

## U.S. COMMISSION ON CIVIL RIGHTS

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## TELEPHONIC BUSINESS MEETING

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FRIDAY, APRIL 20, 2018

+ + + + +

The Commission convened via teleconference  
at 11:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair\*

PATRICIA TIMMONS-GOODSON, Vice Chair\*

DEBO P. ADEGBILE, Commissioner\*

GAIL HERIOT, Commissioner\*

PETER N. KIRSANOW, Commissioner\*

DAVID KLADNEY, Commissioner\*

KAREN K. NARASAKI, Commissioner\*

MICHAEL YAKI, Commissioner\*

MAURO MORALES, Staff Director\*

MAUREEN RUDOLPH, General Counsel\*

\* *Present via telephone*

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STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

ALFREDA GREENE

PAUL MORGAN

DAVID MUSSATT

LENORE OSTROWSKY

MICHELE RAMEY

JOHN RATCLIFFE

BRIAN WALCH

MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

*\* Present via telephone*

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## P R O C E E D I N G S

(11:00 a.m.)

CHAIR LHAMON: Thank you. This meeting of the U.S. Commission on Civil Rights comes to order at 11:00 a.m. Eastern time on April 20, 2018.

The meeting takes place over the phone. I'm Chair Catherine Lhamon. To confirm that each of the Commissioners is on the line, I'll take a roll call at the outset.

Please say present when I say your name. Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Present.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Present.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: I'm here.

CHAIR LHAMON: Thank you. Based on that,

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1 a quorum of the Commissioners is present. Is the  
2 Court Reporter present?

3 COURT REPORTER: Yes.

4 CHAIR LHAMON: Is the Staff Director  
5 present?

6 STAFF DIRECTOR MORALES: Yes.

7 CHAIR LHAMON: Thank you. The meeting now  
8 comes to order.

9 **I. APPROVAL OF AGENDA**

10 CHAIR LHAMON: Is there a motion to  
11 approve the Agenda for this business meeting?

12 COMMISSIONER NARASAKI: I so move. This  
13 is Commissioner Narasaki.

14 CHAIR LHAMON: Okay. Is there a second?

15 VICE CHAIR TIMMONS-GOODSON: Vice chair  
16 Timmons-Goodson second.

17 CHAIR LHAMON: Thank you. Can I check and  
18 see if we have any amendments? I'll start with one.  
19 I move to amend the Agenda to add a letter regarding  
20 the Census 2020 questionnaire.

21 Do I have a second?

22 COMMISSIONER YAKI: Second.

23 CHAIR LHAMON: Thank you. Are there any  
24 further amendments?

25 COMMISSIONER NARASAKI: Madam Chair, this

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1 is Commissioner Narasaki. I would like to move that  
2 we add a statement regarding the immigration judges.

3 CHAIR LHAMON: Okay. I second. Are there  
4 any other amendments?

5 (No response.)

6 CHAIR LHAMON: Hearing none, let's vote to  
7 approve the Agenda as amended. All those in favor say  
8 aye.

9 (Chorus of ayes.)

10 CHAIR LHAMON: Any opposed?

11 (No response.)

12 CHAIR LHAMON: Any abstentions?

13 COMMISSIONER YAKI: Commissioner Yaki  
14 abstains.

15 CHAIR LHAMON: Okay. The motion passes.  
16 No Commissioner opposed, one Commissioner abstained,  
17 all others were in favor.

18 We'll turn now to a discussion and vote on  
19 the chair for our Vermont Advisory Committee.

20 **II. PROGRAM PLANNING**

21 **A. DISCUSSION AND VOTE CHAIR VERMONT ADVISORY**

22 **COMMITTEE**

23 CHAIR LHAMON: Before we begin the  
24 discussion, I'm going to offer a brief reminder that  
25 objections to this nomination have already been shared

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1 with all the Commissioners.

2 To the extent anyone would like to discuss  
3 continuing objections, I remind my fellow  
4 Commissioners that the Commission has a policy not to  
5 defame, degrade, or incriminate any person. Each of  
6 these individuals has agreed to volunteer time and  
7 energy in the pursuit of the protection of civil  
8 rights, which we appreciate.

9 So with that, I'll begin with the Vermont  
10 Advisory Committee. The Staff Director has  
11 recommended for appointment Curtiss Reed, as Chair of  
12 the Vermont Advisory Committee.

