

UNITED STATES SENTENCING COMMISSION

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PUBLIC MEETING

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THURSDAY
DECEMBER 14, 2023

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The U.S. Sentencing Commission met in Suite 2-500, One Columbus Circle, N.E., Washington, D.C., at 2:00 p.m. EST, Judge Carlton W. Reeves, Chair, presiding.

PRESENT

JUDGE CARLTON W. REEVES, Chair
JUDGE LUIS FELIPE RESTREPO, Vice Chair
LAURA E. MATE, Vice Chair
CLAIRE MURRAY, Vice Chair
JUDGE CLARIA HORN BOOM, Commissioner
JUDGE JOHN GLEESON, Commissioner
CANDICE C. WONG, Commissioner
JONATHAN J. WROBLEWSKI, Ex-Officio Commissioner

ALSO PRESENT

KATHLEEN GRILLI, General Counsel
KENNETH P. COHEN, Staff Director

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1 P-R-O-C-E-E-D-I-N-G-S

2 2:03 p.m.

3 CHAIR REEVES: The meeting is now
4 called to order. Maybe I should have drunk a
5 glass of water before I did that. Good
6 afternoon. I'm Chair of the United States
7 Sentencing Commission, Carlton W. Reeves, and I
8 welcome you all to this public meeting.

9 I thank each of you for joining us
10 whether you're in this room or with us
11 attending by live stream. I have the honor of
12 opening this meeting with my fellow
13 commissioners.

14 To my left we have Vice Chair Claire
15 Murray, Vice Chair Laura Mate, and Commissioner
16 Candice Wong. To my right we have Vice Chair
17 Luis Felipe Restrepo, Commissioner Claria Horn
18 Boom, and Commissioner John Gleeson. We also
19 have the ex-officio commissioner to my left at
20 the end, Jonathan Wroblewski.

21 I wanted to thank all of my fellow
22 commissioners for their extensive

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1 contributions, their spirit of collaboration,
2 and their dedication to our work. I'm so
3 honored, as always, to be sitting among this
4 group of esteemed colleagues.

5 We are also joined by Commission
6 employees, some of whom are in this room, most
7 of whom are not because this room is too small
8 to hold all those who impact this agency. They
9 have done the research. They have drafted the
10 policies. They have ensured that this meeting
11 is as open to the public as possible, and they
12 have done so much else to make this meeting
13 possible. On behalf of each of my commissioners
14 up here, on behalf of the public, I want to
15 thank all of our agency staff for the amazing
16 work that they do every single day.

17 So, the first order of business is a
18 vote to adopt the August 24, 2023, public
19 meeting minutes. Is there a motion to do so?

20 VICE CHAIR RESTREPO: So moved.

21 CHAIR REEVES: Is there a second?

22 VICE CHAIR MURRAY: Second.

1 CHAIR REEVES: All right. Is there
2 any discussion on the motion? Hearing no
3 discussion, for those voting on the motion,
4 please say aye.

5 (Chorus of ayes.)

6 CHAIR REEVES: Any nays? Unanimous.
7 Thank you. The motion is now adopted by voice
8 vote.

9 The next item of business is the
10 Report of the Chair and I want to refer back to
11 what I said about the agency's employees, the
12 incredible work that they do every single day.
13 But there are just two pieces of the work that
14 I want to highlight for this year.

15 The first is a new series of
16 Commission Chats podcasts we are putting up
17 online this week. Our latest episode features
18 the wit and the wisdom of the Commission's most
19 prominent Philadelphian, the Honorable Luis
20 Felipe Restrepo. You can listen to that chat
21 by visiting www.ussc.gov, or go to your Apple
22 podcasts.

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1 If Philly isn't quite your cup of
2 tea, you know, just not enough for you, don't
3 worry. Our next episode features New York's
4 favorite son, the Honorable John Gleeson.

