); (b)(7)(C) as the person that ICE was looking for. (b)(6); stated that he was the one to initiate contact with the ICE Officer to establish the true identity of (b)(6); (b)(7)(C) stated that the ICE Officer showed (b)(6); a photo of stated that the photo that the ICE Officer showed (b)(6); (b)(7)(C) did resemble (b)(6); (b)(7)(C) as the person that was in Newton District Court on April 02, 2018. (b)(6); (b)(7)(C) stated that the NCIC criminal history printout that was associated with (b)(6); (b)(7)(C) had approximately 12 separate identities. (b)(6); stated that he was shown a Puerto Rican Birth Certificate in the name of (b)(6); (b)(7)(C) by (b)(6); (b)(7)(C) employer. (b)(6); stated that because of the different identities associated with (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) did not believe that the person in Newton District Court was the person that ICE Officers were seeking.

(b)(6); stated that he remembers speaking to the Assistant District Attorney and Court Officer (b)(6); (b)(7)(C) about the confusion concerning the identity of (b)(6); (b)(7)(C)

(b)(6); stated that he agreed that it is not his responsibility to decide immigration matters in criminal court proceedings. (b)(6); stated that he knows immigration matters are settled in separate immigration court proceedings.

During the playback of the court recording (b)(6); advised of some corrections to the transcript of the recording.

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- Page 4 of the transcript in the recording that begins at 2:48:48 PM (b)(6); stated that he said to Judge (b)(6); (b)(7)(C) that there is a warrant, the transcript reads that (b)(6); (b)(7)(C) stated that there is no warrant.
- Page 5 of the transcript in the recording that begins at 2:48:48 PM (b)(6); stated that the part of the transcript reads "So something's bad (inaudible)", the inaudible part (b)(6); states that he said, "So something's bad with the identification."
- Page 5 of the transcript in the recording that begins at 2:48:48 PM (b)(6); stated that the sentence that reads "and hope that we can avoid ICE." Should read "and hope that he can avoid ICE."
- Page 5 of the transcript in the recording that begins at 2:48:48 PM (b)(6); (b)(7)(C) stated that the sentence that reads "So if he's bailed out…(inaudible)…. ICE" should read "so if he's bailed out from Billerica, ICE."

(b)(6); stated that he asked Judge (b)(6); to go off the record to request that (b)(6); (b)(7)(C) aka (b)(6); be released from the lockup. (b)(6); (b)(7)(C) stated that he knew that it would potentially make him, and Judge (b)(6); look bad if that type of request was included in the court recording. (b)(6); stated that he ultimately needed Judge (b)(6); blessing to be allowed downstairs to speak to (b)(6); (b)(7)(C) and get him released out the back door and that was the main purpose of the sidebar.

(b)(6); stated that he knew ICE was in the lobby of the Newton District Court waiting for (b)(6); (b)(7)(C).

(b)(6); stated that he knew other defendants had been released through the lockup area from the Newton District Court. (b)(6); stated that he didn't think was any rule about releasing defendants out through the lockup area. (b)(6); (b)(7)(C) stated that he believes that defendants that are already downstairs in the lockup that do not come up to the courtroom due to extenuating circumstances (i.e. disagreeable or noncompliant defendant) are released from the lockup downstairs. (b)(6); (b)(7)(C) stated that he remembers that happening one to two times in the six to seven years he has been working at the Newton District Court.

(b)(6); stated that he spoke to Court Officer (b)(6); (b)(7)(C) about the possibility of releasing (b)(6); (b)(7)(C) through (b)(6); (b)(7)(C); (b)(7)(E) stated that he expressed to Court Officer (b)(6); (b)(7)(C) that (b)(6); did not think (b)(6); (b)(7)(C) was the guy that ICE wanted. (b)(6); (b)(7)(C) expressed to Court Officer (b)(6); (b)(7)(C) that one of the identities associated with the (b)(7)(E) showed the person missing their left arm and having a tattoo on their upper left arm. (b)(6); (b)(7)(C) stated that he understood from Court Officer (b)(6); (b)(7)(C) that to facilitate (b)(6); (b)(7)(C) release through the lockup all (b)(6); (b)(7)(C) needed to do was to get (b)(6); (b)(7)(C) from the courtroom. (b)(6); stated that getting (b)(6); (b)(7)(C) downstairs was necessary

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DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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because defendants were typically released from the court room. (b)(6); (b)(7)(C) stated that he recalls discussing the release of (b)(6); (b)(7)(C) through the lockup with Court Officer (b)(6); (b)(7)(C), but (b)(6); does not remember whose idea it was to get (b)(6); (b)(7)(C) released through the lockup.

(b)(6); stated that during the sidebar conversation with Judge (b)(6); he told Judge (b)(6); that it was possible to get (b)(6); (b)(7)(C) released through the lockup in the basement if they could get (b)(6); (b)(7)(C) downstairs after the court proceeding. (b)(6); stated that he asked Judge (b)(6); to speak to (b)(6); (b)(7)(C) with the interpreter to get (b)(6); (b)(7)(C) downstairs to be released through the lockup and ultimately avoid contact with the ICE Officers. (b)(6); stated that this sidebar conversation with Judge (b)(6); is the part of the court recording that was taken off the record. (b)(6); stated that his suggestion to Judge (b)(6); to release (b)(6); (b)(7)(C) through the back door was subtle enough that ADA (b)(6); did not understand that (b)(6); (b)(7)(C) would actually be released through the back door downstairs in the lockup.

(b)(6); stated that he does not remember Court Officer (b)(6); (b)(7)(C) saying anything to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) other than something like 'Good Luck' at the time (b)(6); (b)(7)(C) was allowed to leave the courthouse through the lockup exit. (b)(6); stated that he does not remember Court Officer (b)(6); (b)(7)(C) saying "that didn't look good" when (b)(6); (b)(7)(C) was allowed to leave through the lockup exit, but (b)(6); stated he thinks that sounds like something Court Officer (b)(6); (b)(7)(C) would say.

(b)(6); stated that he does not know how (b)(6); (b)(7)(C) walked away from the courthouse after being released. (b)(6); stated that his view of the outside past the immediate area outside the door was blocked.

(b)(6); stated that Assistant District Attorney (ADA) (b)(6); was upset about (b)(6); (b)(7)(C) aka (b)(6); being released through the lockup. (b)(6); (b)(7)(C) stated that ADA (b)(6); told him that the ICE Officers were pissed at her that (b)(6); (b)(7)(C) was released through the (b)(6); (b)(7)(C); (b)(7)(E) stated that he thinks the ICE Officers may have yelled at ADA (b)(6); over (b)(6); (b)(7)(C) being released.

(b)(6); stated that he spoke to Court Officer (b)(6); (b)(7)(C) after the release of (b)(6); (b)(7)(C) aka (b)(6); but does not remember the exact conversation. (b)(6); stated that he thinks he probably said thanks to Court Officer (b)(6); (b)(7)(C) during that conversation. (b)(6); stated that he also expressed his thanks to Court Officer (b)(6); (b)(7)(C) a couple of days after April 02, 2018 when they spoke.

(b)(6); stated that he does not remember talking to (b)(6); (b)(7)(C) friend or employer following the court proceeding and the release of (b)(6); (b)(7)(C).

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2021-ICLI-00041 143

(b)(6); (b)(7)(C) stated that he spoke to Court Officer (b)(6); (b)(7)(C) sometime in August about Court Officer (b)(6); (b)(7)(C) being summoned to Grand Jury. (b)(6); (b)(7)(C) stated that he did not discuss Court Officer (b)(6); (b)(7)(C) testimony just that it would be a good idea for Court Officer (b)(6); (b)(7)(C) to have an attorney for his Grand Jury testimony.

(b)(6); (b)(7)(C) stated that he has had no contact with Judge (b)(6); (b)(7)(C) since April 02, 2018. (b)(6); (b)(7)(C) stated that he had spoken to (b)(6); (b)(7)(C) about how Judge (b)(6); (b)(7)(C) was doing sometime in December of 2018.

(b)(6); (b)(7)(C) stated that he has been approached by several people for the media about what happened at Newton District Court on April 02, 2018, but (b)(6); (b)(7)(C) has given no comment to any media. (b)(6); (b)(7)(C) stated that he did feel a desire to speak about it because he did not like what was happening to Judge (b)(6); (b)(7)(C) and Court Officer (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) stated that he felt he was just doing his job as a defense attorney in trying to get (b)(6); (b)(7)(C) released because of the confusion and doubt about (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) identity.

(b)(6); (b)(7)(C) stated that Newton District Court may have an old recording system by the name (b)(7)(E) still in place that does not allow a recording to be stop doing a proceeding. (b)(6); (b)(7)(C) stated that he was not certain whether the Newton District Court still had that old system.

Investigation continues.

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~~2021-ICLI-00041 - 444~~

(6)

On Monday, January 14, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) (b)(6); (b)(7)(interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C) . Prior to the interview all parties confirmed that the terms of the proffer letter offered in November 2018 still applied. AUSA (b)(6); (b)(7)(reviewed the purpose and conditions of the proffer letter to (b)(6); (b)(7)(C)

The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); (b)(7)(C) stated the following in sum and substance:

(b)(6); (b)(7)(C) stated that his date of birth is (b)(6); (b)(7)(C) and that he was born in the Bronx, NY. (b)(6); (b)(7)(C) stated that he has lived in Brighton and Newton as a child and currently resides in Newton, MA. stated that his current office is located at (b)(6); (b)(7)(C) , Newton, MA. (b)(6); (b)(7)(C) stated that he got his Juris Doctorate Degree at Boston College in 2000. (b)(6); (b)(7)(C) stated that he had previously worked for the Arizona State Court of Appeals, then as a public defender during the years 2003 through 2006, with the Boston Police Department from 2006 through 2008, on the Barack Obama presidential campaign in 2008 and has been in private practice as an attorney since 2008 to present time. (b)(6); (b)(7)(C) stated that he also works as a Massachusetts state appointed defender and is part of the bar advocate system. (b)(6); (b)(7)(C) stated that he works primarily in the Newton and Waltham District Courts and has appeared in Newton District Court regularly since 2009. (b)(6); (b)(7)(C) stated that he has approximately 50 open cases at any time and that most of his cases are from the Waltham District Court.

(b)(6); (b)(7)(C) stated that he first met Judge (b)(6); (b)(7)(C) approximately seven to eight years ago when he had coffee with her to talk about having his own private practice. (b)(6); (b)(7)(C) stated that Judge (b)(6); (b)(7)(C) was a private attorney when he initially met her.

(b)(6); (b)(7)(C) stated that he currently has a case that had been Judge (b)(6); (b)(7)(C) two attorneys prior to him. stated that he received the case from Attorney (b)(6); (b)(7)(C) and that (b)(6); (b)(7)(C) had received the case from Judge (b)(6); (b)(7)(C) stated that he has had no direct case referrals from Judge (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that has no consistent social or work connection with Judge (b)(6); (b)(7)(C) other than some infrequent social contact. (b)(6); (b)(7)(C) stated that he and Judge (b)(6); (b)(7)(C) attend the same synagogue in Newton but (b)(6); (b)(7)(C) has never seen Judge (b)(6); (b)(7)(C) there.

(b)(6); (b)(7)(C) stated that he believes he has had approximately four or five appearances in court in front of Judge (b)(6); (b)(7)(C) stated that Judge (b)(6); (b)(7)(C) is not typically assigned to the Newton District Court. (b)(6); (b)(7)(C) stated that he hasn't seen Judge (b)(6); (b)(7)(C) in the Newton District Court since April 02, 2018.

(b)(6); (b)(7)(C) stated that he knows that Court Officers are selected to work courts by the sitting District Judge for that court.

(b)(6); (b)(7)(C) stated that he knows Court Officer (b)(6); (b)(7)(C) from working in the Newton District Court. (b)(6); (b)(7)(C) stated that Court Officer (b)(6); was not working at the Newton District Court when (b)(6); (b)(7)(C) first started working there. (b)(6); stated that he met Court Officer (b)(6); approximately four years ago. (b)(6); (b)(7)(C) stated that he is personally familiar with Court Officer (b)(6); (b)(7)(C) from their interactions at the Newton District Court. (b)(6); (b)(7)(C) stated that Court Officer (b)(6); has a large personality and is friendly with most of the employees at the Newton District Court. (b)(6); stated that because of his familiarity with Court Officer (b)(6); over the years (b)(6); gets assistance from Court Officer (b)(6); when (b)(6); is in Court with such things as getting in to the lockup area to speak with clients and other court matters.

(b)(6); (b)(7)(C) stated that Court Officer (b)(6); has never asked for free legal advice.

(b)(6); (b)(7)(C) stated that he once gifted a blue tooth speaker worth approximately $20 to Court Officer (b)(6); around the Christmas holiday approximately two to three years ago. (b)(6); (b)(7)(C) stated that the gift was intended to be used by the entire Court Security staff in the lockup area that it was not a personal gift for (b)(6); alone.

(b)(6); (b)(7)(C) stated that he has gifted other people in the Waltham and Newton District Courts with things such as pastries, coffee or donuts. (b)(6); (b)(7)(C) said that he has brought pastries, coffee and donuts to Waltham more often than Newton mostly because he is in the Waltham District Court more often.

(b)(6); (b)(7)(C) was played a recording of the court proceedings from Newton District Court on April 02, 2018 to refresh his memory of the proceedings. (b)(6); (b)(7)(C) was shown a photo of the Newton District Session One Courtroom and (b)(6); (b)(7)(C) showed where he typically stands near the dock during a court proceeding.

(b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) had his employer and another friend at the Newton District Court on April 02, 2018. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) employer and friend did not like the court assigned defense attorney. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) employer paid (b)(6); (b)(7)(C) $1000.00 by check to retain (b)(6); (b)(7)(C) services for court on April 02, 2018.

(b)(6); (b)(7)(C) stated that he believes he may have been informed about ICE officers being present in Newton District Court on April 02, 2018 by (b)(6); (b)(7)(C) employer.

(b)(6); (b)(7)(C) stated that he received court related paperwork pertaining to (b)(6); (b)(7)(C) from the Assistant District Attorney, the court clerk and the previous Defense Attorney. (b)(6); (b)(7)(C) stated that his initial encounter with (b)(6); (b)(7)(C) prior to representing (b)(6); (b)(7)(C) was in the lockup area. (b)(6); (b)(7)(C) stated that he was allowed into the lockup area by a court officer so (b)(6); (b)(7)(C) could speak to (b)(6); (b)(7)(C) with an interpreter.

(b)(6); (b)(7)(C) stated that the court usually breaks for lunch from 12:45 PM to 2:25 PM and the court room is usually left open.

(b)(6); (b)(7)(C) stated that he spoke to an ICE Officer in the courtroom and asked how the ICE Officer identified (b)(6); (b)(7)(C) as the person that ICE was looking for. (b)(6); (b)(7)(C) stated that he was the one to initiate contact with the ICE Officer to establish the true identity of (b)(6); (b)(7)(C) stated that the ICE Officer showed (b)(6); (b)(7)(C) a photo of (b)(6); (b)(7)(C) stated that the photo that the ICE Officer showed (b)(6); (b)(7)(C) did resemble (b)(6); (b)(7)(C) as the person that was in Newton District Court on April 02, 2018. (b)(6); (b)(7)(C) stated that the NCIC criminal history printout that was associated with (b)(6); (b)(7)(C) had approximately 12 separate identities. (b)(6); (b)(7)(C) stated that he was shown a Puerto Rican Birth Certificate in the name of (b)(6); (b)(7)(C) by (b)(6); (b)(7)(C) employer. (b)(6); (b)(7)(C) stated that because of the different identities associated with (b)(6); (b)(7)(C) did not believe that the person in Newton District Court was the person that ICE Officers were seeking.