13 We'll open the floor for discussion. I  
14 move that we approve this appointment. Do I have a  
15 second?

16 COMMISSIONER NARASAKI: This is  
17 Commissioner Narasaki, I second.

18 CHAIR LHAMON: Thank you. Any discussion  
19 on this appointment?

20 COMMISSIONER HERIOT: Madam Chair?

21 CHAIR LHAMON: Yes?

22 CHAIR LHAMON: Is someone wanting to  
23 speak?

24 COMMISSIONER HERIOT: I did.

25 CHAIR LHAMON: Go ahead, Commissioner

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1 Heriot.

2 COMMISSIONER HERIOT: Commissioner Heriot.

3 I'm going to vote against Curtiss Reed. I think that  
4 I should say why on the record.

5 I don't think he has the temperament  
6 necessary to function as a SAC Chair. A few years ago  
7 he wrote about a Republican Lieutenant Governor who  
8 had adopted Pure Vermont as his campaign slogan.

9 And you know, I would have thought, and I  
10 think most people thought this was an allusion to  
11 Vermont's reputation for pure maple syrup. But Reed  
12 declared this slogan to be a coded message about  
13 making the state racially pure.

14 He said, and I'm quoting him here, these  
15 words denote racial, religious, and cultural  
16 oppression. They imply that Vermont is a place  
17 reserved for white Christians. Close quote on that.

18 He also said, and again, I'm quoting here,  
19 that these words resurrected the horror of the  
20 Eugenics Survey and the 1931 passage of an Act for  
21 Human Betterment by Voluntary Sterilization. This  
22 measure codified the practice of racism, harassment,  
23 and the sterilization of the Abenaki people.

24 Pure Vermont raises the specter of  
25 Hitler's Aryan Nation, and the Khmer Rouge where the

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1 purifying agent was genocide. And the slogan is a --  
2 I'm still in quote here, the slogan is a bitter  
3 reminder of the bigotry and racial segregation  
4 experiences by blacks under slavery and Jim Crow.

5 The precipitous drop in Vermont's black  
6 population in the early 20th Century was no doubt  
7 partially due to the Klan's efforts to keep Vermont  
8 pure. You know, that's the end of the quote here.

9 To me this is just utterly over the top.  
10 I can't imagine why -- how this can be the best we can  
11 do for a SAC Chair in Vermont.

12 I know that some of Reed's fellow SAC  
13 members objected to him being kept off the SAC back in  
14 2010 when this first came up. But that just makes me  
15 wonder whether they should be on the SAC either.

16 COMMISSIONER NARASAKI: This is  
17 Commissioner Narasaki. I support his nomination.

18 I think by all reports he has served well  
19 and with dignity and comported himself accordingly.  
20 And note that this statement was made many years ago.

21 CHAIR LHAMON: Thank you. It sounded like  
22 someone was also beginning to speak?

23 COMMISSIONER YAKI: Madam Chair, this is  
24 Commissioner Yaki.

25 CHAIR LHAMON: Go ahead.

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1                   COMMISSIONER YAKI: I was present when --  
2 during the first so called hullabaloo about the  
3 nominee. I expressed my skepticism then.

4                   And I double down on it again that this is  
5 not a fair characterization of this individual. He  
6 was supported strongly by Senator Leahy's office at  
7 that time. Senator Leahy's office -- expressed  
8 confidence in this person.

9                   I also did my own due diligence with  
10 members of the SAC, including the current Vice -- the  
11 then current Vice Chair and other members and felt  
12 satisfied then, as I do now, that this person has the  
13 temperament, the ability, and most importantly, the  
14 commitment to civil rights that we want in our SAC  
15 Chairs.

16                   And so I support this nomination.

17                   CHAIR LHAMON: Thank you. Is there any  
18 further discussion on this nomination?

19                   (No response.)

20                   CHAIR LHAMON: Hearing none, I'll call the  
21 question and take a roll call vote. Commissioner  
22 Adegbile, how do you vote?

23                   COMMISSIONER ADEGBILE: Aye.

24                   CHAIR LHAMON: Commissioner Heriot?

25                   COMMISSIONER HERIOT: No.

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1 CHAIR LHAMON: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: No.

3 CHAIR LHAMON: Commissioner Kladney?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Narasaki?

6 COMMISSIONER NARASAKI: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: Aye.

9 CHAIR LHAMON: Vice Chair Timmons-Goodson?

10 VICE CHAIR TIMMONS-GOODSON: Yes.

11 CHAIR LHAMON: And I vote yes. The motion  
12 passes. Two Commissioners opposed, no Commissioner  
13 abstained, all others were in favor.

