

Exhibit 28

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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STATE OF NEW YORK, et. al.,

Plaintiffs,

-against-

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,
Defendants.

----- x

October 15, 2020
8:32 a.m.

VIRTUAL ZOOM DEPOSITION of ROBERT
CINTRON, taken pursuant to Notice, held via
Zoom before Fran Insley, a Notary Public of the
States of New York and New Jersey.

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----- I N D E X -----

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| | MS. CHUNG | 161 |

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(Exhibits retained by Ms. Fajana.)

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2 A. Yeah, it would be based on who it is
3 impacting. So when we make changes, there is
4 usually a lot of communication that could
5 happen via a variety of ways. Prior to what we
6 have done here, normally, we would have areas
7 that we would have communication with those
8 areas and then with the districts that report
9 underneath them, so it could be done via
10 verbal. It would be done in writing. They
11 would participate today the way that we're set
12 up.

13 You know, we have these divisions.
14 So a little bit of change that we went through
15 over the last couple of months. Same kind of
16 concept. We would -- we would be interacting
17 with the divisions and the local transportation
18 folks, operational folks on whatever change we
19 might be making. So it's done verbally, in
20 writing, Webinars. There'd be a variety of
21 ways we would do it.

22 Q. And there is typically some back and
23 forth between your area of responsibility and
24 whatever department you are making a
25 transportation schedule for?

1 Cintron - Fajana

2 A. Yes, absolutely.

3 Q. And when you say prior to the
4 changes in the last couple of months, are you
5 talking about changes to the late trip and
6 extra policy -- late trip and extra trip
7 policy, rather?

8 A. Well, that would be different.
9 Those aren't -- that is adhering to schedules,
10 so that would be different. You know, we made
11 some changes in the last month around
12 optimizing long-haul transportation schedules.
13 So those -- it's like a year in the making
14 where we've been developing how to optimize
15 routes.

16 So today, you know, as an example,
17 we might have mail going from point A to point
18 B and we changed the routing to make it more
19 efficient from service or cost perspective. It
20 may not be taking the same routes that we've
21 optimized.

22 So we -- normally, again, if we are
23 making those type of changes or you asked about
24 late and extra service, those are not really
25 schedule changes. That -- that would be

1 Cintron - Fajana

2 anybody had to then or beyond that necessarily
3 get approval. You're kind of referencing these
4 guidelines. You know, I put them out as an
5 idea that you -- you know, you're not calling
6 people. We gave you the guidelines for what
7 you should be doing and why you do them.

8 Q. Well, let's put questions about the
9 guidelines specifically on hold and talk about
10 how late trips and extra trips were run before
11 the guidelines were issued.

12 So you said that people could
13 approve late trips. Are these managers or who
14 is responsible for that approval?

15 A. Front Line Managers in facilities.

16 Q. Was it ever possible for a
17 nonmanagerial employee to decide on their own
18 that a late trip was necessary?

19 A. It's possible. I mean, you've got
20 289 buildings, 31,000 post offices, so, yeah.

21 Q. Well, I guess my question is whether
22 it was required for nonmanagerial employees to
23 seek any sort of approval before running a late
24 trip?

25 A. Yeah. I would say for craft

1 Cintron - Fajana

2 work for managers. I've run five plants. When
3 somebody was making a decision to hold a truck,
4 that was being done by -- by a manager, manager
5 or supervisor was making those decisions.

6 Q. Okay. When --

7 A. The clerk is the person who actually
8 does the activities, so they may be the person
9 who was going to call the extra or they're the
10 ones that are going to tell the driver, but
11 usually that direction is coming from a manager
12 who is running the operation.