5 The second piece of work I wish to
6 highlight is the updated research we published
7 last month on Demographic Differences in
8 Federal Sentencing. After controlling for
9 available personal and offense characteristics,
10 we found that sentencing differences across
11 demographic groups persisted during the five
12 years following the Commission's often-cited
13 2017 Demographic Differences in Sentencing
14 Report.

15 We all have a duty to eradicate
16 racial and unwarranted disparities from every
17 part of our criminal justice system. That is
18 why the Commission is committed to providing
19 judges, lawmakers, and citizens with the most
20 up-to-date information about sentencing
21 differences among demographic groups.

22 While this study's insights into the

1 roots of those differences is limited by the
2 unavailability of certain data, such as that
3 regarding decisions by law enforcement,
4 prosecutors, or other justice system actors and
5 other relevant history and characteristics of
6 the individual sentenced, its findings offer
7 important information for practitioners,
8 researchers, and others looking to make
9 sentencing more just. I want to again thank our
10 staff for their tremendous work on this and all
11 of our other research products.

12 We are here today to vote on whether
13 to publish proposed amendments to the
14 sentencing guidelines. What we will be
15 considering today is the product of a process
16 we can all be proud of.

17 These proposals come from careful,
18 considered deliberation on behalf of my fellow
19 commissioners. These proposals come thanks to
20 an extraordinary preparation and work from the
21 Commission's staff. Perhaps more importantly
22 our proposals come after a remarkable amount of

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1 public input.

2 We received detailed feedback from
3 prosecutors at the Department of Justice,
4 attorneys with the Federal Defenders, and both
5 magistrate and district judges across our
6 federal courts. We heard thoughtful comments
7 from organizations like FAMM, The Sentencing
8 Project, the Center for Justice and Human
9 Dignity, the Aleph Institute, and the Muslim
10 Legal Fund of America.

11 We obtained powerful suggestions
12 from a range of individuals including religious
13 leaders, attorneys, professors, and ordinary
14 people who want to help create a better justice
15 system. So many of those suggestions came from
16 people incarcerated in prisons like FCI
17 Allenwood in Pennsylvania, FCI Edgefield in
18 South Carolina, and FCI Sheridan in Oregon.

19 For every person who wrote to us,
20 please know that regardless of where your words
21 were written, they were read, and they have
22 impact. All of this is to say, again, when you

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1 speak to the Commission you will be heard. I
2 urge those listening now to keep that promise
3 in mind.

4 Whatever proposals we issue today,
5 we are issuing them first and foremost as a way
6 to obtain comment. We need your critiques. We
7 need your data. We need your experiences to
8 ensure we adopt policies that are just, and
9 evidence based. After our meeting, you can
10 visit our website at www.ussc.gov to both read
11 our proposals and submit comments on them.

12 If there was anyone who would
13 recognize the value of the Commission receiving
14 public input, it was the recently departed
15 Justice Sandra Day O'Connor. Justice O'Connor,
16 of course, was a fierce defender of the
17 Sentencing Commission and the guidelines we are
18 responsible for creating.

19 Just as importantly, she was an
20 advocate for, and a reflection of, the value of
21 diversity and policy making. I'll never forget
22 her written tribute that she made to Justice

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1 Thurgood Marshall where she explained how her
2 views on the bench had been changed by, "the
3 perspective of a man who immerses himself in
4 human suffering and then translates that
5 suffering in a way that others can bear and
6 understand."

7 I also remember Justice O'Connor's
8 thoughts upon descending to the higher court.
9 "It's all right to be first to do something,"
10 she said, "but I didn't want to be the last
11 woman on the Supreme Court."

12 I look around this Commission and I see we
13 have a majority of commissioners who are women.
14 I also see our first Asian-American
15 commissioner. Also, I recognize that I'm here
16 as the first Black chair of this Commission.
17 While these firsts are important, they cannot
18 be lasts. I know that they will not be lasts.

19 When I've spoken to groups of judges
20 recently appointed to the federal bench, I see
21 how different our judiciary looks from the time
22 even since I received my appointment in

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1 Mississippi. I see judges who look like
2 America, all parts of America. It is a
3 beautiful thing. It is a necessary thing,
4 and it is a thing I am certain that Justice
5 O'Connor would be proud of.