14 We'll now move to the North Carolina  
15 Advisory Committee.

16 **B. DISCUSSION AND VOTE ON CHAIR**

17 **FOR NORTH CAROLINA ADVISORY COMMITTEE**

18 CHAIR LHAMON: The Staff director has  
19 recommended for appointment Thealeta Monet as Chair of  
20 the North Carolina Advisory Committee. To open the  
21 floor for discussion, I move that we approve this  
22 appointment. Do I have a second?

23 VICE CHAIR TIMMONS-GOODSON: Madam Chair,  
24 this is the Vice Chair, I will second the motion.

25 CHAIR LHAMON: Thank you. Is there any

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1 discussion on this appointment?

2 COMMISSIONER HERIOT: Madam Chair?

3 CHAIR LHAMON: Yes, Commissioner Heriot?

4 COMMISSIONER HERIOT: I'm going to be  
5 voting against Ms. Monet although I believe it's a  
6 closer case than the Vermont case.

7 I believe she's exercised poor judgement  
8 in putting together witnesses for the North Carolina  
9 report on coal ash. I have been told that she had a  
10 great deal to do with the selection of the witnesses.

11 If that's not true, then I'd have a  
12 different view. But I'm told it is true.

13 Like the Commission, SACs should be trying  
14 to bring in people with knowledge and expertise to  
15 testify at their briefings. You know, we need our  
16 reports to contain rigorous analysis.

17 But when North Carolina brings in a  
18 graduate student who bills herself as a dancer/  
19 storyteller, and that witness makes rash and  
20 defamatory accusations against new people, backed up  
21 by nothing that I can see other than a desire for  
22 attention-getting drama, you know, that looks very  
23 bad.

24 I'm told her testimony was supposed to be  
25 poetry. But it was embarrassing. And so, unless I

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1 hear, you know, pretty firm evidence that Ms. Monet  
2 didn't have anything to do with that, I'm inclined to  
3 vote no.

4 COMMISSIONER NARASAKI: This is  
5 Commissioner Narasaki. I strongly support Ms. Monet.

6 I was at the hearing that Commissioner Heriot is  
7 discussing.

8 It was one of the most powerful hearings I  
9 have ever heard in the years that I have served on the  
10 Commissioner. It was extremely well put together.

11 People were in tears most of the time.  
12 The testimony was quite compelling. And the person in  
13 question who gave oral testimony, which was in part a  
14 performance piece, also submitted a 70-page public  
15 comment with interviews and other documentary evidence  
16 that discussed the particular environmental justice  
17 and civil rights concerns of members of the county  
18 community.

19 And she's also a -- works with a breast  
20 cancer action group that is devoted to health justice.

21 And one of the issues that was very present was the  
22 degree to which the violations that were actual  
23 violations that had been found by court to be  
24 violations, was causing a high level of cancer in the  
25 community.

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1           In addition, Ms. Monet was fabulous. She  
2 came to the hearing in a wheelchair, even though she  
3 had just very recently had surgery because she felt  
4 that the hearing was so important. That is her  
5 commitment to the Commission.

6           And she acquitted herself articulately.  
7 And I think she will be a great chair.

8           VICE CHAIR TIMMONS-GOODSON: Madam Chair,  
9 this is the Vice Chair. I also strongly support Ms.  
10 Monet.

11           I know her. Not well. Mainly by  
12 reputation. But I do know her. And she's committed.

13           Commissioner Narasaki took the -- my  
14 thought was the fact that I would want to bring to  
15 your attention that she was there in a wheelchair.  
16 And that speaks to her commitment to this very  
17 important work.

18           I've only heard good things about her.  
19 And I was -- I also attended the North Carolina SAC.  
20 And I was not embarrassed one bit by the  
21 presentations.

22           And I thought it was thorough, well done,  
23 and so I will be supporting her for Vice Chair. Thank  
24 you.

25           CHAIR LHAMON: Thank you. Any further

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1 discussions?

2 (No response.)

3 CHAIR LHAMON: I will say that for myself,  
4 I would not want attributed to me all of the views  
5 expressed in any of our briefings. And so I think  
6 that that is not a basis not to seek someone as a  
7 chair.