(b)(6); (b)(7)(C) stated that he remembers speaking to the Assistant District Attorney and Court Officer (b)(6); (b)(7)(C) about the confusion concerning the identity of (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) stated that he agreed that it is not his responsibility to decide immigration matters in criminal court proceedings. (b)(6); (b)(7)(C) stated that he knows immigration matters are settled in separate immigration court proceedings.

During the playback of the court recording (b)(6); (b)(7)(C) advised of some corrections to the transcript of the recording.

- Page 4 of the transcript in the recording that begins at 2:48:48 PM (b)(6); (b)(7)(C) stated that he said to Judge (b)(6); (b)(7)(C) that there is a warrant, the transcript reads that (b)(6); (b)(7)(C) stated that there is no warrant.
- Page 5 of the transcript in the recording that begins at 2:48:48 PM (b)(6); (b)(7)(C) stated that the part of the transcript reads “So something’s bad (inaudible)”, the inaudible part (b)(6); (b)(7)(C) states that he said, “So something’s bad with the identification.”
- Page 5 of the transcript in the recording that begins at 2:48:48 PM (b)(6); (b)(7)(C) stated that the sentence that reads “and hope that we can avoid ICE.” Should read “and hope that he can avoid ICE.”
- Page 5 of the transcript in the recording that begins at 2:48:48 PM (b)(6); (b)(7)(C) stated that the sentence that reads “So if he’s bailed out…(inaudible)…. ICE” should read “so if he’s bailed out from Billerica, ICE.”

(b)(6); (b)(7)(C) stated that he asked Judge (b)(6); (b)(7)(C) to go off the record to request that (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) be released from the lockup. (b)(6); (b)(7)(C) stated that he knew that it would potentially make him, and Judge (b)(6); (b)(7)(C) look bad if that type of request was included in the court recording. (b)(6); (b)(7)(C) stated that he ultimately needed Judge (b)(6); (b)(7)(C) blessing to be allowed downstairs to speak to (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) and get him released out the back door and that was the main purpose of the sidebar.

(b)(6); (b)(7)(C) stated that he knew ICE was in the lobby of the Newton District Court waiting for (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that he knew other defendants had been released through the lockup area from the Newton District Court. (b)(6); (b)(7)(C) stated that he didn't think was any rule about releasing defendants out through the lockup area. (b)(6); (b)(7)(C) stated that he believes that defendants that are already downstairs in the lockup that do not come up to the courtroom due to extenuating circumstances (i.e. disagreeable or noncompliant defendant) are released from the lockup downstairs. (b)(6); (b)(7)(C) stated that he remembers that happening one to two times in the six to seven years he has been working at the Newton District Court.

(b)(6); (b)(7)(C) stated that he spoke to Court Officer (b)(6); (b)(7)(C) about the possibility of releasing (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) through lockup and out the back door. (b)(6); (b)(7)(C) stated that he expressed to Court Officer (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) did not think (b)(6); (b)(7)(C) was the guy that ICE wanted. (b)(6); (b)(7)(C) expressed to Court Officer (b)(6); (b)(7)(C) that one of the identities associated with the (b)(7)(E) criminal history printout showed the person missing their left arm and having a tattoo on their upper left arm. (b)(6); (b)(7)(C) stated that he understood from Court Officer (b)(6); (b)(7)(C) that to facilitate (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) release through the lockup all (b)(6); (b)(7)(C) needed to do was to get (b)(6); (b)(7)(C) downstairs from the courtroom. (b)(6); (b)(7)(C) stated that getting (b)(6); (b)(7)(C) downstairs was necessary because defendants were typically released from the court room. (b)(6); (b)(7)(C) stated that he recalls discussing the release of (b)(6); (b)(7)(C) through the lockup with Court Officer (b)(6); (b)(7)(C) but (b)(6); (b)(7)(C) does not remember whose idea it was to get (b)(6); (b)(7)(C) released through the lockup.

(b)(6); (b)(7)(C) stated that during the sidebar conversation with Judge (b)(6); (b)(7)(C) he told Judge (b)(6); (b)(7)(C) that it was possible to get (b)(6); (b)(7)(C) released through the lockup in the basement if they could get (b)(6); (b)(7)(C) downstairs after the court proceeding. (b)(6); (b)(7)(C) stated that he asked Judge (b)(6); (b)(7)(C) to speak to (b)(6); (b)(7)(C) with the interpreter to get (b)(6); (b)(7)(C) downstairs to be released through (b)(7)(E) and ultimately avoid contact with the ICE Officers. (b)(6); (b)(7)(C) stated that this sidebar conversation with Judge (b)(6); (b)(7)(C) is the part of the court recording that was taken off the record. (b)(6); (b)(7)(C) stated that his suggestion to Judge (b)(6); (b)(7)(C) to release (b)(6); (b)(7)(C) through the back door was subtle enough that ADA (b)(6); (b)(7)(C) did not understand that (b)(6); (b)(7)(C) would actually be released through the back door downstairs in the lockup.

(b)(6); (b)(7)(C) stated that he does not remember Court Officer (b)(6); (b)(7)(C) saying anything to (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) other than something like 'Good Luck' at the time (b)(6); (b)(7)(C) was allowed to leave the courthouse through the lockup exit. (b)(6); (b)(7)(C) stated that he does not remember Court Officer (b)(6); (b)(7)(C) saying "that didn't look good" when (b)(6); (b)(7)(C) was allowed to leave through the lockup exit, but (b)(6); (b)(7)(C) stated he thinks that sounds like something Court Officer (b)(6); (b)(7)(C) would say.

(b)(6); (b)(7)(C) stated that he does not know how (b)(6); (b)(7)(C) walked away from the courthouse after being released. (b)(6); (b)(7)(C) stated that his view of the outside past the immediate area outside the door was blocked.

(b)(6); stated that Assistant District Attorney (ADA) (b)(6); was upset about (b)(6); (b)(7)(C) being released through the lockup. (b)(6); stated that ADA (b)(6); told him that the ICE Officers were pissed at her that (b)(6); (b)(7)(C) was released through the lockup. (b)(6); stated that he thinks the ICE Officers may have yelled at ADA (b)(6); over (b)(6); (b)(7)(C) being released.

(b)(6); stated that he spoke to Court Officer (b)(6); (b)(7)(C) after the release of (b)(6); (b)(7)(C) but does not remember the exact conversation. (b)(6); stated that he thinks he probably said thanks to Court Officer (b)(6); (b)(7)(C) during that conversation. (b)(6); stated that he also expressed his thanks to Court Officer a couple of days after April 02, 2018 when they spoke.

(b)(6); stated that he does not remember talking to (b)(6); (b)(7)(C) friend or employer following the court proceeding and the release of (b)(6); (b)(7)(C)

(b)(6); stated that he spoke to Court Officer (b)(6); sometime in August about Court Officer (b)(6); (b)(7)(C) being summoned to Grand Jury. (b)(6); stated that he did not discuss Court Officer (b)(6); (b)(7)(C) testimony just that it would be a good idea for Court Officer (b)(6); to have an attorney for his Grand Jury testimony.

(b)(6); stated that he has had no contact with Judge (b)(6); since April 02, 2018. (b)(6); stated that he had spoken to (b)(6); (b)(7)(C) about how Judge (b)(6); was doing sometime in December of 2018.

(b)(6); stated that he has been approached by several people for the media about what happened at Newton District Court on April 02, 2018, but (b)(6); has given no comment to any media. (b)(6); stated that he did feel a desire to speak about it because he did not like what was happening to Judge (b)(6); and Court Officer (b)(6); (b)(7)(C)

(b)(6); stated that he felt he was just doing his job as a defense attorney in trying to get (b)(6); (b)(7)(C) aka (b)(6); released because of the confusion and doubt about (b)(6); (b)(7)(C) identity.

(b)(6); stated that Newton District Court may have an old recording system by the name Colorado still in place that does not allow a recording to be stop doing a proceeding. (b)(6); stated that he was not certain whether the Newton District Court still had that old system.

Investigation continues.

(7)

2/12/2019 @ 130

Interview w/ (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

- Proffer agreement still applies.
- CPCS 5yrs crim defense 4th yr college, then BP job, feds Macon, GA people @ CPCS were angry that left early from CPCS
- believes blacklisted from bar advocacy because of early departure from CPCS
- (b)(6); (b)(7)(C) Middlesex board
- Seen Judge (b)(6); (b)(7)(C) '09 to present couple times per year between NAC and WAC.
  - never saw (b)(6); (b)(7)(C) try a case as an attorney
- General Practice has been to release defendant out the front door from courtroom in NAC since 2009.
- Reiterated that the intent of the sidebar was to get (b)(6); (b)(7)(C) downstairs to be released to avoid lockup. (b)(6); (b)(7)(C) ICE
- (b)(6); (b)(7)(C) would not go thru the lockup in order to go to probation.

(b)(6); (b)(7)(C) would speak to a defendant @ probation after they have been released thru courtroom, then met them at front desk in probation.

(b)(6); (b)(7)(C) no idea what was in the judge's mind (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated no terms of release for (b)(6); (b)(7)(C), no need to see probation.

(b)(6); (b)(7)(C) no talk of probation during sidebar, unrecorded convo.

Ended 1410

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(8)

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

CASE NUMBER
(b)(7)(E)

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of (b)(6); (b)(7)(C) on 02-12-2019

REPORTED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

APPROVED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

DATE APPROVED
3/5/2019

SYNOPSIS

On Tuesday, February 12, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

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DETAILS OF INVESTIGATION

On Tuesday, February 12, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); (b)(7)(C) stated the following in sum and substance:

(b)(6); (b)(7)(C) stated that he had previously worked for the Committee for Public Counsel Services (CPCS) for approximately five years. (b)(6); (b)(7)(C) stated that he attended the criminal defense college while employed by CPCS that was paid for by CPCS. (b)(6); (b)(7)(C) stated that he had left CPCS approximately one year after completing the criminal defense college to work for the Boston Police Department as a general counsel for the Internal Affairs Division. (b)(6); (b)(7)(C) stated that his employers at CPCS were angry with him for leaving shortly after completing the Criminal Defense College and taking employment with the Boston Police Department.

(b)(6); (b)(7)(C) stated that he believed he was blacklisted for the bar advocacy because of his early departure from the CPCS.

(b)(6); (b)(7)(C) stated that he has seen Judge (b)(6); (b)(7)(C) approximately 2-3 times per year since 2009 between working at the Newton District Court and the Waltham District Court. (b)(6); (b)(7)(C) stated that he never saw Judge (b)(6); (b)(7)(C) try a case while as an attorney.

(b)(6); (b)(7)(C) stated that the general practice for releasing defendants from the Newton District Court since 2009 has been to release them from the courtroom and allow them to leave through the front door.

(b)(6); (b)(7)(C) reiterated that the intent of the sidebar conversation in the courtroom with Judge (b)(6); (b)(7)(C) was to get (b)(6); (b)(7)(C) downstairs in the lock up to be released out the back door to avoid ICE Agents.

(b)(6); (b)(7)(C) stated that if were to go to the probation department to speak to a defendant about the conditions of their release he would not have gone through the dock and then through the lockup to get to the probation department. (b)(6); (b)(7)(C) stated that passing through the lockup to get to the probation department would require assistance from a Court Officer with a keycard. (b)(6); (b)(7)(C)

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stated that entering the probation department from the direction of the lock up would necessitate passing by the Chief Probation Officer's Office and potentially causing a disturbance.

(b)(6); (b)(7)(C) stated that he would speak to a defendant at probation after they have been released through the courtroom. (b)(6); (b)(7)(C) stated he would use the public stairway and meet the defendant at the front desk of the probation department downstairs.

(b)(6); (b)(7)(C) stated that it was absolutely not true that he requested from Judge (b)(6); (b)(7)(C) to be allowed downstairs through the lock up to speak with (b)(6); (b)(7)(C) to clear up the Pennsylvania fugitive warrant with probation. (b)(6); (b)(7)(C) stated that the probation department does not have the authority to clear a fugitive warrant, therefore he would not ask to go to probation to have a fugitive warrant cleared.

(b)(6); (b)(7)(C) stated that there were no terms of release imposed on (b)(6); (b)(7)(C) by Judge (b)(6); (b)(7)(C) therefore there was need to go to probation after (b)(6); (b)(7)(C) release. (b)(6); (b)(7)(C) stated that there was no talk of going to probation during the unrecorded sidebar conversation with Judge (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) stated that he has no idea what was in Judge (b)(6); (b)(7)(C) mind during and after the sidebar conversation in the courtroom.

Investigation continues.

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On Tuesday, February 12, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) (b)(6); (b)(7)(interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C) The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); stated the following in sum and substance:

(b)(6); stated that he had previously worked for the Committee for Public Counsel Services (CPCS) for approximately five years. (b)(6); stated that he attended the criminal defense college while employed by CPCS that was paid for by CPCS. (b)(6); stated that he had left CPCS approximately one year after completing the criminal defense college to work for the Boston Police Department as a general counsel for the Internal Affairs Division. (b)(6); stated that his employers at CPCS were angry with him for leaving shortly after completing the Criminal Defense College and taking employment with the Boston Police Department.

(b)(6); stated that he believed he was blacklisted for the bar advocacy because of his early departure from the CPCS.

(b)(6); stated that he has seen Judge (b)(6); (b)(7)(C) approximately 2-3 times per year since 2009 between working at the Newton District Court and the Waltham District Court. (b)(6); stated that he never saw Judge (b)(6); try a case while as an attorney.

(b)(6); stated that the general practice for releasing defendants from the Newton District Court since 2009 has been to release them from the courtroom and allow them to leave through the front door.

(b)(6); reiterated that the intent of the sidebar conversation in the courtroom with Judge (b)(6); and ADA (b)(6); was to get (b)(6); (b)(7)(C) downstairs in the lock up to be released out the back door to avoid ICE Agents.

(b)(6); stated that if were to go to the probation department to speak to a defendant about the conditions of their release he would not have gone through the dock and then through the lockup to get to the probation department. (b)(6); stated that passing through the lockup to get to the probation department would require assistance from a Court Officer with a keycard. (b)(6); stated that entering the probation department from the direction of the lock up would necessitate passing by the Chief Probation Officer's Office and potentially causing a disturbance.

(b)(6); stated that he would speak to a defendant at probation after they have been released through the courtroom. (b)(6); stated he would use the public stairway and meet the defendant at the front desk of the probation department downstairs.

(b)(6); (b)(7)(C) stated that it was absolutely not true that he requested from Judge (b)(6); (b)(7)(C) to be allowed downstairs through the lock up to speak with (b)(6); (b)(7)(C) to clear up the Pennsylvania fugitive warrant with probation. (b)(6); (b)(7)(C) stated that the probation department does not have the authority to clear a fugitive warrant, therefore he would not ask to go to probation to have a fugitive warrant cleared.