13 Q. And you mentioned managers and
14 supervisors, and is there a distinction between
15 those two positions?

16 A. There are. Yes, we have supervisors
17 who are directly responsible maybe for 25
18 people in a mail processing facility. A
19 manager oversees all of the supervisors. So it
20 could be --

21 Q. Okay. Go ahead. Sorry?

22 A. Yep. So that manager is overseeing
23 the Supervisors, you know.

24 Q. So in this instance, are you saying
25 that the approval could only happen at the

1 Cintron - Fajana

2 level of say a Plant Manager or a District
3 Manager or any Supervisor?

4 A. Yeah. A supervisor could make that
5 decision. If you -- you got to think about how
6 we operate. We operate 24/7. There is not
7 always a manager in a building, so a lot of
8 times it's left up to a supervisor and then,
9 you know, they could make that decision.

10 Q. And before the new guidelines about
11 the adherence to the transportation schedules,
12 what would a Supervisor consider before making
13 that decision to approve a late trip?

14 A. They would be considering, you know,
15 again, how late -- how late an operation is
16 running, right. So the decision could be, as
17 it relates, like maybe to going to a delivery
18 unit in the morning. They would be working
19 with the people inside the operations, right,
20 so a Supervisor in transportation would have
21 the trucks. It could be that the -- the --
22 inside the building, they are running 20
23 minutes late, 30 minutes late. They would make
24 a decision based on that time frame, whether it
25 was reasonable to either hold the truck or just

1 Cintron - Fajana

2 bit of confusion from the telecon with --
3 during that telecon with the Area Vice
4 President around the elimination of extras and
5 lates. It was never the intent -- I mean,
6 aspirationally, the idea is get rid of lates
7 and extras, but we knew then and, you know, had
8 some questions around what it meant
9 specifically, because we have a lot of reasons
10 in the network why we absolutely do run lates
11 and extras, and so the document was created to
12 clear up any confusion around that idea. You
13 know, so the idea is you are going to run lates
14 and extras every day. There are reasons why we
15 do it.

16 Q. And this was to clear up confusion
17 among Area Vice Presidents based off of the
18 conference that you had had with Area Vice
19 Presidents on July 10th, 2020?

20 A. That's correct.

21 Q. And what was discussed at that
22 conference?

23 A. It was about again, eliminating
24 lates and extras in the network. We had been
25 talking about it for a very long time,

1 Cintron - Fajana

2 adherence to the operating plan. There were
3 other initiatives talked about during that
4 call, and so the idea here was, you know,
5 again, because I got some phone calls, people
6 had questions, you know, we created these --
7 this document to clarify that they're -- we
8 were not eliminating later and extras in the
9 network.

10 Q. And who did you receive telephone
11 calls from?

12 A. I would have talked to a couple of
13 people. Mike Barber, who is the MOS in the
14 southern area had called me. I think Mike
15 Melendrez in the Great Lakes area might have
16 called me, I believe. Larry Munoz, I may have
17 spoken to, M-U-N-O-Z, Sean Mossman. So I
18 think -- it's like -- to the best of my
19 recollection, those would have been some of the
20 people that I would have received calls from.

21 Q. And are all of those individuals
22 Area Vice Presidents?

23 A. No.

24 Q. And what are their respective roles?

25 A. So there would have been -- a couple

1 Cintron - Fajana

2 It also impacts costs, right, if we don't
3 adhere to the operating plan and we run, you
4 know, unnecessary extra service behind it
5 becomes costly.

6 Q. Just to confirm, what date was the
7 Cintron guidance document issued?

8 A. I believe I issued a preliminary one
9 on the 11th, and then I had a final version
10 that went out on the 14th.

11 Q. Is that final version what we are
12 looking at right now?

13 A. I would say that's the final
14 version. They are pretty similar, but I
15 believe that's the final version, the one you
16 have in front of you.

17 Q. Okay. So you mentioned that prior
18 to the issuance of the Cintron guidelines, that
19 there was not formal written guidance about the
20 need to adhere to transportation schedules; is
21 that correct?