8 Hearing no further discussion, I'll call  
9 the question and take a roll call vote. Commissioner  
10 Adegbile, how do you vote?

11 COMMISSIONER ADEGBILE: Aye.

12 CHAIR LHAMON: Commissioner Heriot?

13 COMMISSIONER HERIOT: No.

14 CHAIR LHAMON: Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: Abstain.

16 CHAIR LHAMON: Commissioner Kladney?

17 COMMISSIONER KLADNEY: Yes.

18 CHAIR LHAMON: Commissioner Narasaki?

19 COMMISSIONER NARASAKI: A very  
20 enthusiastic yes.

21 CHAIR LHAMON: Commissioner Yaki?

22 COMMISSIONER YAKI: Aye.

23 CHAIR LHAMON: Vice Chair Timmons-Goodson?

24 VICE CHAIR TIMMONS-GOODSON: Yes. With  
25 two exclamation marks.

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1 CHAIR LHAMON: And I vote yes. The motion  
2 passes. One Commissioner opposed, one Commissioner  
3 abstained, all others were in favor.

4 The next item on our amended agenda is a  
5 discussion and vote on a proposed letter regarding the  
6 2020 Census Questionnaire.

7 **C. DISCUSSION AND VOTE ON PROPOSED LETTER**  
8 **REGARDING 2020 CENSUS QUESTIONNAIRE**

9 CHAIR LHAMON: Which is slightly revised.  
10 The slightly revised text was circulated by my  
11 special assistant yesterday.

12 I'll begin by reading the text of the  
13 letter into the record so we know what we're voting  
14 on. And as is our convention, I will not read the  
15 footnotes.

16 The letter is to the Honorable Wilbur  
17 Ross. Dear Secretary Ross, the undersigned members of  
18 the United States Commission on Civil Rights write to  
19 express our deep civil rights concern with your recent  
20 decision to add a citizenship question to the 2020  
21 Census Questionnaire in response to a request from the  
22 Department of Justice, and urge you to reconsider this  
23 decision.

24 As an independent, bipartisan federal  
25 agency charged with advising the President and

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1 Congress on civil rights matters, the Commission has  
2 long evaluated the U.S. Census and its accuracy.  
3 Critical enforcement of our nation's civil rights laws  
4 depends in part on a true and fair count of all  
5 Americans, not a process that is jeopardized by a  
6 hasty decision to include a question that could have  
7 far-reaching ramifications for the health of our  
8 country.

9 Our country relies on the Census in  
10 determining essential questions of our democracy such  
11 as how many seats a state has in the U.S. House of  
12 Representatives. Even in years past without the  
13 introduction of an untested question, the Census has  
14 undercounted communities of color.

15 For these reasons, the Commission is  
16 particularly disturbed by your decision to include a  
17 citizenship question in the upcoming decennial  
18 Questionnaire. In other questionnaires, the Census  
19 Bureau has inquired about citizenship status,  
20 including the long form questionnaire and the American  
21 Community Survey in more recent years, but it has been  
22 decades, since 1950, that it was included in the  
23 decennial questionnaire as you now propose. The  
24 decennial Census questionnaire is the one survey that  
25 is sent to all American households, and the one survey

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1 that specifically fulfills the constitutional  
2 directive to conduct an actual enumeration of all  
3 persons in the United States.

4 The need for an accurate count has  
5 typically led the Bureau to do extensive testing and  
6 preparation before making any changes to this  
7 decennial questionnaire, including changes to  
8 instructions, question order, and certainly the  
9 introduction of a wholly separate question.

10 In 2017 the U.S. Census Bureau conducted  
11 studies in response to the observation of increased  
12 rates of unusual respondent behaviors during test  
13 surveys regarding concerns about confidentiality and  
14 data access relating to immigration.

15 The findings point to an unprecedented  
16 groundswell in confidentiality and data sharing  
17 concerns, particularly among immigrants or those who  
18 live with immigrants that could have an impact on  
19 participation and data quality for the 2020 Census.

20 The U.S. Department of Commerce dismissed  
21 these concerns by stating the Census Bureau's analysis  
22 did not provide definitive empirical support for that  
23 belief. But as your analysis also pointed out,  
24 neither does there exist definitive empirical support  
25 for the belief that there will not be a negative

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1 response to the inclusion of a citizenship question.