(b)(6); (b)(7)(C) stated that there were no terms of release imposed on (b)(6); (b)(7)(C) by Judge therefore there was need to go to probation after (b)(6); (b)(7)(C) release. (b)(6); (b)(7)(C) stated that there was no talk of going to probation during the unrecorded sidebar conversation with Judge (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) stated that he has no idea what was in Judge (b)(6); (b)(7)(C) mind during and after the sidebar conversation in the courtroom.

Investigation continues.

(10)

APP461

March 12, 2019 @ USAO

Interview w/ (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Immunity agreement in place.

- conversation w/ (b)(6); (b)(7)(C) following 4/2/18 incident. on 4/3/18

- wasn't asked about it

- probably went to chambers or roundtable
  - no one else present, try to speak to her early in AM, remember sitting in chambers

- (b)(6); (b)(7)(C) initiated convo

- told (b)(6); (b)(7)(C) about incident, ICE was there his client was the target and he went out back door, thought (b)(6); (b)(7)(C) should be aware. ICE was asked to leave courtroom

- ADA + ICE upset, brief convo (b)(6); (b)(7)(C) stated she already knew about it, don't worry
- no recollection of details being conveyed in convo
- @ approx 0845, believes it was then before she was on the bench
- roundtable includes PO, clerks, ADA
- Judge chambers on 1st Floor
- either asked and saw her before or caught her on the way at of round (b)(6); (b)(7)(C).
- had 2 defendants sched. for AM court on 4/3/18.
- had subsequent encounters w/ (b)(6); (b)(7)(C) said she didn't want to talk about the matter after Globe article.

- After Globe article, approached (b)(6); (b)(7)(C) asked if (b)(6); (b)(7)(C) was ok w/ (b)(6); (b)(7)(C) practing in her court and she said yes.

- (b)(6); (b)(7)(C) heard (b)(6); (b)(7)(C) needed to obtain a lawyer said to (b)(6); (b)(7)(C) asked if they were OK (b)(6); (b)(7)(C) said yes don't worry about it.

- (b)(6); (b)(7)(C) does not remember any substantive convo's

- has not relayed any details of the incident to anyone other than wife, father attorney, ~~#~~

- no court appearances on calendar for 4/4/19

- 4/5/19 in Waltham DC.

- 4/6/19 no cases

- approached (b)(6); (b)(7)(C) about incidents because he knew ADA was upset and ICE agents were upset and thought A product to talk to (b)(6); (b)(7)(C)

- (b)(6); (b)(7)(C) did not say what her source was about her knowledge of the incidents.

- (b)(6); (b)(7)(C) say (b)(6); (b)(7)(C) has submitted retirement paperwork

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(11)

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

CASE NUMBER
(b)(7)(E)

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of (b)(6); (b)(7)(C) on March 12, 2019

REPORTED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

APPROVED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

DATE APPROVED
4/17/2019

SYNOPSIS

On Tuesday, March 12, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

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2021-ICLI-00045-460

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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DETAILS OF INVESTIGATION

On Tuesday, March 12, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C). The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); (b)(7)(C) stated the following in sum and substance:

(b)(6); (b)(7)(C) stated that he had a conversation with Judge (b)(6); (b)(7)(C) on April 03, 2018 about the April 02, 2018 incident. (b)(6); (b)(7)(C) stated that he initiated the conversation with Judge (b)(6); (b)(7)(C) stated that he believes the conversation with Judge (b)(6); (b)(7)(C) took place in Judge (b)(6); (b)(7)(C) chambers on the (b)(6); (b)(7)(C) of the courthouse. (b)(6); (b)(7)(C) stated that no one else was present during the conversation. (b)(6); (b)(7)(C) stated that he believes the conversation took place sometime around 8:45 AM before Judge (b)(6); (b)(7)(C) was seated on the bench.

(b)(6); (b)(7)(C) stated that he wanted to speak with Judge (b)(6); (b)(7)(C) early in the morning to inform her of what happened the previous day. (b)(6); (b)(7)(C) stated he approached Judge (b)(6); (b)(7)(C) about the incident in the court because he knew the ADA and the ICE Officer were upset about what happened and (b)(6); (b)(7)(C) thought it would be prudent to talk to Judge (b)(6); (b)(7)(C) about it.

(b)(6); (b)(7)(C) stated that Judge (b)(6); (b)(7)(C) told him that she already knew what had happened and that did not need to worry about it. (b)(6); (b)(7)(C) stated that he does not remember details of the incident being conveyed to Judge (b)(6); (b)(7)(C) during the conversation.

(b)(6); (b)(7)(C) stated that he was at Newton District Court on April 03, 2018 because he had two defendants scheduled for court appearances that morning.

(b)(6); (b)(7)(C) stated that he had subsequent encounters with Judge (b)(6); (b)(7)(C), but they never discussed the incident at Newton District Court.

(b)(6); (b)(7)(C) stated that after the Boston Globe article was published in December 2018 he approached Judge (b)(6); (b)(7)(C) to ask if he was ok to practice in the Newton District Court and Judge (b)(6); (b)(7)(C) said yes.

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2021-ICLI-00041 464

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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(b)(6); (b)(7)(C) stated that he heard that Judge (b)(6); (b)(7)(C) needed to obtain a lawyer because of the Newton District Court incident. (b)(6); (b)(7)(C) stated that he asked Judge (b)(6); (b)(7)(C) again if they were ok and Judge (b)(6); (b)(7)(C) said yes and (b)(6); (b)(7)(C) shouldn't worry about it.

(b)(6); (b)(7)(C) stated that he does not remember any substantive conversations with Judge (b)(6); (b)(7)(C) about the incident at Newton District Court.

(b)(6); (b)(7)(C) stated that he has not relayed any details of the incident at Newton District Court to anyone other than his wife, his father and his attorney.

(b)(6); (b)(7)(C) stated that Judge (b)(6); (b)(7)(C) did not tell him from whom she had heard about the incident prior to talking to (b)(6); (b)(7)(C)

(b)(6); stated that he heard that Court Officer (b)(6); (b)(7)(C) had recently submitted paperwork for his retirement and may no longer be employed at the Newton District Court.

Investigation continues.

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(12)

On Tuesday, March 12, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) (b)(6); interviewed Attorney (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) and Attorney (b)(6); (b)(7)(C) representing (b)(6); (b)(7)(C) . The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) aka (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); stated the following in sum and substance:

(b)(6); stated that he had a conversation with Judge (b)(6); on April 03, 2018 about the April 02, 2018 incident. (b)(6); stated that he initiated the conversation with Judge (b)(6); (b)(7)(C) stated that he believes the conversation with Judge (b)(6); took place in Judge (b)(6); (b)(7)(C) chambers on the first floor of the courthouse. (b)(6); stated that no one else was present during the conversation. (b)(6); stated that he believes the conversation took place sometime around 8:45 AM before Judge (b)(6); was seated on the bench.

(b)(6); stated that he wanted to speak with Judge (b)(6); early in the morning to inform her of what happened the previous day. (b)(6); stated he approached Judge (b)(6); (b)(7)(C) about the incident in the court because he knew the ADA and the ICE Officer were upset about what happened and (b)(6); thought it would be prudent to talk to Judge (b)(6); about it.

(b)(6); (b)(7)(C) stated that Judge (b)(6); told him that she already knew what had happened and that did not need to worry about it. (b)(6); stated that he does not remember details of the incident being conveyed to Judge (b)(6); during the conversation.

(b)(6); stated that he was at Newton District Court on April 03, 2018 because he had two defendants scheduled for court appearances that morning.

(b)(6); stated that he had subsequent encounters with Judge (b)(6); , but they never discussed the incident at Newton District Court.

(b)(6); stated that after the Boston Globe article was published in December 2018 he approached Judge (b)(6); to ask if he was ok to practice in the Newton District Court and Judge (b)(6); said yes.

(b)(6); stated that he heard that Judge (b)(6); needed to obtain a lawyer because of the Newton District Court incident. (b)(6); (b)(7)(C) stated that he asked Judge (b)(6); again if they were ok and Judge (b)(6); said yes and shouldn't worry about it.

(b)(6); stated that he does not remember any substantive conversations with Judge (b)(6); about the incident at Newton District Court.

(b)(6); stated that he has not relayed any details of the incident at Newton District Court to anyone other than his wife, his father and his attorney.

(b)(6); stated that Judge (b)(6); did not tell him from whom she had heard about the incident prior to talking to (b)(6);

(b)(6); stated that he heard that Court Officer (b)(6); (b)(7)(C) had recently submitted paperwork for his retirement and may no longer be employed at the Newton District Court.

Investigation continues.

(13)

MAIN ISSUE/POINT IS THAT [redacted] DID NOT TELL [redacted] EVERY SINGLE DETAIL

[redacted] suggested edits

APP470

On Tuesday, March 12, 2019, Assistant United States Attorneys (AUSA) [redacted] and [redacted] interviewed Attorney [redacted] at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) [redacted] and Attorney [redacted] representing [redacted] The interview was conducted in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named [redacted] aka [redacted] whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

[redacted] stated the following in sum and substance:

[redacted] stated that he had a conversation with Judge [redacted] on April 03, 2018 about the April 02, 2018 incident. [redacted] stated that he initiated the conversation with Judge [redacted] stated that he believes the conversation with Judge [redacted] took place in Judge [redacted] chambers on the first floor of the courthouse. [redacted] stated that no one else was present during the conversation. [redacted] stated that he believes the conversation took place sometime around 8:45 AM before Judge [redacted] was seated on the bench.

[redacted] stated that he wanted to speak with Judge [redacted] early in the morning to inform her of what happened the previous day. [redacted] stated that he told Judge [redacted] about what happened in court the previous day and that ICE was there to arrest his client and that his client was released out the back door of the courthouse. [redacted] stated that he wanted Judge [redacted] to be aware of what happened in ~~the~~ court the previous day. [redacted] stated that he told Judge [redacted] about ADA [redacted] and the ICE Officer being upset ~~about what happened in the court the previous day~~.

Summary of what happened

[redacted] stated that Judge [redacted] told him that she already knew what had happened and that did not need to worry about it. [redacted] stated that he does not remember details of the incident being conveyed to Judge [redacted] during the conversation.

[redacted] stated that he was at Newton District Court on April 03, 2018 because he had two defendants scheduled for court appearances that morning

[redacted] stated that he had subsequent encounters with Judge [redacted] but they never discussed the incident at Newton District Court. [redacted] ~~stated that after the Boston Globe published an op-ed in December 2018, Judge~~ [redacted] ~~did not want to discuss the incident from Newton District Court.~~

[redacted] stated that after the Boston Globe article was published in Dec 2018 he approached Judge [redacted] to ask if he was ok to practice in the Newton District Court and Judge [redacted] said yes.

[redacted] stated that he heard that Judge [redacted] needed to obtain a lawyer because of the Newton District Court incident. [redacted] stated that he asked Judge [redacted] again if they were ok and Judge [redacted] said yes and [redacted] shouldn't worry about it.

[redacted] stated that he does not remember any substantive conversations with Judge [redacted] about the incident at Newton District Court.

(b)(6); stated that he has not relayed any details of the incident at Newton District Court to anyone other than his wife, his father and his attorney.

(b)(6); stated he approached Judge (b)(6); about the incident in the court because he knew the ADA and the ICE Officer were upset about what happened and (b)(6); thought it would be prudent to talk to Judge (b)(6); about it.

(b)(6); stated that Judge (b)(6); did not tell him from whom she had heard about the incident prior to talking to (b)(6);

(b)(6); stated that he heard that Court Officer (b)(6); had recently submitted paperwork for his retirement and may no longer be employed at the Newton District Court.

Investigation continues.

(14)

APP472

Thursday, October 04, 2018 @ 1600

Phone interview of ADA (b)(6); (b)(7)(C) w/ AUSA (b)(6); (b)(7)(C) and HSI SA (b)(6); (b)(7)(C)

- Incident 4/2/18 @ Newton District Court
- ADA for 3 years
- worked in Newton for one month prior there everyday
- encountered several defendants prior w/ ICE detainers. prior to incident.
- ~~on~~ no the def w/ detainers in NDC.
- Court Off (b)(6); (b)(7)(C) allowed def out back door
- Spoke w/ ICE Agents in courtroom
- Knew about fugitive warrant but didn't think it was a match out of P.A. (b)(6); (b)(7)(C)
- ICE Agent notified ADA of prior dupat.
- Knew ICE Agent wanted to take custody

- Did not Know if CO (b)(6); (b)(7)(C) Knew of ICE Agents
- Does remb[illegible] seeing detainer (I-247)
- Assume court personal Knew of I-247
- CO's in lockup are usually aware of I-247's when defendants are brought to court
- Never worked w (b)(6); (b)(7)(C) before NAC.
- Doesn't remember ICE Agents being asked to leave Courtroom, Believe ICE Agent told her he was asked to leave Courtroom.
- Thinks she heard that ICE Agents were refused to take custody of (b)(6); (b)(7)(C) in lockup.
- Doesn't Know S.O.P for defendants release at NAC.
- Doesn't Know of other C.O's in NAC that day.
- Didn't hear anyone tell (b)(6); (b)(7)(C) to alter (b)(6); (b)(7)(C) to leave

@ Sidebar

- Remembers defendant's Atty ask to speak to client in lockup and thinking it was odd.
(b)(6); (b)(7)(C) Def Atty. Defense Att. asked to speak to client in lockup. Thinks defendant should have been released upstair as is usually the case. Normally CO brings defendants property upstairs and returns to defendant and then defendant is released from court upstairs not lockup.

- Defendant had an acquaintence in the courtroom, never was introduced and doesn't know the person.

- Doesn't know why Defense Atty asked for sidebar but believes it was because ICE Agent was in courtroom.

- Interview ended @ 1618

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(15)

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

CASE NUMBER
(b)(7)(E)

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of ADA (b)(6); (b)(7)(C) on 10-04-2018

REPORTED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

APPROVED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

DATE APPROVED
10/5/2018

SYNOPSIS

On Thursday, October 04, 2018, Middlesex County Assistant District Attorney (ADA) (b)(6); (b)(7)(C) was interviewed over the phone by Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Present via phone was Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

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DETAILS OF INVESTIGATION

On Thursday, October 04, 2018, Middlesex County Assistant District Attorney (ADA) (b)(6); (b)(7)(C) was interviewed over the phone by Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) Present via phone was Homeland Security Investigations Special Agent (HSI SA) (b)(6); The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 4:00 PM. ADA (b)(6); stated the following in sum and substance:

ADA (b)(6); (b)(7)(C) stated that she did remember the incident that took place on April 02, 2018, at the Newton District Court in Newton, MA.

ADA (b)(6); stated that she has been working as an Assistant District Attorney in Middlesex County for approximately three (3) years. ADA (b)(6); stated that she started working in the Newton District Court approximately one (1) month prior to the incident on April 02, 2018.

ADA (b)(6); (b)(7)(C) stated that she was familiar with Detainers that are lodged by ICE/ERO for individuals that are unlawfully present in the United States. ADA (b)(6); (b)(7)(C) stated that she has encountered several criminal defendants in District Court that have had ICE Detainers lodged.

ADA (b)(6); stated that she was aware that there was an ICE Detainer lodged for (b)(6); (b)(7)(C) by ICE/ERO. ADA (b)(6); was not aware of any other criminal defendants in Newton District Court on April 02, 2018 that had an ICE Detainer lodged for them. ADA (b)(6); stated that she had spoken to the ICE/ERO Officers that were in the Newton District Court to take (b)(6); (b)(7)(C) into custody following his court appearance.