22 A. Formal written guidance, no.

23 Q. And were there any trainings that
24 were given to management about the need to
25 adhere to transportation schedules and

1 Cintron - Fajana

2 A. I wouldn't say -- not confusion over
3 whether employees could run. Again, I'm just
4 to clarify that employees don't necessarily
5 make those -- not craft, if you are talking
6 employees. Decisions about running
7 transportation are usually being done again by
8 a supervisor or manager in the organization
9 prior to and today.

10 Q. And so at that time, do you recall
11 receiving questions about whether lates or
12 extras should be run by supervisors or
13 managers? This is before the issuance of the
14 July 2020 Cintron guidelines.

15 A. I mean, the biggest one -- you know,
16 there would be questions around customer
17 pickups, whether or not we should be running
18 extras. You know, some customer pickups we
19 would be doing back even today, and we put
20 guidelines around that too. It could be to run
21 a whole tractor trailer to go pick up a
22 container of mail. Does that make logical
23 sense for us to do that. You know, there would
24 be questions like that. Those would certainly
25 be questions we would have. You know, during

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2 the system and see exactly what his lates and
3 extras are in his area of responsibility. It
4 could be that a manager that runs that facility
5 could distribute -- you know, generate a report
6 and distribute it to those folks. It could be
7 back then areas that would do that or today
8 divisions. So it's not like a regular format
9 that we are sending these out on a regular
10 basis to the field because we have -- you know,
11 we've invested a significant amount of money in
12 these systems for people to readily be able to
13 see that data.

14 Q. Okay. So beyond data about the
15 number of lates and extra trips, what other
16 information did you and your team have as you
17 were developing the Cintron guidelines?

18 A. There wouldn't have been any other
19 questions or data. The guidelines were built
20 around scenarios that could occur. So it
21 wasn't about data as much as it was there is a
22 scenario that could result in late or extra and
23 then what would be the guidance around that --
24 that situation.

25 Q. So when you say "scenarios," are you

1 Cintron - Fajana

2 talking about hypotheticals or how did these --
3 how did you decide which scenarios to consider?

4 A. Thirty-five years of experience of
5 looking at all the reasons why it has to
6 happen. So, you know, what we did is, we
7 did -- you know, again, we walked through. If
8 you looked at the Cintron guidelines, as you
9 call them, late FedEx happens every day in the
10 network.

11 Somewhere out of all the planes, out
12 of the 600 planes that operate, one of them is
13 going to be late. So we know that -- that
14 event could occur.

15 Extra flights due to mitigation. We
16 already know in advance that there is going to
17 be another flight. Too much mail went into the
18 cargo carrier. The only way to get it out is
19 because they now need another plane. Known,
20 happens every day.

21 Our terminal handling service. You
22 know, I could go through every one of these.
23 These are things that occur in the network on a
24 regular basis and would absolutely justify
25 lates and extras to occur, did then and do

1 Cintron - Fajana

2 today. So there is no data to really gather
3 other than, you know, what we see every day as
4 failure points in the network potentially.

5 Q. Okay. Was there any other type of
6 analysis done of what the impact of the Cintron
7 guidelines would be?

8 A. I wouldn't say there is any other
9 analysis, again, other than the experience and
10 service analysis, I keep going back to, you
11 know, yesterday. You know, three trailers
12 arrived to an air stop late. The impact is
13 that if you leave late, then we absolutely know
14 that mail is coming back. That's a fact.

15 Q. And what was the service analysis?

16 A. Service analysis would have been --
17 has been for two years, we got a variety of
18 different things. There is -- the last couple
19 of years has -- has developed. I would -- I
20 would say that the data flow has become far
21 more robust. You know, one of the items we do
22 is what we call a grid analysis that tells you
23 why mail failed. Then that grid analysis you
24 would see the scans. You know, you could see
25 where a truck departed late, arrived late, and

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2 A. No, because again, as I said, the
3 guidelines were met to approve what was already
4 known, situations that could occur that would
5 require extras and there was no analysis
6 necessary. These were the reasons why you
7 would be running lates and extras in the
8 network.