2 Moreover, there is an all too real  
3 potential for misuse of Census information with a  
4 historically and painfully valid basis for concern  
5 with participating in a Census that includes such a  
6 question.

7 In the face of the studies by the Census  
8 Bureau raising this concern, as well as the concerns  
9 raised by Members of Congress, mayors, and state  
10 attorneys general from around the country, and the  
11 Census Bureau's own advisory committee, we find it  
12 alarming that you did not obtain more conclusive  
13 information about the potential for damage to the  
14 accuracy of this critical survey of Americans before  
15 prematurely choosing to include an untested  
16 citizenship question.

17 A group of former Directors of the Census  
18 Bureau from both Republican and Democratic  
19 administrations noted that it is highly risky to ask  
20 untested questions, pointing to the great deal of  
21 evidence that even small changes in survey question  
22 order, wording and instructions can have significant  
23 and often unexpected consequences for the rate,  
24 quality, and truthfulness of response.

25 You yourself noted in testimony to the

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1 House Committee on Oversight and Government Reform  
2 late last year that adding untested questions could  
3 reduce response rates, a fact that in and of itself  
4 should counsel against this decision, let alone  
5 factoring in the additional concerns raised by a  
6 significant number of stakeholders and affected  
7 communities.

8 Thank you for your consideration and we  
9 look forward to your response. Very truly yours, and  
10 it will be signed by the signatures from this  
11 Commission.

12 I now move to approve the statement and  
13 open the floor for discussion. Do I have a second?

14 VICE CHAIR TIMMONS-GOODSON: Madam Chair,  
15 this is the Vice Chair, I second the motion.

16 CHAIR LHAMON: Thank you. Any discussion?

17 COMMISSIONER NARASAKI: Madam Chair?  
18 Madam Chair, this is Commissioner Narasaki. I need to  
19 note that I must recuse myself from this discussion  
20 and vote.

21 CHAIR LHAMON: Thank you. Noting that  
22 recusal, any discussion from anyone else?

23 VICE CHAIR TIMMONS-GOODSON: Yes. I would  
24 like to say just a few words, Madam Chair. I have  
25 what I view as a special connection with the Census

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1 Bureau.

2 My first professional employment following  
3 graduation from law school was as an employee of the  
4 U.S. Census Bureau. I served as the 1980 District  
5 Aid, one of several 1980 District Managers.

6 And for me that meant that I was in charge  
7 of enumerating the citizens of Cumberland County,  
8 North Carolina and ten surrounding counties. And so I  
9 supervised the enumeration of citizens.

10 And from that perch, I observed the large  
11 amount of resources that the U.S. Census Bureau  
12 expended in order to educate our citizens about the  
13 importance of the Census and how hard they worked to  
14 gain the trust of our citizens.

15 And so there have been many, many hours  
16 over many, many years to build confidence in the work  
17 and the mission of the Bureau and the importance of  
18 enumeration. And I'm just really concerned that  
19 whatever gains we might make as a result of these  
20 changes will be outweighed by the -- I'll call it  
21 retrenchment in the willingness of our citizens to  
22 volunteer some of their most personal data.

23 And so out of concern for the effect that  
24 it will have on the response rate, I support the  
25 letter going out or the statement going ahead.

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1 CHAIR LHAMON: Thank you, Vice Chair. Any  
2 further discussion on the draft? Okay.

3 COMMISSIONER KIRSANOW: Madam Chair,  
4 Kirsanow here.

5 CHAIR LHAMON: Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Thank you, Madam  
7 Chair. Probably not a surprise, I'm going to vote  
8 against this letter for a couple of reasons that are  
9 actually contained in the letter.

10 The letter states that it's highly risky  
11 to ask untested questions. I understand the specific  
12 basis for that. But I would note, as the letter also  
13 notes, that this is a question that has been asked for  
14 nearly two hundred years and consistently from 1820 to  
15 1950. And in one form or another, until as recently  
16 as 2010, although not of all citizens or respondents.  
17 But it's hardly an untested question.

18 I also agree, and the letter says that  
19 critical enforcement of our nation's civil rights laws  
20 depends in part on a true and fair count of all  
21 Americans. That's exactly right.

22 Couldn't agree more. A fair count of all  
23 Americans. And one of the ways of determining that is  
24 to ask whether or not somebody's a citizen of the  
25 country. We want to know how many Americans there are

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1 and how many non-Americans there are.