ADA (b)(6); stated that she was aware that Middlesex County Court Officer (b)(6); (b)(7)(C) had released (b)(6); (b)(7)(C) out the back door of the courthouse through the lock up area downstairs.

ADA (b)(6); (b)(7)(C) states that she knew about a fugitive warrant for (b)(6); out of Pennsylvania, but she did not think the photo that she saw was a match to the person in the courtroom.

ADA (b)(6); stated that the ICE/ERO Officer notified her that (b)(6); had been previously deported from the United States. ADA (b)(6); (b)(7)(C) stated that she was aware that the ICE/ERO Officers wanted to take (b)(6); into custody following his court appearance. ADA (b)(6); could not remember the name of the ICE/ERO Officer that she spoke to but stated that he was a tall white male.

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ADA (b)(6); stated that she was not aware if Court Officer (b)(6); (b)(7)(C) knew that the ICE/ERO Officers were there to take custody of (b)(6);

ADA (b)(6); stated that she remembered seeing the ICE Detainer for (b)(6); (b)(7)(C) stated that she assumed that the other court personnel were aware of the ICE Detainer for (b)(6); ADA (b)(6); stated that as far as she knows the Court Officers are usually aware that Detainers are lodged for criminal defendants when they are brought to the courthouse.

ADA (b)(6); stated that she had never worked with Court Officer (b)(6); (b)(7)(C) prior to being in the Newton District Court, Newton, MA.

ADA (b)(6); stated that she does not remember the ICE/ERO Officers being asked to leave the courtroom, but ADA (b)(6); believes that one of the ICE/ERO Officers told her that he was asked to leave the courtroom.

ADA (b)(6); stated that she thinks she heard that the ICE/ERO Officers were refused to take custody of (b)(6); in the courthouse lock up area.

ADA (b)(6); stated that she does not the specific standard operating procedure for the release of criminal defendants in the Newton District Court. ADA (b)(6); stated that she did not know of any other Court Officers other than Court Officer (b)(6); (b)(7)(C) that were in the Newton District Court on April 02, 2018.

ADA (b)(6); Stated that she did not hear anyone tell Court Officer (b)(6); (b)(7)(C) to (b)(6); to leave the courthouse through the lock up area downstairs.

ADA (b)(6); stated that (b)(6); (b)(7)(C) Defense Attorney was (b)(6); (b)(7)(C) ADA (b)(6); stated that she remembers Attorney (b)(6); ask to speak to his (b)(6); in the lock up area. ADA (b)(6); stated that she thought that it was odd for a defense attorney to request to speak to their client in the lock up area.

ADA (b)(6); stated that she did not know why Defense Attorney (b)(6); requested a sidebar with the Judge and her but ADA (b)(6); believes it was because the ICE/ERO Officers were present in the courtroom.

ADA (b)(6); stated that she thinks that defendants are usually released (b)(7)(E) in the courthouse. ADA (b)(6); stated that in the past she has seen Court Officers bring a defendant's property upstairs from the lock up area and return it to the defendant and then the defendant can leave the courthouse through the main entrance.

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~~2022-ICLI-00041-156~~

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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ADA (b)(6); (b)(7)(C) stated that she believed that (b)(6); (b)(7)(C) had an acquaintance at the courthouse. ADA (b)(6); (b)(7)(C) stated that she did not know the acquaintance of (b)(6); (b)(7)(C) but saw that person in the lobby and in the courtroom with (b)(6); (b)(7)(C)

Investigations continues.

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2021-ICLI-00041-487

(16)

On Thursday, October 04, 2018, Middlesex County Assistant District Attorney (ADA) (b)(6); (b)(7)(C) was interviewed over the phone by Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C). Present via phone was Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C). The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 4:00 PM. ADA (b)(6); (b)(7)(C) stated the following in sum and substance:

ADA (b)(6); (b)(7)(C) stated that she did remember the incident that took place on April 02, 2018, at the Newton District Court in Newton, MA.

ADA (b)(6); (b)(7)(C) stated that she has been working as an Assistant District Attorney in Middlesex County for approximately three (3) years. ADA (b)(6); (b)(7)(C) stated that she started working in the Newton District Court approximately one (1) month prior to the incident on April 02, 2018.

ADA (b)(6); (b)(7)(C) stated that she was familiar with Detainers that are lodged by ICE/ERO for individuals that are unlawfully present in the United States. ADA (b)(6); (b)(7)(C) stated that she has encountered several criminal defendants in District Court that have had ICE Detainers lodged.

ADA (b)(6); (b)(7)(C) stated that she was aware that there was an ICE Detainer lodged for (b)(6); (b)(7)(C) by ICE/ERO. ADA (b)(6); (b)(7)(C) was not aware of any other criminal defendants in Newton District Court on April 02, 2018 that had an ICE Detainer lodged for them. ADA (b)(6); (b)(7)(C) stated that she had spoken to the ICE/ERO Officers that were in the Newton District Court to take (b)(6); (b)(7)(C) into custody following his court appearance.

ADA (b)(6); (b)(7)(C) stated that she was aware that Middlesex County Court Officer (b)(6); had released (b)(6); (b)(7)(C) out the back door of the courthouse through the lock up area downstairs.

ADA (b)(6); (b)(7)(C) states that she knew about a fugitive warrant for (b)(6); out of Pennsylvania, but she did not think the photo that she saw was a match to the person in the courtroom.

ADA (b)(6); (b)(7)(C) stated that the ICE/ERO Officer notified her that (b)(6); had been previously deported from the United States. ADA (b)(6); (b)(7)(C) stated that she was aware that the ICE/ERO Officers wanted to take (b)(6); into custody following his court appearance. ADA (b)(6); (b)(7)(C) could not remember the name of the ICE/ERO Officer that she spoke to but stated that he was a tall white male.

ADA (b)(6); (b)(7)(C) stated that she was not aware if Court Officer (b)(6); knew that the ICE/ERO Officers were there to take custody of (b)(6);.

ADA (b)(6); (b)(7)(C) stated that she remembered seeing the ICE Detainer for (b)(6); (b)(7)(C) stated that she assumed that the other court personnel were aware of the ICE Detainer for (b)(6); (b)(7)(C) stated that as far as she knows the Court Officers are usually aware that Detainers are lodged for criminal defendants when they are brought to the courthouse.

ADA (b)(6); (b)(7)(C) stated that she had never worked with Court Officer (b)(6); prior to being in the Newton District Court, Newton, MA.

ADA (b)(6); (b)(7)(C) stated that she does not remember the ICE/ERO Officers being asked to leave the courtroom, but ADA (b)(6); believes that one of the ICE/ERO Officers told her that he was asked to leave the courtroom.

ADA (b)(6); (b)(7)(C) stated that she thinks she heard that the ICE/ERO Officers were refused to take custody of (b)(6); in the courthouse lock up area.

ADA (b)(6); (b)(7)(C) stated that she does not the specific standard operating procedure for the release of criminal defendants in the Newton District Court. ADA (b)(6); stated that she did not know of any other Court Officers other than Court Officer (b)(6); that were in the Newton District Court on April 02, 2018.

ADA (b)(6); (b)(7)(C) Stated that she did not hear anyone tell Court Officer (b)(6); to (b)(6); to leave the courthouse through the lock up area downstairs.

ADA (b)(6); (b)(7)(C) stated that (b)(6); Defense Attorney was (b)(6); (b)(7)(C) stated that she remembers Attorney (b)(6); ask to speak to his (b)(6); in the lock up area. ADA (b)(6); stated that she thought that it was odd for a defense attorney to request to speak to their client in the lock up area.

ADA (b)(6); (b)(7)(C) stated that she did not know why Defense Attorney (b)(6); requested a sidebar with the Judge and her but ADA (b)(6); believes it was because the ICE/ERO Officers were present in the courtroom.

ADA (b)(6); (b)(7)(C) stated that she thinks that defendants are usually released upstairs in the courthouse. ADA (b)(6); stated that in the past she has seen Court Officers bring a defendant's property upstairs from the lock up area and return it to the defendant and then the defendant can leave the courthouse through the main entrance.

ADA (b)(6); (b)(7)(C) stated that she believed that (b)(6); had an acquaintance at the courthouse. ADA (b)(6); (b)(7)(C) stated that she did not know the acquaintance of (b)(6); (b)(7)(C) but saw that person in the lobby and in the courtroom with (b)(6); (b)(7)(C)

(17)

APP481

1

1/9/19

AUSA Atty. (b)(6); (b)(7)(C)

DOB: (b)(6); (b)(7)(C) ADA (b)(6); (b)(7)(C)

LS: 5/15

Middlesex: 9/15

↳ Malden DC 1 ine ADA to 1/17

↳ Lowell DC to 9/17

↳ Malden as Deputy Sup. to 3/18 to end of July

↳ Newton as Sup.

(b)(6); (b)(7)(C) ⇒ Give Packet w/ PD report, CGIS, Detainer...

If detainer, doesn't ask to be held. Bring detainer to courts attention.

Had not seen booking photo of PA warrant

ADA sits next to dock

Def. will go next to speaker @ dock at times

Court offs. beside dock, at times off. in dock ⇒ has seen both

In custody always escorted up by offs.

Court offs. has view from comp. of lock up

Spoke w/ ICE agent and he showed photo which looked like photo in paperwork

Side bar would be to judges left

2:48 - Wes is going down to bring Δ up

Side bar

- ADA found side bar discussion "weird/sketchy", (b)(6); (b)(7)(C) trying to avoid ICE discussed options to avoid Δ being turned over to ICE
- (b)(6); (b)(7)(C) asks to have him taken downstairs which ADA found odd and never happens

ADA speaks w/ (b)(6); (b)(7)(C) later:

- (b)(6); (b)(7)(C) appears to have property bag
- ADA tells (b)(6); (b)(7)(C) "I know what you did and it was not the right thing to do"
  ↳ (b)(6); (b)(7)(C) smiles and says nothing

- ICE agent requested to go to lock up and denied
- ICE agent removed from courtroom by ~~clerk~~ court offs.

Realized ICE present sometime after 1st call → Not sure when ICE was kicked out

- ADA asked (b)(6); (b)(7)(C) (v.t. w.t.) who's office is in basement, if you're able to get out from basement

~~AD~~

- All paperwork, to include detainer, stays w/ subject

ADA has never had someone go off the record

Martha after (b)(6); (b)(7)(C) would say "I guess I shouldn't have done that, I might get in trouble" told ADA when he was call to (b)(6); (b)(7)(C) volunteering these statements

(b)(6); (b)(7)(C) said "could be a career ender"

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(18)

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

CASE NUMBER
(b)(7)(E)

CASE OPENED
10/5/2018

CURRENT CASE TITLE
Obstruction of Justice

REPORT TITLE
Interview of ADA (b)(6); (b)(7)(C)

REPORTED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

APPROVED BY
(b)(6); (b)(7)(C)
SPECIAL AGENT

DATE APPROVED
1/15/2019

SYNOPSIS

On Wednesday, January 09, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed Assistant District Attorney (ADA) (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Attorney at (b)(6); (b)(7)(C). The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 10:30AM.

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3004-ICLI-00041-127

DETAILS OF INVESTIGATION

On Wednesday, January 09, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed Assistant District Attorney (ADA) (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) Attorney at (b)(6); (b)(6); (b)(7)(C) The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 10:30AM.

ADA (b)(6); (b)(7)(C) stated the following in sum and substance:

ADA (b)(6); (b)(7)(C) stated her date of birth is (b)(6); (b)(7)(C) and she graduated law school in May 2015. (b)(6); stated she has worked as an ADA since September 2015. (b)(6); stated she was assigned to Malden District Court as a line ADA until January 2017. (b)(6); stated she was then assigned to Lowell District Court until September 2017. (b)(6); stated she was then assigned to Malden District Court as Deputy Supervisor until March 2018 at which point she was assigned to Newton District Court as a Supervisor.

On April 02, 2018, (b)(6); stated (b)(6); (b)(7)(C) gave her a packet for (b)(6); (b)(7)(C) which included a police report, CJIS report, and an Immigration Detainer. (b)(6); stated when there is an Immigration Detainer she does not ask for the subject to be held and the Detainer is brought to the courts attention. (b)(6); stated that she had not seen the booking photo from the Pennsylvania warrant prior to court on April 02, 2018.

(b)(6); (b)(7)(C) stated the ADA sits next to the dock in the court room during court. (b)(6); stated the Defense Counsel will go next to the speaker at the dock during court at times. (b)(6); stated the Court Officer sets beside the dock and at times the Officer will be in the dock during court, she has seen both.

(b)(6); (b)(7)(C) stated the subjects who are in custody are always escorted from the holding area in the basement to the dock, via stairs in the dock, by an Officer. (b)(6); stated the Court Officer has a view, from computers at their desk in the court room, of the lock up area.

(b)(6); stated she spoke with an ICE Agent sometime during the day of April 02, 2018, in court. (b)(6); stated the ICE Agent showed her a photograph which appeared to her to resemble the photograph in the paperwork that she had.

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2021-ICLI-00041-488

(b)(6); (b)(7)(C) stated that the side bar occurs to the judges left from the judge's point of view. (b)(6); (b)(7)(C) stated at the 2:48PM mark, Court Officer (b)(6); (b)(7)(C) is going down to bring (b)(6); (b)(7)(C) up from the lock up area to the dock.

(b)(6); (b)(7)(C) stated that during the side bar Judge (b)(6); (b)(7)(C) were discussing options to avoid turning (b)(6); (b)(7)(C) over to ICE. (b)(6); (b)(7)(C) stated she found it "weird /sketchy" that Judge (b)(6); (b)(7)(C) were attempting to avoid ICE. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) requests to have (b)(6); (b)(7)(C) taken downstairs which (b)(6); (b)(7)(C) found odd and never happens. (b)(6); (b)(7)(C) stated that she later notified her supervisor of the events that took place because she found these events so "weird."

(b)(6); (b)(7)(C) stated the ICE Agent requested to go to the lockup with (b)(6); (b)(7)(C) and he was denied. (b)(6); (b)(7)(C) stated at some point during the day the ICE Agent was removed from the courtroom which only the judge would have the authority to do. (b)(6); (b)(7)(C) stated she had noticed that ICE was present in court sometime after first call and she is not sure exactly when the ICE agent was removed from the courtroom.

(b)(6); (b)(7)(C) stated that she spoke with (b)(6); (b)(7)(C) later that same day after court and she noticed (b)(6); (b)(7)(C) had what she believed was a property bag for (b)(6); (b)(7)(C) stated that she told (b)(6); (b)(7)(C) "I know what you did, and it was not the right thing to do" and (b)(6); (b)(7)(C) smiled and did not say anything.

(b)(6); (b)(7)(C) stated that all paperwork, to include Immigration Detainers, stay with the subjects in custody.

(b)(6); (b)(7)(C) stated she has never seen a judge go off the record and stop recording.

(b)(6); (b)(7)(C) stated that months after April 02, 2018, Officer (b)(6); (b)(7)(C) made a voluntary statement to , "I guess I shouldn't have done that, I might get in trouble" when he was called to grand jury for the events of April 02, 2018.

(b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) stated, "could be a career ender." (Agent's note: (b)(6); (b)(7)(C) the Newton District Court Clerk)

Investigation continues.

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(19)

On Wednesday, January 09, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed Assistant District Attorney (ADA) (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) Attorney at Law (b)(6); (b)(7)(C). The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) (b)(6); whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 10:30AM.