9 Q. So there was no need to do an
10 analysis on service performance or the impact
11 that these guidelines could have on other parts
12 of postal operations?

13 A. No, because the impact that we were
14 seeing was we were impacting other parts of the
15 operation. You know, you were bringing a truck
16 to a facility outside of a window where it was
17 not able to process that mail, that was an
18 impact. We go the to cargo carriers and mail
19 was coming back.

20 If you failed to do some of this,
21 you were leaving mail, right? Again, the focus
22 here was directing you how to be able to run
23 that, you know, why you would be running that
24 service, and so that -- you know, often I keep
25 hearing that we ban. We didn't ban extras and

1 Cintron - Fajana

2 We -- you know, the contractor will
3 not be able to unload that aircraft. We will
4 not be able to process that mail until the
5 following day, so running extra service to pick
6 it up today would not be a good use of extra
7 transportation because there's no benefit to
8 running it, because two hours later we might
9 have a truck that's scheduled already to drop
10 mail off that's going to bring that mail back.

11 So what we didn't want to do --
12 right, this was clarified. Again, there are
13 reasons why you would not run, but there are
14 100 reasons why you absolutely do need to run
15 every day and we do, several hundred.

16 Q. Right. And just to be clear, the
17 guidelines were meant to clarify the confusion
18 that was caused by the July 10th
19 teleconference?

20 A. That's correct.

21 Q. And just to also be clear about some
22 of your prior testimony, different managers,
23 whether they were AVPs or MOSs asked you
24 whether late trips and extra trips were, in
25 fact, eliminated and wanted guidance about

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minute break. So we will be back at 9:57.

(Time noted: 9:47 a.m.)

(Back on the record. Time noted:

10:00 a.m.)

Q. Let's go back on the record.

So Mr. Cintron, I just wanted to ask you a few follow-up questions about this July 10th teleconference again. So what precipitated the decision to make a presentation about needing to adhere to transportation schedules?

A. Again, telecon was held or I won't say again. I didn't state that. So this was held by Dave Williams, Chief Operating Officer at the time with the AVPs. So I think it's just -- you know, many items were in the deck. This would have just been one of them, just an ongoing issue with lates and extras and adhering to the operating plan in general. I believe the presentation was around all of that, not just transportation but operating plans in general and people adhering to the operating plan.

Q. Your specific presentation or other

1 Cintron - Fajana
2 presentations that took place at a
3 teleconference were about the need to adhere to
4 operating plans?

5 A. July 10th is not my presentation.

6 Q. So let me -- let's step back then,
7 because based on your prior testimony, you said
8 that there was a July 10th teleconference --

9 A. Yes.

10 Q. -- where a presentation was made
11 about needing to adhere to transportation
12 schedules as it pertains to lates and extras?

13 A. That was part of the presentation on
14 July 10th.

15 Q. So who delivered that presentation?

16 A. Chief Operating Officer at the time,
17 Dave Williams.

18 Q. I see. And so what else was a part
19 of that presentation beyond lates and extras?

20 A. I would have to go back and look.
21 There were other slides. I can't recollect 100
22 percent, but we could easily go back and look.

23 Q. Did Dave Williams also present on
24 operating plan?

25 A. Yes, whatever the topics were,

1 Cintron - Fajana

2 Dave -- Dave presented at this meeting, and it
3 would have been -- it would have been more than
4 just lates. There was more than just lates and
5 extras. I just don't remember what every slide
6 was.

7 Q. And then following the meeting,
8 AVPs, MOSs and others were asking you about the
9 late trip/extra trip piece of that
10 presentation; is that correct?

11 A. That's correct. I would have -- I
12 received some calls from the people we
13 discussed earlier that were asking for
14 clarification.

15 Q. Okay. And so when you say there was
16 a presentation, was this just -- was this just
17 done orally or was there a PowerPoint?