2 I also agree that we want to have an  
3 accurate Census because it determines, you know, from  
4 a political perspective the number of seats or the  
5 number of electors. But if we don't know how many  
6 citizens there are, we have a distorted or warped  
7 understanding of how many people are entitled to vote.

8 And that affects redistricting. That  
9 affects the allocation of electors. There are  
10 districts that may have outsized populations of non-  
11 citizens.

12 But because those districts have been  
13 drawn in a certain way that could give citizens that  
14 live in a district where the number of citizens are  
15 diluted, outsize power. That's again something we'd  
16 want to know.

17 So for those reasons and others, I'll be  
18 voting against it.

19 CHAIR LHAMON: Thanks Commissioner  
20 Kirsanow. Just to be clear, the letter does not take  
21 the position that it would not be valid to include the  
22 citizenship question ever on the decennial form.

23 But that it should have gone through the  
24 rigorous testing and analysis process that other  
25 questions went through. And while it is of course

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1 correct that the question has been asked in the long  
2 form every ten years since 1950, it has not been  
3 asked, and therefore has not been tested, in the form  
4 that goes to all people who complete the Census  
5 survey.

6 And so its impact on that completion has  
7 not been tested and is extremely risky. In addition,  
8 the citizenship question will continue to be asked in  
9 the American Community Survey, which is the  
10 replacement for the long form, which was -- in 2010.

11 So the ability to get the benefit of that  
12 question for all of its purposes will continue as it  
13 has every ten years since 1950. So we don't stand at  
14 a risk without it.

15 But we do stand at a risk for what will  
16 take place with this survey going forward because of  
17 the failure to meet statutory deadlines for -- to  
18 appropriately test the question for that purpose.

19 Are there any further discussions?

20 COMMISSIONER YAKI: Madam Chair?

21 CHAIR LHAMON: Go ahead, Commissioner  
22 Yaki.

23 COMMISSIONER YAKI: Madam Chair, I  
24 appreciate the intent of this resolution. And I will  
25 be supporting it.

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1           But I just wanted to add that for me  
2 especially, it is difficult to separate what I think  
3 was an 11th hour and extremely cynical attempt to  
4 continue the scare and intimidation tactics against  
5 minority communities in this country by the Trump  
6 Administration.

7           That the -- and I would just remind, and  
8 Commissioner Narasaki would be able to second this,  
9 were she would be able to participate, but the -- this  
10 kind of information as much as we like to think it is  
11 private, it is not as private as we think it is.

12           It has been used and was used in locating  
13 and identifying Japanese Americans for the purposes of  
14 ensuring that they were all -- they were accounted for  
15 during the internment process in 1942. To the point  
16 where they could isolate on a block by block basis on  
17 where they could direct troops and law enforcement to  
18 ensure that Japanese Americans were removed from their  
19 homes and put on trains.

20           I believe that this by -- you know, the  
21 fact that it did not go through testing shows even  
22 more the cynical use of this for political purposes  
23 almost contrary to the -- and contrary to the purposes  
24 that -- and concerns raised by Commissioner Kirsanow.

25           So I will be supporting this. But I also

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1 wanted to point out that there is a deeper and more  
2 insidious context -- to the addition of this question  
3 than was raised.

4 CHAIR LHAMON: Thank you, Commissioner  
5 Yaki. Any further discussion?

6 COMMISSIONER KIRSANOW: Well, I might go  
7 along with that if we're also going to remove  
8 questions related to race and national origin. It  
9 could be used very cynically by nefarious governments  
10 such as the Trump Administration to isolate and  
11 localize people.

12 CHAIR LHAMON: Mr. Kirsanow, are you  
13 offering an amendment to the letter?

14 COMMISSIONER KIRSANOW: No. I'm just  
15 being facetious as usual. But nonetheless, it is --  
16 there's a little bit of consistency with respect to  
17 that.

18 I still maintain that it's something that  
19 is purportedly untested that's been done for years,  
20 and years, and years, is the complete opposite of  
21 untested. And as a sovereign nation, the United  
22 States in an enumeration can ask a number of  
23 questions.

24 And one of the questions seems to be how  
25 many of us are Americans? It's an easy question to

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1 ask. And it has to do with things such as the  
2 assignment of electors and the drawing of districts.

3 COMMISSIONER YAKI: Well, this is  
4 Commissioner Yaki. We can get into a deep  
5 philosophical discussion about what being an American  
6 is. And whether or not a nucleus people who have  
7 lived here almost all their entire lives, and  
8 contributed to this country, fought for this country,  
9 and yet are denied the ability to be citizens of this  
10 country.