ADA (b)(6); stated the following in sum and substance:

ADA (b)(6); stated her date of birth is (b)(6); (b)(7)(C) and she graduated law school in May 2015. (b)(6); stated she has worked as an ADA since September 2015. (b)(6); stated she was assigned to Malden District Court as a line ADA until January 2017. (b)(6); stated she was then assigned to Lowell District Court until September 2017. (b)(6); stated she was then assigned to Malden District Court as Deputy Supervisor until March 2018 at which point she was assigned to Newton District Court as a Supervisor.

On April 02, 2018, (b)(6); stated (b)(6); (b)(7)(C) gave her a packet for (b)(6); (b)(7)(C) which included a police report, CJIS report, and an Immigration Detainer. (b)(6); stated when there is an Immigration Detainer she does not ask for the subject to be held and the Detainer is brought to the courts attention. (b)(6); stated that she had not seen the booking photo from the Pennsylvania warrant prior to court on April 02, 2018.

(b)(6); stated the ADA sits next to the dock in the court room during court. (b)(6); stated the Defense Counsel will go next to the speaker at the dock during court at times. (b)(6); stated the Court Officer sets beside the dock and at times the Officer will be in the dock during court, she has seen both.

(b)(6); stated the subjects who are in custody are always escorted from the holding area in the basement to the dock, via stairs in the dock, by an Officer. (b)(6); stated the Court Officer has a view, from computers at their desk in the court room, of the lock up area.

(b)(6); stated she spoke with an ICE Agent sometime during the day of April 02, 2018, in court. (b)(6); (b)(7)(C) stated the ICE Agent showed her a photograph which appeared to her to resemble the photograph in the paperwork that she had.

(b)(6); stated that the side bar occurs to the judges left from the judge's point of view. (b)(6); stated at the 2:48PM mark, Court Officer (b)(6); is going down to bring (b)(6); (b)(7)(C) up from the lock up area to the dock.

(b)(6); stated that during the side bar Judge (b)(6); and Defense Counsel (b)(6); (b)(7)(C) were discussing options to avoid turning (b)(6); (b)(7)(C) over to ICE. (b)(6); stated she found it "weird/sketchy" that Judge (b)(6); (b)(7)(C) were attempting to avoid ICE. (b)(6); stated that (b)(6); requests to have

(b)(6); (b)(7)(C) taken downstairs which (b)(6); found odd and never happens. (b)(6); stated that she later notified her supervisor of the events that took place because she found these events so "weird."

(b)(6); (b)(7)(C) stated the ICE Agent requested to go to the lockup with (b)(6); (b)(7)(C) and he was denied. stated at some point during the day the ICE Agent was removed from the courtroom which only the judge would have the authority to do. (b)(6); stated she had noticed that ICE was present in court sometime after first call and she is not sure exactly when the ICE agent was removed from the courtroom.

(b)(6); stated that she spoke with (b)(6); later that same day after court and she noticed (b)(6); had what she believed was a property bag for (b)(6); (b)(7)(C) stated that she told (b)(6); "I know what you did, and it was not the right thing to do" and (b)(6); smiled and did not say anything.

(b)(6); stated that all paperwork, to include Immigration Detainers, stay with the subjects in custody.

(b)(6); stated she has never seen a judge go off the record and stop recording.

(b)(6); (b)(7)(C) stated that months after April 02, 2018, Officer (b)(6); made a voluntary statement to "I guess I shouldn't have done that, I might get in trouble" when he was called to grand jury for the events of April 02, 2018.

(b)(6); stated that (b)(6); stated, "could be a career ender." (Agent's note: (b)(6); is (b)(6); (b)(7)(C) the Newton District Court Clerk)

Investigation continues.

(20)

APP488

Department of Homeland Security
Immigration and Customs Enforcement

Memorandum of Investigation

File Number:	Title:	Control Office:
(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)	BOS

On April 2, 2018, I, Deportation Officer (DO) (b)(6); (b)(7)(C) responded to a Secure Communities (SC) hit based on arrest by Newton Police. The subject, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) of the Dominican Republic, was arrested by Newton Police and charged with possession of Class B (cocaine). Subject has no other known criminal history. I arrived at the Newton District Courthouse at approximately 0930 hours. At security, I identified myself and asked for the chief court officer. The security officer stated he was not around but the other court officers on duty were in the courtroom. I entered the courtroom and sat in the designated area for police, directly next to a court officer and Newton Police officer. A Newton Police officer, I believe his first name was (b)(6); , greeted me by asking if I was here for his guy, (b)(6); I said yes, I have a detainer and warrant. He said that he had the paperwork already.

As I observed the court proceedings throughout the morning, during a brief recess, I introduced myself to the court officer situated near me. I asked him if I would be able to take custody of the subject in lock-up at the conclusion of his arraignment. He said that I could and that it would be better for him and the other court officer in the court as they were the only two court officers around. I said that would be great as I was alone currently and for officer safety reasons it would be best.

The subject's arraignment took some time and was not called until after lunchtime. Throughout the day, as circumstances permitted, the court officers, the assistant district attorney (ADA), the clerk magistrate and the defense attorney were all made aware of my presence and intent to arrest (b)(6); (b)(7)(C) upon his release from state custody. In addition, I could see that both the ADA and defense attorney were in physical possession of the immigration detainer.

Just before the lunch break, approximately 1230 hours, the female defense attorney approached me and asked if I was with ICE. I stated, "Yes, how can I help you?" She was explaining to me her reservations about her client being the wanted person out of Pennsylvania and the subject that I was in court for based on the information in the detainer. I assured her that her client was subject of the ICE detainer, confirmed through biometrics. Ultimately, at approximately 1310 hours, the case was held over to the afternoon session.

I reentered the courtroom at approximately 1400 hours. As I sat in the courtroom waiting for the session to begin, a male attorney, not present in the courtroom earlier in the day introduced himself as the subject's defense counsel and asked if I was with ICE. I stated, "Yes, how can I help you?" He went on to say that he believed there to be a case of mistaken identity with his client. I told him that I knew his client's identity. He proceeded read and to point out differences in his client's height and weight compared to the subject cited in the detainer. I told him that I was not concerned with those discrepancies. I further told him that I was only concerned with his client's biometric match. I explained that his client has been previously removed from the U.S. and that his presence is evidence of his illegal reentry into the U.S.

After the conversation with the defense attorney I spoke with the ADA in greater detail about the subject's immigration history. I explained his previous deportations and that he would be presented for prosecution to the U.S. Attorney's Office for Reentry After Deportation when he comes into ICE custody.

At approximately 1410 hours, the clerk entered the courtroom and asked if I was with ICE. I stated, "Yes". He asked if I had a warrant and again I stated, "Yes, I have it right here". I asked if he wanted it or wanted to see it and he said "No". The clerk went on to say that the judge wants me to tell you to leave the courtroom. I said, "Leave the courtroom?". The clerk said yes. I said why am I being told to leave the courtroom? He stated that the judge didn't want her courtroom being intimidated by the presence of ICE. It should be noted that I was in plain clothes, with all my branding and gear covered by a shirt and a jacket. I asked again if he was telling me to leave the courtroom and he said the judge doesn't want anyone being intimidated by ICE. I left the courtroom and the clerk followed me out to the front lobby/security area. He explained to me that he would let me know as soon as a decision on the case had been rendered. The clerk returned to the courtroom and shortly thereafter the clerk returned to speak to me again and stated that if the subject is released he will be released either through the courtroom or brought back down to lock-up and released into the courthouse. I asked, "So he will come up the stairs over there and into the lobby to use the main exit?" He stated, "Yes".

At that time, I expressed to him the serious matter of officer safety. I pointed out that I was currently alone and there are three (3) males that have been waiting all day for the subject. The subject's defense attorney has been meeting with them, off and on throughout the afternoon. I asked the clerk that if it was at all possible it would be better for officer safety reasons for me to take the subject into custody in lock-up. He said, "No, I'm sorry", and returned to the courtroom. It should be noted that it is Massachusetts Trial Court policy to allow ICE officers into the lock-up to take aliens into custody. However, I was refused this opportunity.

At this time, I waited outside the court room for the decision and at approximately 1421 hours I contacted my team to see if there was anyone available for back-up. Deportation Officer (DO) (b)(6); (b)(7)(C) responded and arrived at the court approximately 30 minutes later. I never left the front lobby. The clerk came out of the court at approximately 1450 and said the subject was being released. The clerk went on to say that subject would be brought back down to lock-up and then escorted by a court officer to the lobby/security area, where I was waiting.

The ADA came out sometime later (I would estimate no more than 10 minutes) and stated to me that she had a bad feeling that the subject was released out the back of the building. She based her feeling on a "look" that she got from the subject's defense attorney. We told her that we were just waiting for the court officer to bring the subject upstairs and she commented on why it was taking so long. The clerk met us in the lobby and stated that the subject should be coming up any minute and then went back to the court room. The ADA asked the victim witness advocate (VWA) to inquire about the subject and he went downstairs.

Within a few minutes the VWA returned and informed that he did not see the subject in lock up and that the only other way to leave the building is from lock up but he doubted that the court officers would have allowed for that to happen. The ADA also made a similar statement that she couldn't believe that would happen.

We increasingly became suspicious that the subject was not in lock up and Deportation Officer (b)(6); stated he would go to the sally port at lock-up. He exited the front entrance and went around to the back of the courthouse on foot. Deportation Officer (b)(6); reported that he noticed a court officer outside talking to correctional officers that were inside their transport van. DO (b)(6); explained to the court officer that we were waiting for our subject to be brought up stairs in the lobby so that we could take him in to custody. The officer stated the name of subject before DO (b)(6); did and very sarcastically said that he released him from the back door. DO (b)(6); asked him why he did so, knowing that we were in the building with a detainer and a warrant of arrest. The officer responded to DO (b)(6); with an arrogant tone that he just let him go from the back.

Ultimately, late in the afternoon, the chief court officer was suddenly available. He advised us that the subject was released out the back of the building but couldn't explain why. It was explained to us by multiple court personnel that it required the assistance of someone with a security pass (court personnel).

Deportation Officer:	(b)(6); (b)(7)(C)	Date:	04/18/2018

G-166C

(21)

APP491

Department of Homeland Security
Immigration and Customs Enforcement

Memorandum of Investigation

File Number:	Title:	Control Office:
(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)	BOS

On April 2, 2018, at about 2:15 PM I, Deportation Officer (b)(6); (b)(7)(C), received a phone call from Supervisory Detention and Deportation Officer (SDDO) (b)(6); (b)(7)(C) requesting that I would assist Deportation Officer (DO) (b)(6); (b)(7)(C) at the Newton District Court Located at 1309 Washington Street, West Newton, Massachusetts. I grabbed my duty gear and proceeded to that address in order to assist DO (b)(6); (b)(7)(C). I arrived at about 2:51PM and parked my government issued vehicle in the front of the building. I contacted my colleague via cell phone about his location in the building and then entered the main entrance. I was greeted by a Court Security Officer at the check point and identified myself as Deportation Officer and showed my credentials. I explained to the officer that I was there on official business and looking for DO (b)(6); . Once passed through the security I noticed DO (b)(6); was just outside the court room. DO (b)(6); stated that the clerk had informed him just a few minutes ago that the subject was going to be released. The clerk also stated that the subject was going to be brought down to lock up and then escorted by a court officer to the lobby where we were.

Within a few minutes, a female Assistant District Attorney (ADA) greeted us and seemed to be aware about the subject's case. We told her that we were just waiting for the court officer to bring the subject upstairs and she commented on why it was taking so long. The clerk met us in the lobby and stated that the subject should be coming up any minute and then went back to the court room. The ADA asked the victim witness advocate (VWA) to inquire about the subject's and he went downstairs. Within a few minutes the VWA returned and informed that he did not see the subject in lock up and that the only other way to leave the building is from lock up but he doubted that the Court Officers would have allowed for that to happen. The ADA also made a similar statement that she couldn't believe that would happen. I became increasingly suspicious that the subject was not in lock up and I informed DO (b)(6); that I would go to the sally port near the lock up and exited the courthouse through the front entrance. I walked to rear of the building and noticed a court officer outside talking to correctional officers that were inside their transport van. I identified myself as a Deportation Officer to the Court Officer and showed him my credentials. I explained to the Court Officer that we were waiting for our subject to be brought up stairs in the lobby so that we could take him in to custody. The officer stated the name of subject before I did (b)(6); (b)(7)(C) and very sarcastically said that he released him from the back door. I asked him why has did so, knowing that we were in the building with a detainer and a warrant of arrest. The officer responded, with an arrogant tone, that he just let him go from the back. I informed DO (b)(6); and returned to our office.

Deportation Officer: (b)(6); (b)(7)(C)	Date: 04/18/2018

G-166C

(22)

APP492

(1)

1/11/2019

Interview of (b)(6); (b)(7)(C) HSI

(b)(6); (b)(7)(C) AUSA

(b)(6); (b)(7)(C) 7/11/68, Waltham, MA, been interp for courts for approx 2., 20yrs as interp., Vetted interp to become a certified interp.

(b)(6); (b)(7)(C) mostly Middlesex cty, ~~for~~ training period, to become certified interp.

(b)(6); (b)(7)(C) appeared in NDC approx 10 times prior to 4/2/18

(b)(6); (b)(7)(C) started in courts about 9/2017.

(b)(6); (b)(7)(C) interpreting for (b)(6); (b)(7)(C) at 10:34 AM.

(b)(6); (b)(7)(C) he speaks directly to defendant, not heard well on court recording

(b)(6); (b)(7)(C) showed photo #9 of court, showed where he stands in court next to dock, to speak thru hole in glass to defendant

(b)(6); (b)(7)(C) ID'd (b)(6); (b)(7)(C) in NPB booking photo

(b)(6); (b)(7)(C) Says Photo from Chambersburg PA is not the one he saw in court on 4/2/18.

(b)(6); (b)(7)(C) Knew of detainer and presence of ICE

(b)(6); (b)(7)(C) says Detainer was in packet.

(b)(6); (b)(7)(C) says he thought (b)(6); (b)(7)(C) was ADA, because he made decision to have (b)(6); (b)(7)(C) go out back door.

(b)(6); (b)(7)(C) doesn't remember dealing w/ (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) went down to lockup through the dock.

(b)(6); (b)(7)(C) reason went down stair to let him know he was going out the back (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) doesn't know who was by the door; (b)(6); (b)(7)(C) went first (b)(6); (b)(7)(C) behind (b)(6); (b)(7)(C) asks (b)(6); (b)(7)(C) if he is good w/ that

(b)(6); (b)(7)(C) heard someone say "Well that didn't look good", after (b)(6); (b)(7)(C) walked out door.
↓
thinks it was C.O. holding the door.