18 A. Yeah, there was -- there was a
19 PowerPoint.

20 Q. And do you remember what the
21 PowerPoint said about late and extra trips?

22 A. Yeah, they said about eliminating
23 them.

24 Q. It said what about eliminating them?

25 A. I think no more late trips, and

1 Cintron - Fajana

2 Q. When -- you said you made that clear
3 that late trips and extra trips were not
4 banned, and how did you make that clear to
5 employees or how was that made clear?

6 A. Yeah. Memos have come out that, you
7 know, that say that, that we have not -- not
8 banned the use of extras and lates.

9 Q. Do you recall the date that any
10 particular memo was released?

11 A. You could produce them. I don't --
12 I mean, right off the top, I don't know -- I
13 wouldn't know the dates.

14 Q. Do you know the substance of any
15 particular memo that was issued regarding the
16 ability of postal employees to continue running
17 lates and extras?

18 A. Again, I think what we've said in
19 different documents again that we have not
20 banned the use of lates and extra service.
21 Those decisions again, made at the front-line
22 level when appropriate to do so.

23 Q. So it's fair to say then that the
24 Cintron guidelines remain in effect at the
25 Postal Service?

1 Cintron - Fajana

2 A. They do.

3 MS. ECHOLS: Objection, vague. Go
4 ahead. You can answer.

5 A. They do. They are in effect.

6 Q. Okay.

7 MS. FAJANA: Alex, could you please
8 display Tab 7. Let's mark this as
9 Exhibit 5. Can you please scroll through
10 for the witness?

11 (Whereupon document was marked
12 Exhibit 5 for identification as of this
13 date.)

14 A. (Witness reviewing document.)

15 Q. Mr. Cintron, are you familiar with
16 this document?

17 A. Yes, it looks familiar.

18 Q. Have you seen it before?

19 A. I have.

20 Q. And when is the last time that you
21 saw this document?

22 A. I don't recollect the last time I
23 looked at it. It came out in September. I'm
24 not sure the last time I would have looked at
25 it.

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2 got them running very large facilities and
3 operations in the field and I think that they
4 understand -- they would understand what this
5 is telling them.

6 I think that's why it starts out
7 with the idea that we have not banned them. So
8 we are not telling them we're not -- we're not
9 telling you don't run them. We are. But it's
10 got to be reasonable to able to make timely
11 delivery. There's just some decisions you --
12 you're just not going to make and we count on
13 those people having some business acumen that
14 allows them to understand the difference of
15 when you do and don't do that.

16 Q. So if managers and supervisors, you
17 know, rely on their individual experience and
18 expertise to determine whether late trips or
19 extra trips are necessary, then why were the
20 Cintron guidelines issued?

21 A. Because in some cases people made
22 decisions that were not -- that did not make
23 sense, right. So that's why I said we have not
24 rescinded the guidelines. There are reasons
25 why you would not run an extra. There are many

1 Cintron - Fajana

2 a schedule. What our focus has been is we
3 would much rather that we take the failure
4 there, the 10 percent, at that point in time,
5 than to try -- again, these are heroic efforts.

6 The people at the Postal Service,
7 they are very focused. Again, and this has
8 been a long-aged issue with our people, right.
9 They are trying to get every piece every day.
10 So they want to get every piece on the truck
11 and don't always understand that the truck,
12 when it gets to its destination where it's
13 going, may not making it there timely and now
14 you're bringing the mail back. That is why we
15 need to run on a plan. The truck would have
16 left at 90 percent. It would have made the air
17 stop. And yeah, we would have had some delayed
18 mail. We would have had some. It would have
19 been a small pile sitting in the plant. We
20 held it a little too long and then it got
21 refused. Those are real scenarios that have
22 been happening every day for a very long time.
23 So our focus is to reduce that from happening.