11 So we can discuss what being an American  
12 is. But I don't think this letter is the focal point  
13 for that.

14 COMMISSIONER KIRSANOW: Okay. Well, it's  
15 the letter that talks about Americans. I simply raise  
16 it to repeat the fact that the letter is concerned  
17 about Americans.

18 COMMISSIONER YAKI: Yeah. But your  
19 definition of American is a citizen. And I'm telling  
20 you right now that I think that being an American has  
21 a lot more traits than that.

22 And we can go into a very long discussion  
23 about that, Commissioner Kirsanow. And again, I point  
24 to people who have lived here and who have fought for  
25 our country overseas, and yet are not recognized as

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1 Americans.

2 But are probably more American in many  
3 respect than others that you and I would --

4 CHAIR LHAMON: All right. Okay. I'm  
5 going to call the question. Take a roll call vote.

6 Commissioner Adegbile, how do you vote?

7 COMMISSIONER ADEGBILE: Aye.

8 CHAIR LHAMON: Commissioner Heriot?

9 COMMISSIONER HERIOT: I'm going to vote  
10 no.

11 CHAIR LHAMON: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: No.

13 CHAIR LHAMON: Commissioner Kladney?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIR LHAMON: Commissioner Narasaki, I'm  
16 just confirming you are recused?

17 COMMISSIONER NARASAKI: It's killing me.  
18 And yes, I am recused.

19 CHAIR LHAMON: Thank you. Commissioner  
20 Yaki?

21 COMMISSIONER YAKI: Aye.

22 CHAIR LHAMON: Vice Chair Timmons-Goodson?

23 VICE CHAIR TIMMONS-GOODSON: Yes.

24 CHAIR LHAMON: And I vote yes. The motion  
25 passes. Two Commissioners opposed, one Commissioner

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1 is recused, all others were in favor.

2 The next item on our amended agenda is a  
3 discussion and vote on a proposed statement entitled  
4 U.S. Commission on Civil Rights Denounces Imposition  
5 of Immigration Judge Quotas, introduced by  
6 Commissioner Narasaki.

7 **D. DISCUSSION AND VOTE ON PROPOSED STATEMENT**

8 **ENTITLED U.S. COMMISSION ON CIVIL RIGHTS**  
9 **DENOUNCES IMPOSITION OF IMMIGRATION JUDGE QUOTAS**

10 CHAIR LHAMON: Commissioner Narasaki,  
11 could you please read the statement you proposed for  
12 consideration?

13 COMMISSIONER NARASAKI: Yes. Thank you,  
14 Madam Chair. And I repeat your reminder that I, by  
15 tradition, I am not reading all of the footnotes  
16 because that would keep us here forever.

17 The statement reads, U.S. Commission on  
18 Civil Rights Denounces Imposition of Immigration Judge  
19 Quotas. The U.S. Commission on Civil Rights strongly  
20 objects to what amounts to an annual seven hundred  
21 case closure quota on immigration judges imposed by  
22 the Department of Justice.

23 The Commission is aware that the backlog  
24 of immigration cases itself poses substantial due  
25 process concerns. However, placing limitations or

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1 ill-considered pressures on immigration judges to  
2 resolve cases impedes fair access to justice,  
3 endangers the due process rights of immigrants, and is  
4 a startling attack on the independence of immigration  
5 judges.

6 As Judge Ashley Tabaddor, President of the  
7 National Association of Immigration Judges, NAIJ,  
8 notes, the recent DOJ action marks a crisis point.  
9 Immigrants are entitled to have their immigration  
10 carefully adjudicated by judges who do not base their  
11 decisions on factors beyond the merits of each case.

12 Moreover, because immigrants only have the  
13 right to counsel in immigration proceedings at their  
14 own expense, most have no attorney, which places  
15 additional responsibilities on the judges to ensure  
16 that due process is provided and that cases are  
17 correctly decided under our laws.

18 The immigration court system faces a large  
19 backlog, and immigrants, including those seeking  
20 refuge or fighting deportation, often wait years for  
21 their cases to be decided.

22 Although addressing these issues is  
23 critically important, imposing quotas is the wrong  
24 approach and will do little to address the problem.  
25 Congress has recently appropriated funds that enable

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1 the Administration to add one hundred judges to the  
2 approximately three hundred fifty judges already on  
3 the bench.