(b)(6); (b)(7)(C) Knew ICE was there but not exactly where

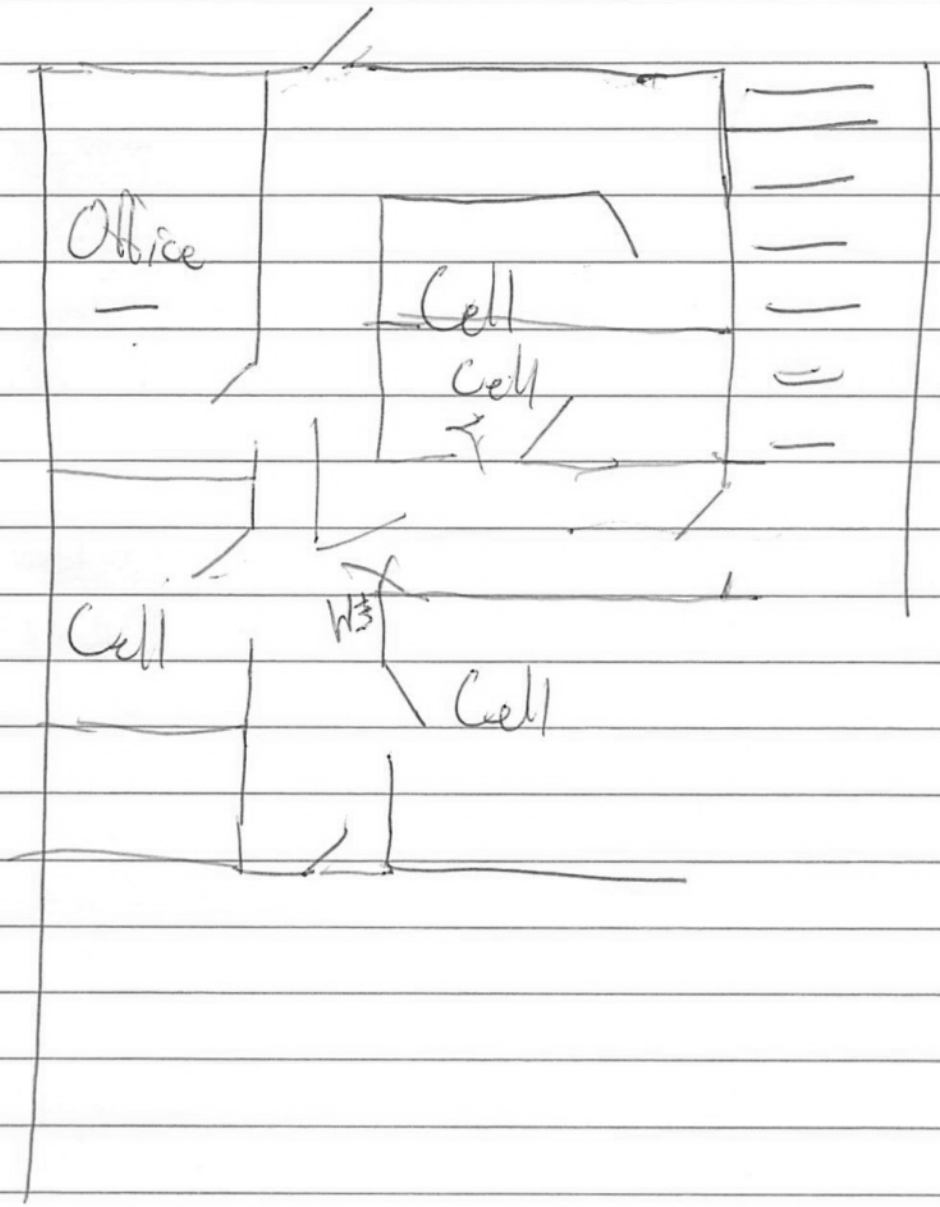
(b)(6); (b)(7)(C) familiar w/ people being released at the front door not thru the lockup.

(b)(6); (b)(7)(C) went down stairs to interpret.

- (b)(6); (b)(7)(C) never went down to lockup before after defendant has been released.
- (b)(6); (b)(7)(C) remembers convo between (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) but doesn't want to repeat due to attorney privilege.
- (b)(6); (b)(7)(C) spoke to CO; doesn't know what was said
- (b)(6); (b)(7)(C) understood that (b)(6); (b)(7)(C) was going to be released thru lockup when he was in courtroom, because what he heard from sidebar and that recorder was turned off. Understood the Judge & (b)(6); (b)(7)(C) were getting him released.
- (b)(6); (b)(7)(C) no convo w/ (b)(6); (b)(7)(C) that wasn't between (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) speaks no english.
- (b)(6); (b)(7)(C) Knew ICE was in courtroom at some point.
- (b)(6); (b)(7)(C) doesn't remember (b)(6); (b)(7)(C) having anyone in court ie friends + family
- (b)(6); (b)(7)(C) didn't speak to (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) doesn't know (b)(6); (b)(7)(C), thinks he is arrogant.
- (b)(6); (b)(7)(C) no other interviews connected to this investigation

- (b)(6); (b)(7)(C) and ADA were in front of the judges bench for sidebar.
- (b)(6); (b)(7)(C) does not remember any convo between CO + (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) detainer was passed around.
- (b)(6); (b)(7)(C) to his understanding convo between Judge + (b)(6); (b)(7)(C) @ sidebar was to release (b)(6); (b)(7)(C) thru lockup.
- (b)(6); (b)(7)(C) remembers (b)(6); (b)(7)(confirming if (b)(6); (b)(7)(C) was ok w/ what was happening.

ended @ approx 1215.


Office
Cell
Cell
Cell
Cell

DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

(23)

~~OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE~~

CASE NUMBER

(b)(7)(E)

CASE OPENED

10/5/2018

CURRENT CASE TITLE

Obstruction of Justice

REPORT TITLE

Interview of (b)(6); (b)(7)(C) on January 11, 2019

REPORTED BY

(b)(6); (b)(7)(C)

SPECIAL AGENT

APPROVED BY

(b)(6); (b)(7)(C)

SPECIAL AGENT

DATE APPROVED

1/22/2019

SYNOPSIS

On Friday, January 11, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) interviewed (b)(6); (b)(7)(C) (b)(6); at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview were Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C). The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers. The interview began at approximately 11:10 AM.

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2021-ICLI-00041-433

DETAILS OF INVESTIGATION

On Friday, January 11, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) (b)(6); interviewed (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview was Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C). The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); stated the following in sum and substance:

(b)(6); stated he was born on (b)(6); (b)(7)(C) and he currently lives in Waltham, MA. (b)(6); stated he has been working as an interpreter in the Massachusetts courts for approximately 2 years. (b)(6); stated that he has worked as an interpreter outside the court system for approximately 20 years. (b)(6); stated that since sometime around September 2017 he has worked as a vetted interpreter an is in the process of becoming a certified interpreter with the state court system.

(b)(6); stated that he mostly works as an interpreter in Middlesex County Courts. (b)(6); stated that he had worked as an interpreter in Newton District Court approximately 10 times prior to April 02, 2018.

(b)(6); stated that on April 02, 2018, he started interpreting for (b)(6); (b)(7)(C) at approximately 10:34 AM. (b)(6); stated that he speaks directly to the defendant he is interpreting for and for that reason (b)(6); is not able to be heard very well on the court recording.

(b)(6); was shown photo #9, of the (b)(7)(E) Courtroom at Newton District Court, (b)(6); showed where he stands next to the dock in the courtroom when he is interpreting.

(b)(6); identified (b)(6); (b)(7)(C) from the photo contained on the Newton Police booking page.

(b)(6); stated that the photo received from the Chambersburg Police Department, Chambersburg, PA was not the same person that (b)(6); interpreted for in the Newton District Court.

(b)(6); stated that he was aware that there was an ICE Officer present at the Newton District Court but did not know exactly where the ICE Officer was. (b)(6); stated that there was an ICE detainer in place for (b)(6); (b)(7)(C) stated that there was a detainer in the

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2021-ICLI-00041 434

court packet for (b)(6); (b)(7)(C) stated that he remembers the detainer being passed around.

(b)(6); stated that he thought (b)(6); (b)(7)(C) was the Assistant District Attorney because (b)(6); made the decision to get (b)(6); (b)(7)(C) released through the lock up area (b)(7)(E)

(b)(6); stated that he does not remember having any interaction with Court Officer (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

(b)(6); stated that he went down to the lock up area with (b)(6); (b)(7)(C) after the court proceeding through the dock. (b)(6); stated that he believed the reason they went downstairs to lock up was to inform (b)(6); (b)(7)(C) that he was to be released out the back door of the lock (b)(6); (b)(7)(C); stated that he has never previously gone downstairs to the lock up to interpret for a defendant after the defendant has been released.

(b)(6); stated that that he does not know who was by the exit door of the lock up. (b)(6); stated that he was the first to go down the stairs to the lock up and that (b)(6); was behind him. (b)(6); stated that (b)(6); asked him if he was "good with that" in reference to going down to the lock up.

(b)(6); stated that he remembers someone saying "well that didn't look good" in reference to how (b)(6); (b)(7)(C) left after being let out the exit from the lockup. (b)(6); stated that he thinks it was the court officer that made the statement, but (b)(6); is not certain who it was.

(b)(6); stated that he was familiar with defendants being released from court and going out the front door not through the lock up area.

(b)(6); (b)(7)(C) stated that he remembers conversation between (b)(6); (b)(7)(C), but does not what to repeat the conversation because of attorney client privilege.

(b)(6); stated that he saw (b)(6); speaking to a Court Officer but does not know what was said between the two.

(b)(6); stated that he understood that (b)(6); (b)(7)(C) was going to be released through the lock up area when he was in the courtroom because of what (b)(6); heard from the sidebar and because the recorder was turned off. (b)(6); stated that he understood that the Judge and (b)(6); were getting (b)(6); (b)(7)(C) released.

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~~2021-ICLI-00041-435~~

(b)(6); (b)(7)(C) stated that he did not have any conversation with (b)(6); (b)(7)(C) that was not a translation between (b)(6); (b)(7)(C) stated that as far as he remembers (b)(6); (b)(7)(C) spoke little to no English.

(b)(6); (b)(7)(C) stated that he did not know of any friends or family of (b)(6); (b)(7)(C) being in the courtroom.

(b)(6); (b)(7)(C) stated that he does not know (b)(6); (b)(7)(C) personally. (b)(6); (b)(7)(C) stated that he believed (b)(6); (b)(7)(C) to be arrogant.

(b)(6); (b)(7)(C) stated that he has not participated in any other interviews related to the current investigation related to the events at the Newton District Court on April 02, 2018.

(b)(6); (b)(7)(C) stated that he remembers (b)(6); (b)(7)(C) being in front of the Judges bench during the sidebar conversation.

(b)(6); (b)(7)(C) stated that he does not remember any conversation between (b)(6); (b)(7)(C) and a Court Officer.

(b)(6); (b)(7)(C) restated that to his understanding the conversation between the Judge and (b)(6); (b)(7)(C) at sidebar was to release (b)(6); (b)(7)(C) through the lock up area downstairs.

(b)(6); (b)(7)(C) stated that he remembers (b)(6); (b)(7)(C) confirming with (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) was ok with what was happening.

HSI SA (b)(6); (b)(7)(C) drew a rough diagram of the lock up area of the Newton District Court to use as a reference. Using the rough diagram, (b)(6); (b)(7)(C) showed where he was standing in the lock up area when (b)(6); (b)(7)(C) was let out the exit door of the lock up. The rough diagram is contained within the case file.

Investigation continues.

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Current Case Title	ROI Number	Date Approved
Obstruction of Justice	(b)(7)(E)	1/22/2019

This document is loaned to you for official use only and remains the property of the Department of Homeland Security. Any further request for disclosure of this document or information contained herein should be referred to HSI Headquarters together with a copy of the document.

On Friday, January 11, 2019, Assistant United States Attorneys (AUSA) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) interviewed (b)(6); (b)(7)(C) at the United States Federal Courthouse located at One Courthouse Way, Boston, MA. Also present during the interview was Homeland Security Investigations Special Agent (HSI SA) (b)(6); (b)(7)(C) . The interview was done in reference to an incident that occurred at the Newton District Court, Newton, MA on April 02, 2018, involving the release of a criminal defendant named (b)(6); (b)(7)(C) whom was wanted by Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) Officers.

(b)(6); (b)(7)(C) stated the following in sum and substance:

(b)(6); (b)(7)(C) stated he was born on (b)(6); (b)(7)(C) and he currently lives in Waltham, MA. (b)(6); (b)(7)(C) stated he has been working as an interpreter in the Massachusetts courts for approximately 2 years. (b)(6); (b)(7)(C) stated that he has worked as an interpreter outside the court system for approximately 20 years. (b)(6); (b)(7)(C) stated that since sometime around September 2017 he has worked as a vetted interpreter an is in the process of becoming a certified interpreter with the state court system.

(b)(6); (b)(7)(C) stated that he mostly works as an interpreter in Middlesex County Courts. (b)(6); (b)(7)(C) stated that he had worked as an interpreter in Newton District Court approximately 10 times prior to April 02, 2018.

(b)(6); (b)(7)(C) stated that on April 02, 2018, he started interpreting for (b)(6); (b)(7)(C) at approximately 10:34 AM. (b)(6); (b)(7)(C) stated that he speaks directly to the defendant he is interpreting for and for that reason (b)(6); (b)(7)(C) is not able to be heard very well on the court recording.

(b)(6); (b)(7)(C) was shown photo #9, of the First Session Courtroom at Newton District Court, (b)(6); (b)(7)(C) showed where he stands next to the dock in the courtroom when he is interpreting.

(b)(6); (b)(7)(C) identified (b)(6); (b)(7)(C) from the photo contained on the Newton Police booking page.

(b)(6); (b)(7)(C) stated that the photo received from the Chambersburg Police Department, Chambersburg, PA was not the same person that (b)(6); (b)(7)(C) interpreted for in the Newton District Court.

(b)(6); (b)(7)(C) stated that he was aware that there was an ICE Officer present at the Newton District Court but did not know exactly where the ICE Officer was. (b)(6); (b)(7)(C) stated that there was an ICE detainer in place for (b)(6); (b)(7)(C) stated that there was a detainer in the court packet for (b)(6); (b)(7)(C) stated that he remembers the detainer being passed around.

(b)(6); (b)(7)(C) stated that he thought (b)(6); (b)(7)(C) was the Assistant District Attorney because (b)(6); (b)(7)(C) made the decision to get (b)(6); (b)(7)(C) released through the lock up area downstairs.

(b)(6); (b)(7)(C) stated that he does not remember having any interaction with Court Officer (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

(b)(6); stated that he went down to the lock up area with (b)(6); after the court proceeding through (b)(6); (b)(7)(C); (b)(7)(E) stated that he believed the reason they went downstairs to lock up was to inform (b)(6); (b)(7)(C) that he was to be released out the back door of the lock up. (b)(6); stated that he has never previously gone downstairs to the lock up to interpret for a defendant after the defendant has been released.

(b)(6); stated that that he does not know who was by the exit door of the lock up. (b)(6); stated that he was the first to go down the stairs to the lock up and that (b)(6); was behind him. (b)(6); stated that (b)(6); asked him if he was "good with that" in reference to going down to the lock up.

(b)(6); stated that he remembers someone saying "well that didn't look good" in reference to how (b)(6); (b)(7)(C) left after being let out the exit from the lockup. (b)(6); stated that he thinks it was the court officer that made the statement, but (b)(6); is not certain who it was.

(b)(6); stated that he was familiar with defendants being released from court and going out the front door not through the lock up area.

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(b)(6); stated that he did not have any conversation with (b)(6); (b)(7)(C) that was not a translation between (b)(6); (b)(7)(C) stated that as far as he remembers (b)(6); (b)(6); (b)(7)(C) spoke little to no English.

(b)(6); stated that he did not know of any friends or family of (b)(6); (b)(7)(C) being in the courtroom.

(b)(6); stated that he does not know (b)(6); personally. (b)(6); stated that he believed (b)(6); to be arrogant.