6 I think about the employees here at the
7 Commission, many of whom are in a leadership
8 role and who are female. I appreciate each one
9 of you.

10 I think of these remarks, and I
11 think of the remarks of one of Justice
12 O'Connor's former law clerks who said that he
13 always thought she was listening to both sides.
14 "One thing Justice O'Connor did best was to
15 listen and respect both sides of an argument
16 even when disagreeing," he explained.

17 That was important when she served
18 on the Supreme Court in the past. That is
19 especially important today in these times, and
20 that will be important tomorrow and the days to
21 come.

22 I find it fitting then that we take

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1 a moment to honor Justice O'Connor and in doing
2 so there are few better to do so than my fellow
3 Commissioner Candice Wong. Commissioner Wong
4 served as a law clerk to Justice O'Connor and
5 the Justice served as an officiant at
6 Commissioner Wong's wedding.

7 I welcome your remarks, Commissioner
8 Wong.

9 COMMISSIONER WONG: Thank you so
10 much, Chair Reeves, for the opportunity to say
11 just a few very brief words. As you mentioned,
12 I had the great honor of clerking for Justice
13 O'Connor in 2011. The Justice was as much a
14 force of nature in person as she was from afar.
15 She was warm, energetic, witty, and utterly
16 unfazed and matter-of-fact about her singular
17 and trail-blazing place in history.

18 She was as invested in her clerks'
19 personal lives as their professional successes,
20 and she was fiercely devoted to instilling in
21 the next generation the values of civility and
22 service. I feel blessed to have learned from

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1 her and we are all blessed by her example.

2 CHAIR REEVES: Thank you so much,
3 Commissioner Wong.

4 Now we are ready to turn to the next
5 item of business. The next item of business is
6 a possible vote to publish in the Federal
7 Register proposed guideline amendments and
8 issues for public comment. The General Counsel
9 will advise the Commission on the first
10 possible vote concerning an amendment on the
11 rule for calculating loss.

12 MS. GRILLI: Thank you, Judge
13 Reeves. Before you, you have a proposed
14 amendment that would address a decision from
15 the Third Circuit regarding the validity and
16 enforceability of Application Note 3(A) to
17 §2B1.1 to ensure consistent loss calculation
18 across circuits.

19 The proposed amendment would create
20 notes to the loss table at §2B1.1 and move the
21 general rule regarding loss as the greater of
22 actual or intended loss from the Commentary to

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1 the guideline itself along with several of the
2 other rules and definitions contained in those
3 notes. It makes corresponding changes to
4 §2B2.3, §2C1.1, §8A1.2, and includes an issue
5 for comment.

6 A motion to publish with a public comment
7 period closing on February 22, 2024, and
8 technical and conforming amendment authority to
9 staff is appropriate at this time.

10 CHAIR REEVES: Is there a motion to
11 publish the proposed amendment as suggested by
12 the General Counsel?

13 VICE CHAIR MURRAY: So moved.

14 CHAIR REEVES: Is there a second?

15 COMMISSIONER WONG: Second.

16 CHAIR REEVES: Is there any
17 discussion on the motion? Hearing no
18 discussion, you may vote on the motion by
19 saying aye. Any ayes?

20 (Chorus of ayes.)

21 CHAIR REEVES: Any nays? The motion
22 is adopted. Let the record reflect that at

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1 least three commissioners voted in favor of the
2 motion to publish.

3 The General Counsel will now advise
4 the Commission on a possible vote concerning a
5 proposed amendment on youthful individuals.

6 MS. GRILLI: This proposed amendment
7 contains two parts, A and B. The Commission is
8 considering whether to promulgate either or
9 both as they are not mutually exclusive. Part
10 A addresses the computation of criminal history
11 points for offenses committed prior to the age
12 of 18, and Part B addresses the sentencing of
13 youthful individuals.