24 MS. FAJANA: Fran, can we take a ten
25 minute break, please. We will be back at

1 Cintron - Fajana

2 A. It appears to be 48, 4,900.

3 Q. So since there is some variation,
4 would it be fair to say that it's between 3 to
5 5,000 as well in early July?

6 A. Sure.

7 Q. Is it also correct that there are
8 fewer late trips per day now in October as
9 compared to early July?

10 A. Yes.

11 Q. So now, let's look at -- starting
12 July 11th and look at the next couple of weeks.
13 So for the remainder of July. So if we could
14 scroll through and also look up until
15 July 31st.

16 So how would you characterize the
17 number of late trips happening at this time
18 from July 11th through July 31st?

19 A. 1,000 to 1,800.

20 Q. Is it correct to say that that is
21 around the same rate as of right now in
22 mid-October?

23 A. I believe it was.

24 Q. Is it fair to say that the rate of
25 late trips is significantly lower than it was

1 Cintron - Fajana

2 before July 11, 2020?

3 A. Absolutely.

4 MS. FAJANA: Alex, can we please
5 look at tab 11 and we will mark this as
6 Exhibit 9.

7 (Whereupon document was marked
8 Exhibit 9 for identification as of this
9 date.)

10 Q. Mr. Cintron, are you familiar with
11 this document?

12 A. Yes, that would be extras.

13 Q. Have you seen this document before?

14 A. I have.

15 Q. When did you last see it?

16 A. I would say in the last few days,
17 maybe Monday.

18 MS. FAJANA: Alex, can we please
19 scroll through to the bottom.

20 Q. So looking at this time period
21 again, the data that we have from October, so
22 that's October 1st through October 11, 2020, on
23 average how many extra trips were being made
24 during this time period?

25 A. October looks like 500 to 1,700.

1 Cintron - Fajana

2 communications, do they apply to election mail
3 as well?

4 A. Yes, they would. They would, right,
5 because the mail is all together, so it's not
6 like we have election mail that is separate
7 from everything, so basically it's applying to
8 all which includes election mail.

9 Q. That is the end of my questions.
10 Thank you again for your time.

11 MS. FAJANA: So Alexis, did you want
12 to do a redirect or --

13 MS. ECHOLS: Let's take a break and
14 then I will be able to figure out whether
15 or not we will need to do a redirect. And
16 we will proceed with that when we come
17 back from the break. Let's take ten
18 minutes and then if we need more, we will
19 come back and say it, but I don't think we
20 will. Let's come back at 1:30.

21 MS. FAJANA: Okay. So Fran, can we
22 go off the record, please.

23 (Time noted: 1:19 p.m.)

24 (Brief recess taken.)

25 (Time noted: 1:33 p.m.)

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Cintron - Fajana

MS. ECHOLS: We do not have any redirect for Mr. Cintron. We ask that he be able to read and sign the transcript.

MS. FAJANA: Is there anything else?

MS. ECHOLS: Not from us.

MS. FAJANA: Well, thank you again, Fran, for your hard work these past few days. I know it's been some early mornings and we really appreciate it and thank you again to Mr. Cintron for your time today.

(Time noted: 1:34 p.m.)

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A C K N O W L E D G M E N T

STATE OF :
:ss
COUNTY OF :

I, ROBERT CINTRON, hereby certify that I have read the transcript of my testimony taken under oath in my deposition on the 15th day of October, 2020; that the transcript is a true, complete record of my testimony and that the answers on the record as given by me are true and correct.

ROBERT CINTRON

Signed and subscribed to before me this day of , 2020.

Notary Public of the State of

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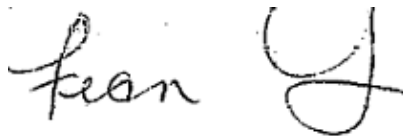
C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the Deposition of ROBERT CINTRON was held before me on the 15th day of October, 2020; that said witness was duly sworn before the commencement of testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Deposition of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 2020.



FRAN INSLEY