(b)(6); stated that he has not participated in any other interviews related to the current investigation related to the events at the Newton District Court on April 02, 2018.

(b)(6); stated that he remembers (b)(6); and ADA (b)(6); being in front of the Judges bench during the sidebar conversation.

(b)(6); stated that he does not remember any conversation between (b)(6); (b)(7)(C) and a Court Officer.

(b)(6); (b)(7)(C) restated that to his understanding the conversation between the Judge and (b)(6); at sidebar was to release (b)(6); (b)(7)(C) through the lock up area downstairs.

(b)(6); (b)(7)(C) stated that he remembers (b)(6); (b)(7)(C) confirming with (b)(6); that (b)(6); was ok with what was happening.

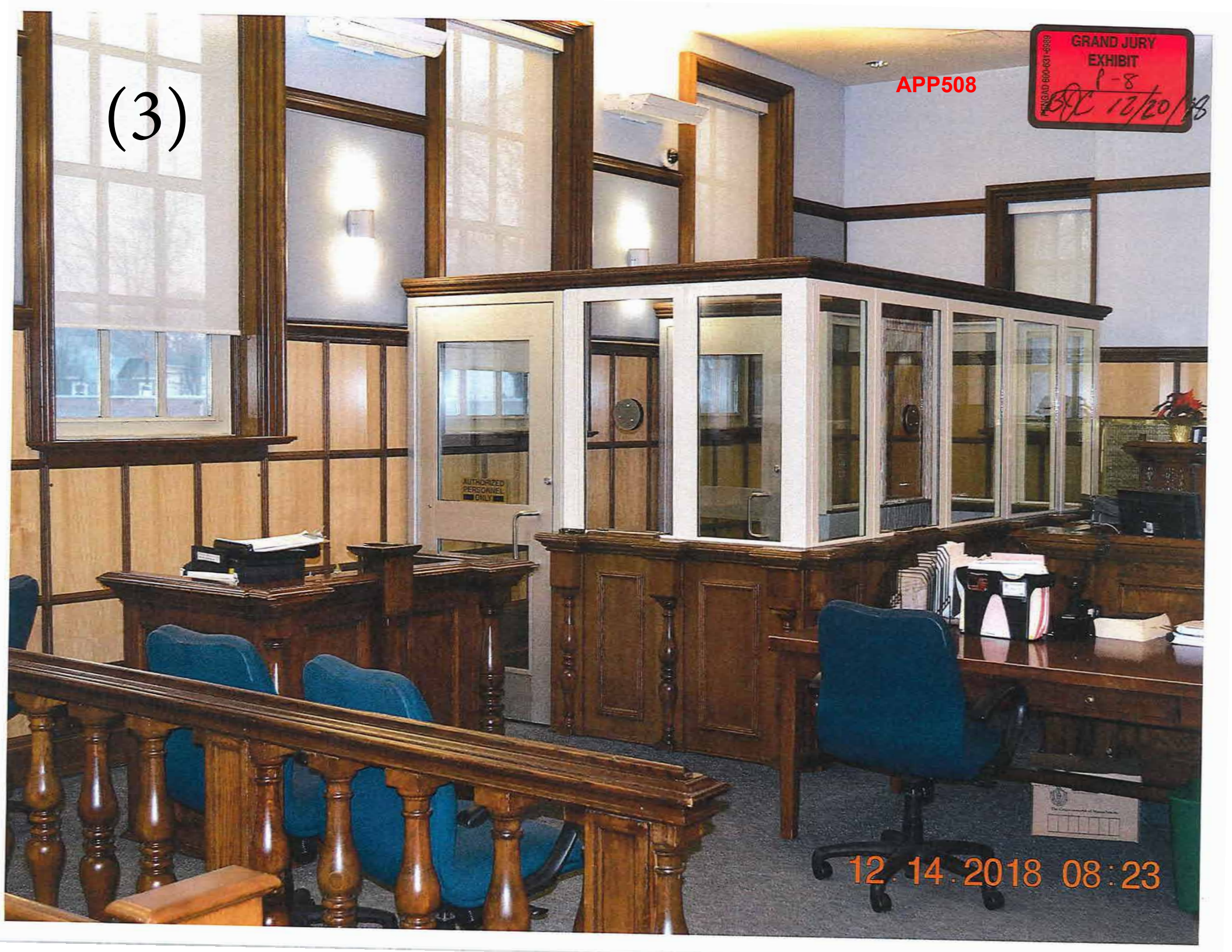
HSI SA (b)(6); drew a rough diagram of the lock up area of the Newton District Court to use as a reference. Using the rough diagram, (b)(6); showed where he was standing in the lock up area when (b)(6); (b)(7)(C) was let out the exit door of the lock up. The rough diagram is contained within the case file.

Investigation continues.

APPENDIX U


APP506
GRAND JURY
EXHIBIT
P-4
12/20/18
(1)
CLERK
MAGISTRATE
CELL
PHONES
ALLOWED
CLERKS
OFFICE
12.14.2018 08:21


(2)
APP507
GRAND JURY
EXHIBIT
P-5
EXIT
12.14.2018 08:21


(3)
APP508
GRAND JURY
EXHIBIT
1-8
12/20/18
AUTHORIZED
PERSONNEL
ONLY
12.14.2018 08:23

GRAND JURY EXHIBIT
R-9
BJC 12/20/18

(4)




APP510
GRAND JURY
EXHIBIT
P-10
(5)
EXIT
EXIT
PUSH UNTIL ALARM SOUN
DOOR CAN BE OPENED
IN 15 SECONDS
12.14.2018 08:23


(6)
GRAND JURY
EXHIBIT
P-13
DATE 12/20/18
APP511
12.14.2018 08:24


(7)
APP512
GRAND JURY
EXHIBIT
P-17
EXIT
12 . 14 . 2018 08 : 25


(8)
APP513
GRAND JURY
EXHIBIT
P-21
12/20/18
AUTHORIZED
PERSONNEL
ONLY
12.14.2018 08:26

(9)

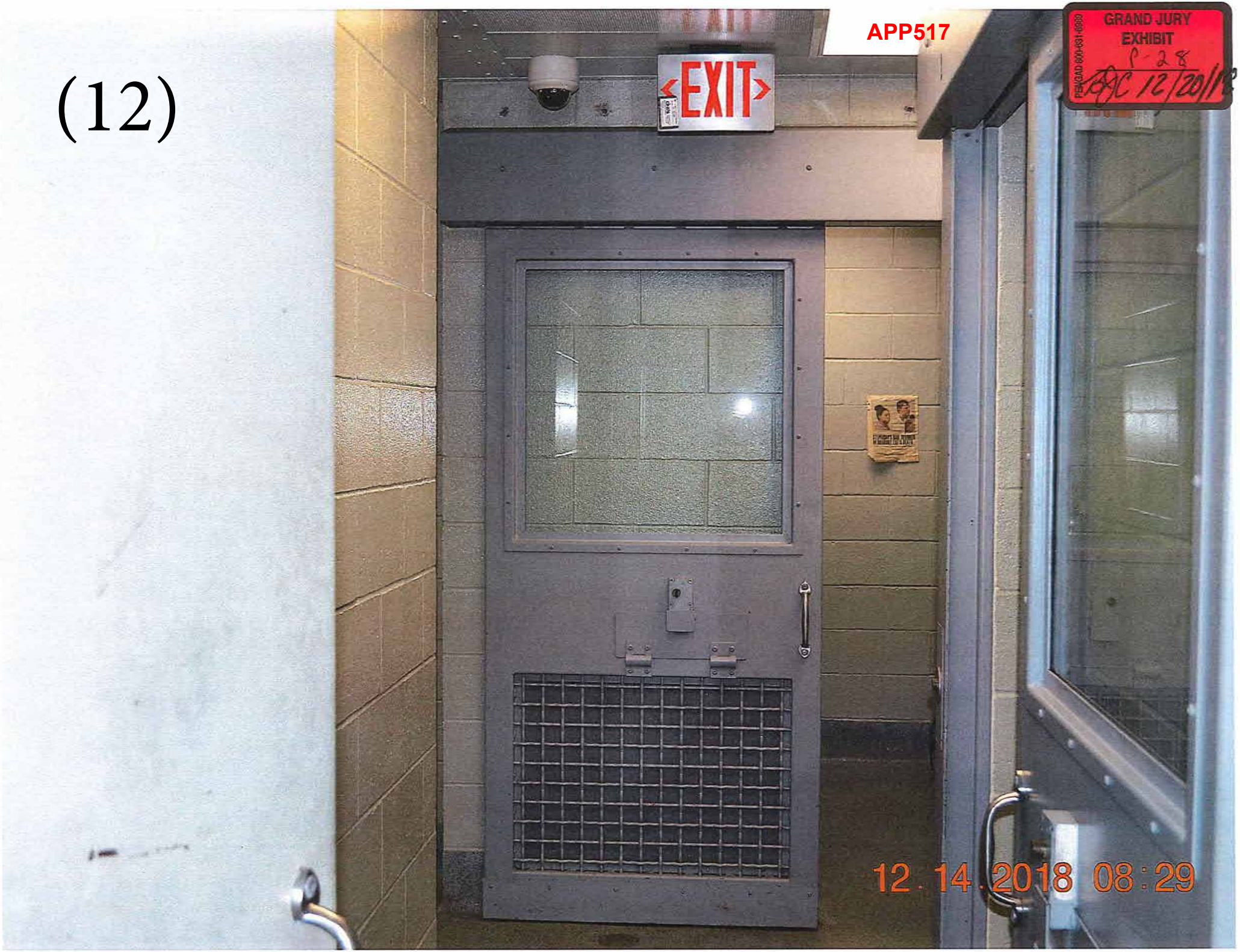



APP515
(10)
GRAND JURY
EXHIBIT
8 24
BFC 12/20/18
12.14.2018 08:28

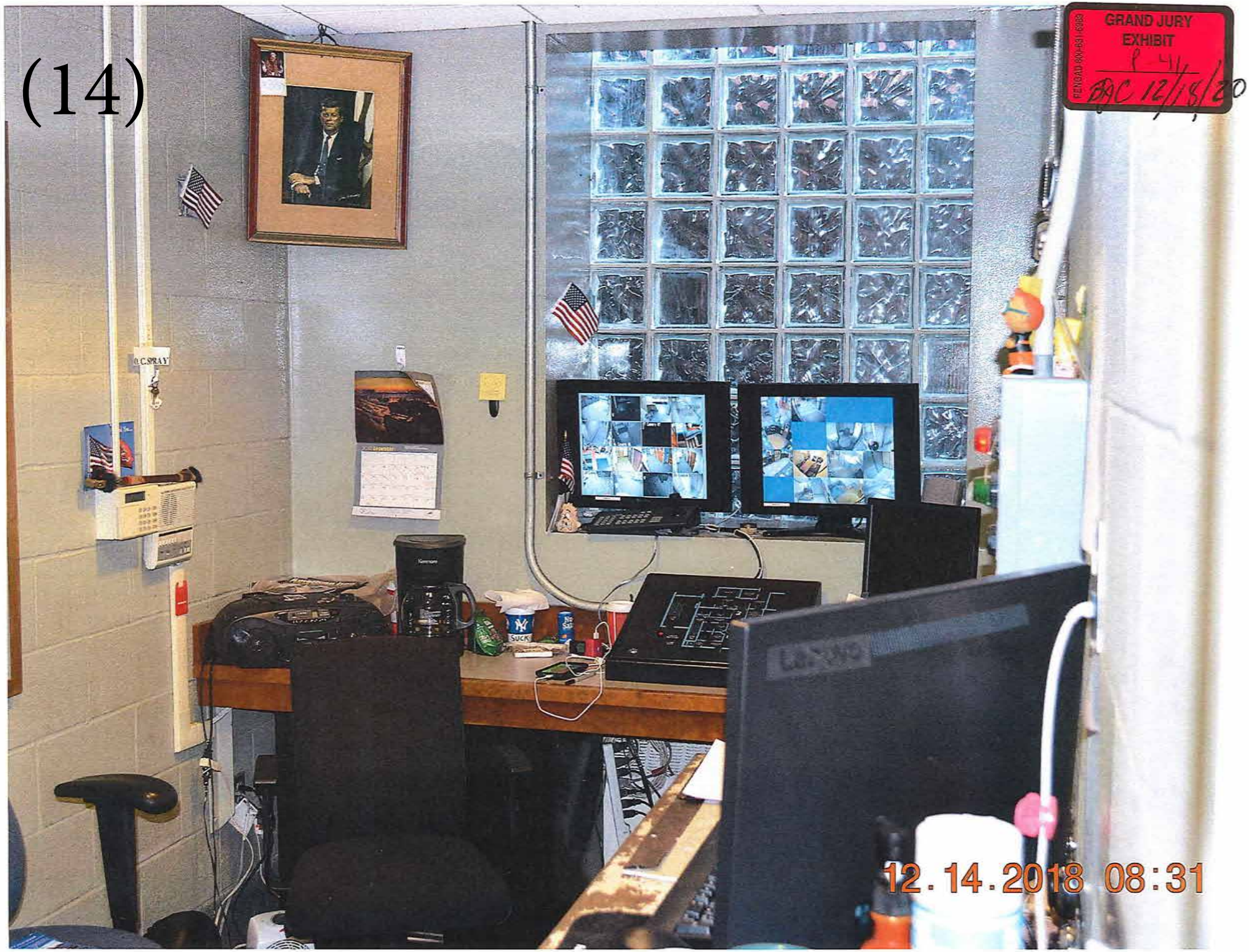
(11)