14 Part A contains three options; one
15 that would amend §4A1.2(d)(2)(A) to exclude
16 juvenile sentences from receiving two criminal
17 history points; one that would amend §4A1.2(d)
18 to exclude all juvenile sentences from being
19 considered in the calculation of the criminal
20 history score, and a third that would amend
21 §4A1.2(d) to exclude all sentences resulting
22 from offenses committed prior to the age of 18

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1 from being considered in the calculation of
2 criminal history. This option would also make
3 changes to the Commentary of §2K1.3, §2K2.1,
4 §2L1.2, and §4B1.2, and includes issues for
5 comment.

6 Part B of the proposed amendment
7 would amend the first sentence in §5H1.1 to
8 provide solely that age may be relevant in
9 determining whether a departure is warranted.

10 It would also add language
11 specifically providing for a downward departure
12 for cases in which a defendant was youthful at
13 the time of the offense and sets forth
14 considerations for the court in determining
15 whether a departure based on youth is
16 warranted. This part also includes issues for
17 comment.

18 A motion to publish with a public
19 comment period closing on February 22, 2024,
20 and technical and conforming amendment
21 authority to staff would be in order at this
22 time.

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1 CHAIR REEVES: Is there a motion to
2 publish the proposed amendment as suggested by
3 the General Counsel?

4 COMMISSIONER GLEESON: So moved.

5 CHAIR REEVES: Is there a second?

6 VICE CHAIR RESTREPO: Second.

7 CHAIR REEVES: Is there any
8 discussion on the motion? Hearing no
9 discussion, we may now vote. Vote on the
10 motion by saying aye.

11 (Chorus of ayes.)

12 CHAIR REEVES: Are there any nays?

13 VICE CHAIR MURRAY: Nay.

14 COMMISSIONER WONG: Nay.

15 COMMISSIONER BOOM: Nay.

16 CHAIR REEVES: The motion is
17 adopted. Let the record reflect that at least
18 three commissioners voted in favor of the
19 motion to publish.

20 The General Counsel will now advise
21 the Commission on a possible vote concerning a
22 proposed amendment on acquitted conduct.

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1 MS. GRILLI: The proposed amendment
2 on acquitted conduct would amend the Guidelines
3 Manual to address the use of acquitted conduct
4 for purposes of determining a sentence and
5 includes three options.

6 Option One would amend §1B1.3 to add
7 a new subsection (c) providing that acquitted
8 conduct is not relevant conduct for purposes of
9 determining the guideline range and includes
10 the definition of acquitted conduct.

11 Option Two would amend the
12 Commentary to §1B1.3 to add a new application
13 note providing that a downward departure may be
14 warranted if the use of acquitted conduct has a
15 disproportionate impact in determining the
16 guideline range relative to the offense of
17 conviction.

18 Option Three would amend §6A1.3 to
19 add a new subsection (c) addressing the
20 standard of proof required to resolve disputes
21 involving sentencing factors and would provide
22 that acquitted conduct should not be considered

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1 unless it is established by clear and
2 convincing evidence.

3 The proposed amendment also includes
4 four issues for comment.

5 A motion to publish the acquitted conduct
6 amendment with a public comment period closing
7 on February 22, 2024, and technical and
8 conforming amendment authority to staff is in
9 order at this time.

10 CHAIR REEVES: Is there a motion to
11 publish the proposed amendment as suggested by
12 the General Counsel?

13 VICE CHAIR MATE: So moved.

14 CHAIR REEVES: Is there a second?

15 COMMISSIONER GLEESON: Second.

16 CHAIR REEVES: Is there any
17 discussion on the motion? Hearing no
18 discussion, you may vote in favor of this
19 motion by saying aye. Any ayes?

20 (Chorus of ayes.)

21 CHAIR REEVES: Any nays? No nays.
22 The motion is adopted. Let the record reflect

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1 that at least three commissioners voted in
2 favor of the motion to publish.

3 The General Counsel will now advise
4 the Commission on a possible vote concerning a
5 proposed amendment on circuit conflicts.

6 MS. GRILLI: The circuit conflict
7 amendment contains two parts. Again, the
8 Commission is considering whether to promulgate
9 either or both as they are not mutually
10 exclusive.

11 Part A would amend §2K2.1 to address
12 a circuit conflict concerning whether a serial
13 number must be illegible in order to apply the
14 four-level increase in §2K2.1(b)(4)(B)(i) for a
15 firearm that has an altered or obliterated
16 serial number. Two options are presented on
17 either side of the conflict.

18 Part B would amend the Commentary to
19 §2K2.4 to address a circuit conflict concerning
20 whether subsection (c) of §3D1.2, the grouping
21 rules, permit grouping of a firearms count
22 under 18 U.S.C. § 922(g) with a drug

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1 trafficking count where the defendant also has
2 a separate count under 18 U.S.C. § 924(c). One
3 option is provided and an issue for comment is
4 also included.

5 A motion to publish this proposed circuit
6 conflicts amendment with a public comment
7 period closing on February 22, 2024, and
8 technical and conforming amendment authority to
9 staff would be appropriate at this time.

10 CHAIR REEVES: Is there a motion to
11 publish the proposed amendment as suggested by
12 the General Counsel?

13 VICE CHAIR RESTREPO: So moved.

14 CHAIR REEVES: Is there a second?

15 COMMISSIONER WONG: Second.

16 CHAIR REEVES: Is there any
17 discussion on this motion? Vote on the motion
18 by saying aye.

19 (Chorus of ayes.)

20 CHAIR REEVES: Any nays? The motion
21 is adopted and let the record reflect that at
22 least three commissioners voted in favor of the

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1 motion to publish.

2 The General Counsel will now advise
3 the Commission on a possible vote concerning a
4 proposed miscellaneous amendment.

5 MS. GRILLI: Miscellaneous amendment
6 contains six parts, A through F. Again, the
7 Commission is considering whether to promulgate
8 any and all of these parts as they are not
9 mutually exclusive.

10 Part A responds to the Safeguard
11 Tribal Objects of Patrimony Act by amending
12 Appendix A and the Commentary to §2B1.5. It
13 includes an issue for comment.

14 Part B responds to the Export
15 Control Reform Act of 2018 and concerns raised
16 in public comment about §2M5.1. It amends
17 Appendix A and §2M5.1 and includes issues for
18 comment.

19 Part C responds to concerns raised
20 in public comment relating to offenses under 31
21 U.S.C. §§ 5322, 5336, and guideline §2S1.3. It
22 amends the specific offense characteristic at

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1 §2S1.3(b) (2) (B) to reflect the enhanced
2 penalties applicable to offenses under those
3 statutes.

4 Part D responds to concerns raised
5 in public comment relating to statutes
6 referenced in Appendix A to §2R1.1 and amends
7 Appendix A and the Commentary to §2R1.1 to
8 replace the reference to 15 U.S.C. § 3(b) with
9 a reference to 15 U.S.C. § 3(a).

10 Part E addresses a miscellaneous
11 issue regarding application of the base offense
12 levels at subsections (a)(1) through (a)(4) of
13 §2D1.1. It provides two options to respond to
14 that miscellaneous issue.

15 Part F responds to concerns relating
16 to the scope of the definition of "sex offense"
17 in subsection (b)(2) of §4C1.1. Two options
18 are provided in Part F.

19 A motion to publish the proposed
20 miscellaneous amendment with a public comment
21 period closing on February 22, 2024, and
22 technical and conforming amendment authority to

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1 staff would be warranted at this time.

2 CHAIR REEVES: Is there a motion to
3 publish the proposed amendment as suggested by
4 the General Counsel?

5 COMMISSIONER BOOM: So moved.

6 CHAIR REEVES: Is there a second?

7 VICE CHAIR MURRAY: Second.

8 CHAIR REEVES: Is there any
9 discussion on the motion? Hearing no
10 discussion, let's vote on the motion by saying
11 aye.