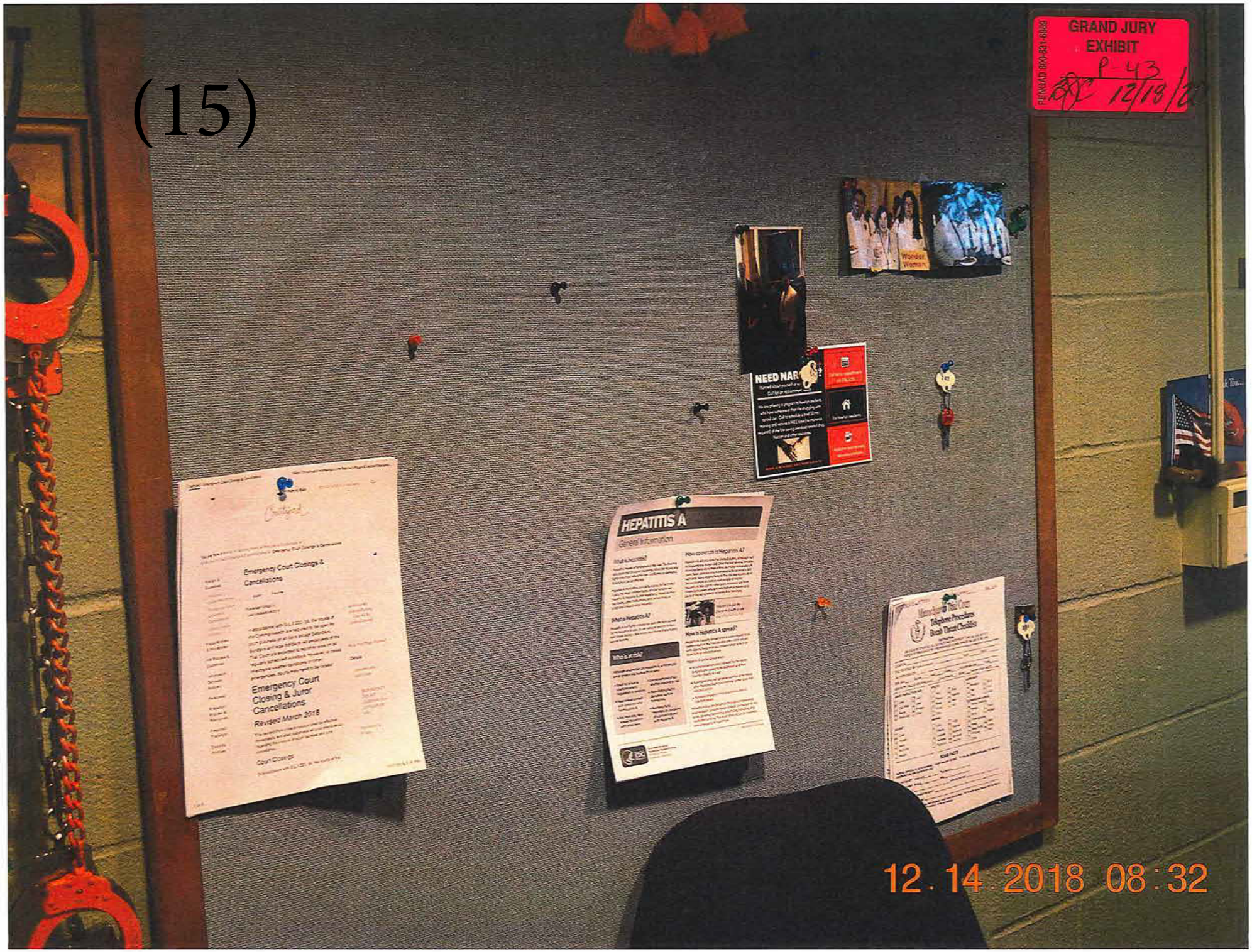


(12)




(13)
APP518
GRAND JURY
EXHIBIT
EXIT
FIREARMS
O.C. SPRAY
12.14.2018 08:31


(14)
GRAND JURY EXHIBIT
8-41
BAC 12/18/20
12.14.2018 08:31

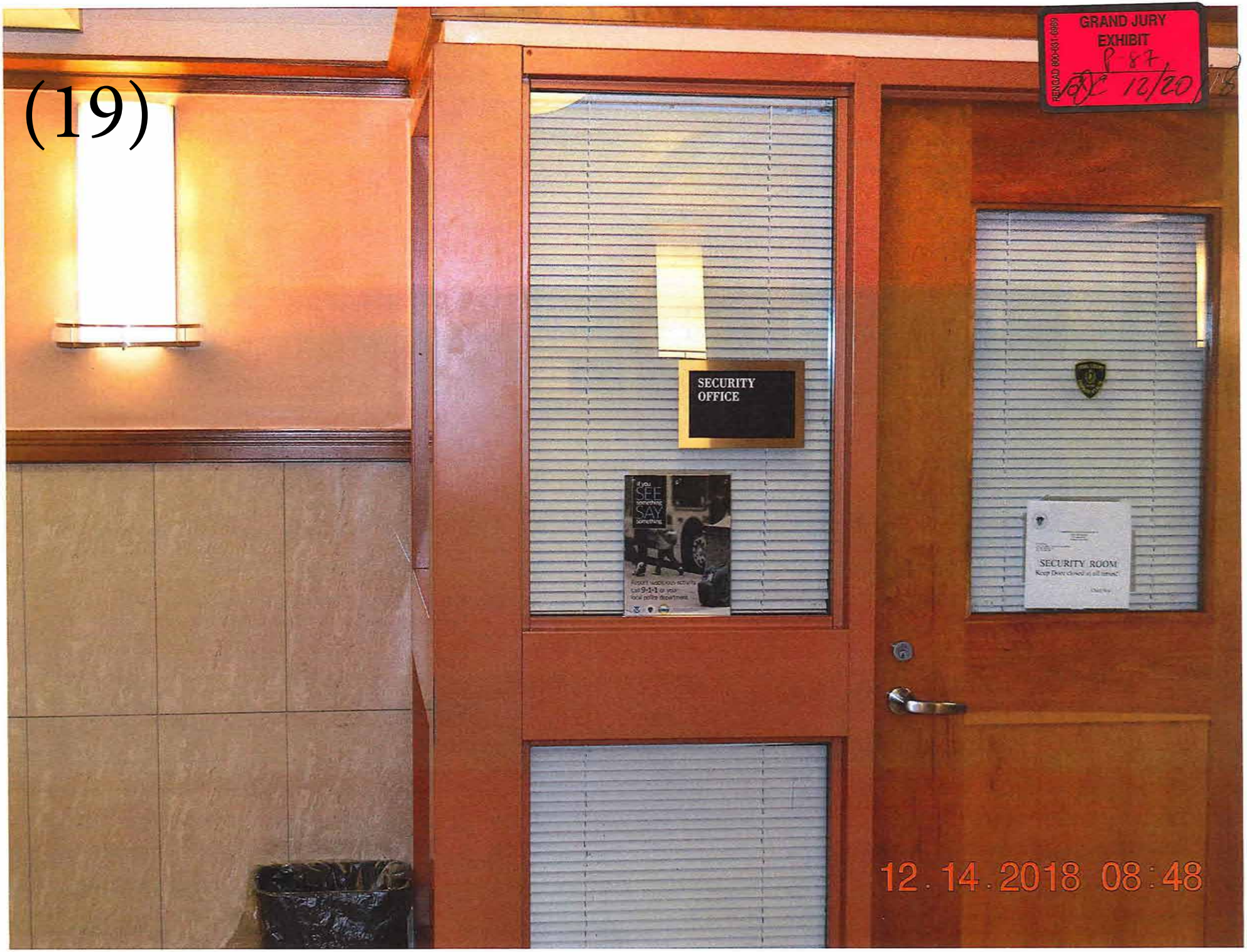

(15)
GRAND JURY EXHIBIT
P-43
12/18
Emergency Court Closings & Cancellations
Emergency Court Closing & Juror Cancellations
Revised March 2018
HEPATITIS A
General Information
12.14.2018 08:32

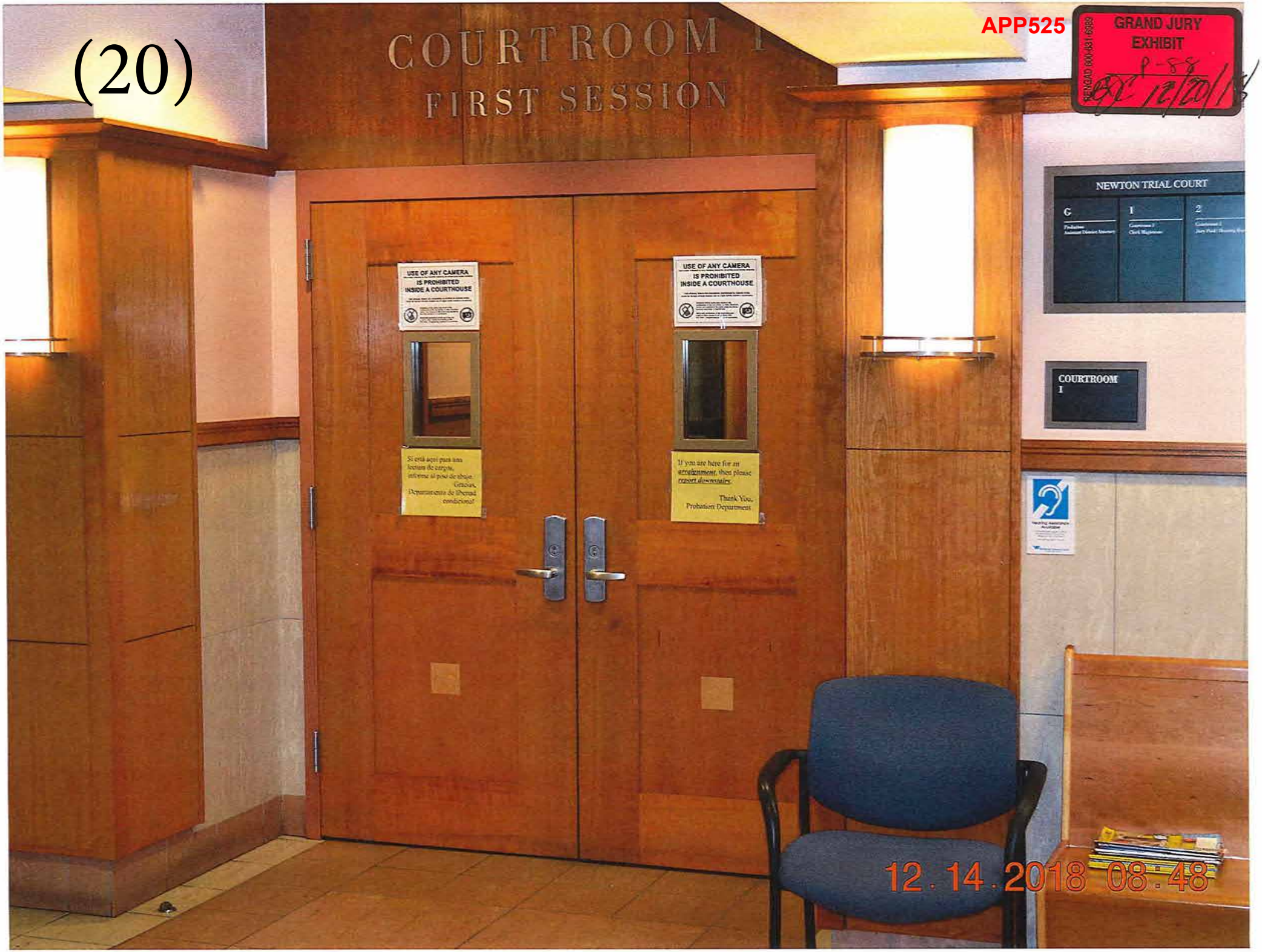

GRAND JURY
EXHIBIT
P-44
BAC 12/201
(16)
12.14.2018 08:32

(17)


GRAND JURY
EXHIBIT
8-45
BXC 12/18/20
PENDAD 800-631-6989
12.14.2018 08:33


(18)
APP523
GRAND JURY
EXHIBIT
12/20/18
12 . 14 . 2018 08 : 47


GRAND JURY
EXHIBIT
8-87
12/20
PENGAD 800-631-6989
(19)
SECURITY
OFFICE
if you
SEE
something
SAY
something
SECURITY ROOM
12.14.2018 08:48


(20)
COURTROOM 1
FIRST SESSION
APP525
GRAND JURY EXHIBIT
NEWTON TRIAL COURT
COURTROOM 1
USE OF ANY CAMERA IS PROHIBITED INSIDE A COURTHOUSE
USE OF ANY CAMERA IS PROHIBITED INSIDE A COURTHOUSE
12.14.2018 08:48

(21)


GRAND JURY
EXHIBIT
P-91
1309
NEWTON TRIAL COURT
This is a
Smoke-free
Building
Hours:
Monday-Friday
8:30am-4:30pm
This is a
Smoke-free
Building
CAUTION
DOOR
12.14.2018 08:49

(22)

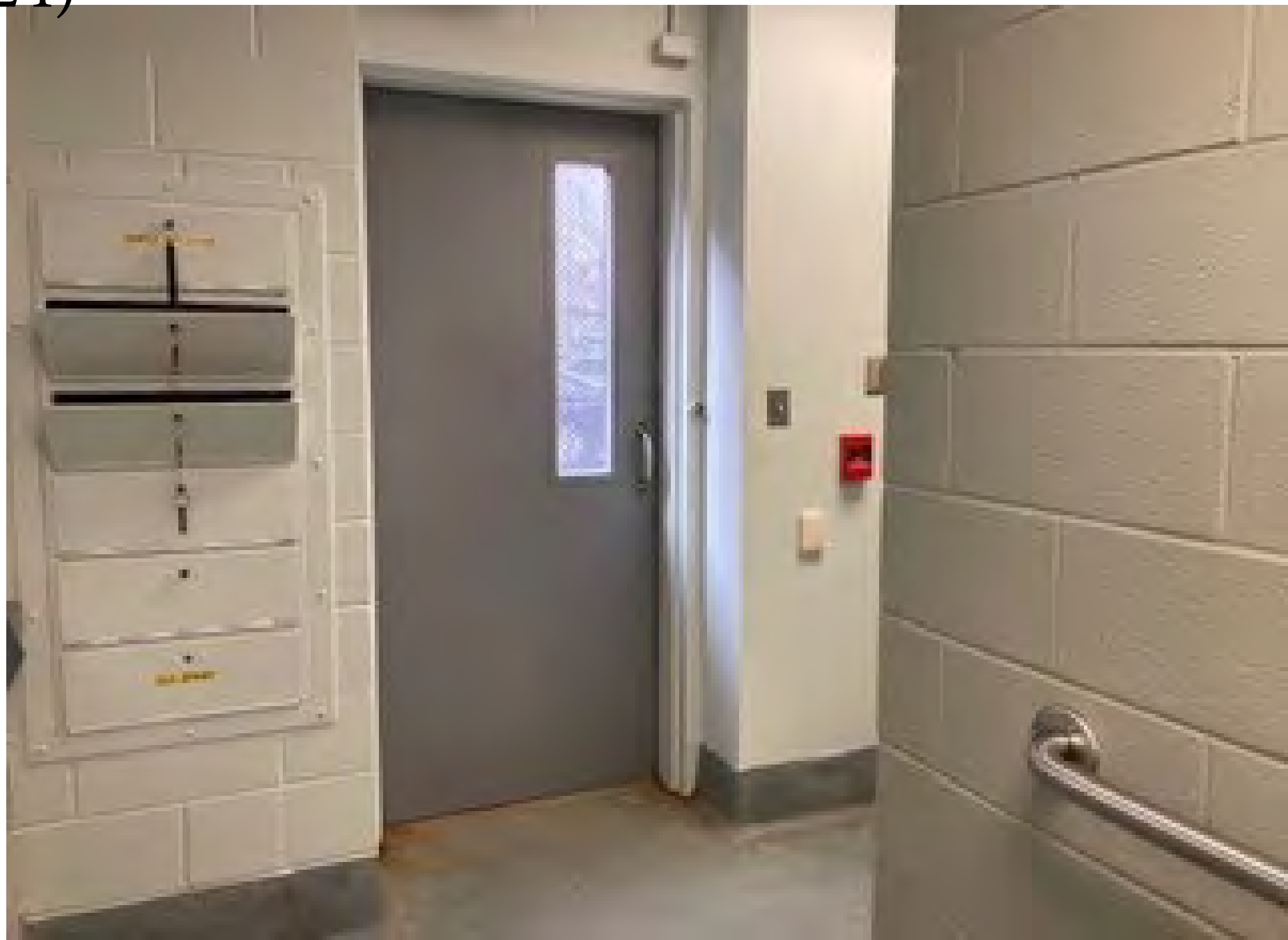

GRAND JURY
EXHIBIT
P-92
12/18/20
RESERVED
PARKING
NEWTON POLICE
EMPLOYEES
ONLY
RESERVED
PARKING
RESERVED
PARKING
1307
NEWTON
PARKING ENFORCEMENT
12.14.2018 08:56



(23)

(24)

APP529



APP530