12 (Chorus of ayes.)

13 CHAIR REEVES: Any nays? The motion
14 is adopted. Let the record reflect that at
15 least three commissioners voted in favor of the
16 motion to publish.

17 The General Counsel will now advise
18 the Commission on a possible vote concerning a
19 proposed technical amendment.

20 MS. GRILLI: The proposed technical
21 amendment would make technical and other non-
22 substantive changes to the Guidelines Manual.

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1 It also contains two parts, A and B, and they
2 are not mutually exclusive. The Commission is
3 considering both.

4 Part A would amend §4C1.1, and Part
5 B would make technical and clerical changes to
6 multiple guidelines to provide stylistic
7 consistency on how subdivisions are designated
8 and to correct typographical errors.

9 A motion to publish the proposed
10 technical amendment with a public comment
11 period closing on February 22, 2024, and
12 technical and conforming amendment authority to
13 staff is in order at this time.

14 CHAIR REEVES: Is there a motion to
15 publish the proposed amendment as suggested by
16 the General Counsel?

17 COMMISSIONER GLEESON: So moved.

18 CHAIR REEVES: Is there a second?

19 VICE CHAIR RESTREPO: Second.

20 CHAIR REEVES: Is there any
21 discussion on the motion? Hearing no
22 discussion, you may vote on the motion by

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1 saying aye. Any ayes?

2 (Chorus of ayes.)

3 CHAIR REEVES: Any nays? No nays.
4 The motion is adopted. Let the record reflect
5 that at least three commissioners voted in
6 favor of the motion to publish.

7 The General Counsel will now advise
8 the Commission on a possible vote concerning a
9 proposed amendment on simplification of the
10 three-step process.

11 MS. GRILLI: The simplification of
12 the Three-Step Process amendment before you
13 responds to the priority of exploration of ways
14 to simplify the guidelines and consideration of
15 amendments that might be appropriate. The
16 Commission is including issues for comment and
17 a proposed amendment to inform the Commission's
18 consideration of these issues.

19 The proposed amendment contains two
20 parts. Part A contains issues for comment on
21 whether changes should be made to the Guideline
22 Manual relating to the three-step process set

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1 forth in §1B1.1, and the use of departures and
2 policy statements relating to specific offense
3 characteristics.

4 Part B contains a proposed amendment
5 that would restructure the Guidelines Manual to
6 simplify both the current three-step process
7 used in determining whether a sentence that is
8 sufficient but not greater than necessary, and
9 the existing guidance in the Guidelines Manual
10 regarding a court's consideration of the
11 individual circumstances of the defendant as
12 well as certain offense characteristics.

13 A motion to publish the proposed
14 amendment with a public comment period closing
15 February 22, 2024, and technical and conforming
16 amendment authority to staff is in order at
17 this time.

18 CHAIR REEVES: Is there a motion to
19 publish the proposed amendment as suggested by
20 the General Counsel?

21 VICE CHAIR MATE: So moved.

22 CHAIR REEVES: Is there a second?

1 COMMISSIONER GLEESON: Second.

2 CHAIR REEVES: Is there any
3 discussion on the motion? You may vote on the
4 motion by saying aye.

5 (Chorus of ayes.)

6 CHAIR REEVES: Any nays? The motion
7 is adopted. Let the record reflect that at
8 least three commissioners voted in favor of the
9 motion to publish.

10 Is there any further business before
11 the Commission? Hearing none, is there a
12 motion to adjourn?

13 VICE CHAIR RESTREPO: So moved.

14 CHAIR REEVES: Is there a second?

15 COMMISSIONER WONG: Second.

16 CHAIR REEVES: Vote on the motion by
17 saying aye.

18 (Chorus of ayes.)

19 CHAIR REEVES: Anyone opposed? The
20 motion is adopted by voice vote and the meeting
21 is now adjourned. Happy Holidays!

22 (Whereupon, the above-entitled

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1 matter went off the record at 2:30 p.m.)

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