4 This addition of jurists who can exercise  
5 their judgement in the fair administration of justice  
6 is an appropriate response to the backlog. Quotas  
7 will negatively affect the quality of immigration  
8 decisions and increase judicial errors that have a  
9 life or death consequence, and will only create  
10 inefficiencies on the appellate level.

11 Separately, measuring judges by the number  
12 of cases they close rather than the quantum of justice  
13 they deliver and the soundness of their decisions  
14 badly misses the mark for actual access to justice in  
15 this country.

16 For decades the Commission and its state  
17 advisory committees have investigated and reported on  
18 the often negative civil and human rights implications  
19 of our nation's immigration laws and policies. We  
20 strongly urge the Department of Justice to rescind the  
21 quota system.

22 Chair Catherine E. Lhamon stated, the fair  
23 administration of justice requires that each  
24 individual who comes before a judge has the assurance  
25 that his or her case is not hastily judged merely to

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1 meet a quota requirement. Anything less is an attack  
2 on the necessary independence and impartiality of the  
3 judiciary.

4 CHAIR LHAMON: Thank you, Commissioner  
5 Narasaki. Do we have a motion to approve the  
6 statement to open the floor for discussion?

7 VICE CHAIR TIMMONS-GOODSON: So moved.

8 CHAIR LHAMON: Is there a second?

9 COMMISSIONER ADEGBILE: Yes, I second,  
10 Commissioner Adegbile.

11 CHAIR LHAMON: Thank you. Is there any  
12 discussion on this statement? I'll begin with you,  
13 Commissioner Narasaki, as the sponsor of the  
14 statement.

15 COMMISSIONER NARASAKI: Yes. I want to  
16 add that the immigration laws are extremely  
17 complicated because they often raise questions of  
18 human rights, international law, state and local law,  
19 and very complicated asylum refugee law on top of the  
20 immigration laws.

21 Immigrants also often are not speaking  
22 English and may be facing trauma when they come,  
23 particularly those who are seeking asylum. And it  
24 takes them time to be able to tell their stories and  
25 also to be able to identify counsel who can help them

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1 get through these often complicated cases.

2 There was a hearing this week in the  
3 Senate Judiciary Committee. And I think the case was  
4 finally made that it would be -- the issue is not  
5 whether immigration judges are working hard enough,  
6 they have huge caseloads already. So simply forcing  
7 them to try to do more is not going to actually help  
8 the situation.

9 And in fact, one time when in another  
10 Administration, efforts were made to try to expedite  
11 this, what happened was the immigration appellate  
12 system became overly backlogged because judges stopped  
13 writing decisions and articulating their reasoning.

14 So people automatically were appealing.  
15 And then the appellate judges have no real record in  
16 which to try to make their assessments.

17 We -- I believe that the answer is what  
18 Congress is already pursuing, which is adding to  
19 immigration judges. But I also would add they need to  
20 add support staff and law clerks. Most judges do not  
21 have much assistance in trying to get through their  
22 cases.

23 In addition, unfortunately if the  
24 Administration was truly concerned about the  
25 efficiency, they would look at the decision they

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1 recently made, which is to suspend the Legal  
2 Orientation Program.

3 And under this program, attorneys and  
4 paralegals working pro bono for nonprofit  
5 organizations meet with detainees and help them try to  
6 understand the law and help them try to understand  
7 whether in fact they have a case or not.

8 This has been found repeatedly to help  
9 make the system more efficient and less costly. And  
10 yet the Administration has suspended this while they  
11 evaluate it.

12 So I will stop there.

13 CHAIR LHAMON: Thank you. Any further  
14 discussion on the statement?

15 COMMISSIONER HERIOT: Madam Chair?

16 CHAIR LHAMON: Commissioner Heriot?

17 COMMISSIONER HERIOT: I just have a  
18 question. I have been told that requirements of this  
19 is sort are very common for ALJs throughout the  
20 federal bureaucracy.

21 Commissioner Narasaki, do you happen to  
22 have information? For example, I'm told that Social  
23 Security ALJs have similar requirements.

24 COMMISSIONER NARASAKI: I think that any -

25 -

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1                   COMMISSIONER KLADNEY:  Actually, I do have  
2                   that information.  In case anybody wants to hear it.

3                   They don't have a requirement of a case  
4                   number.  They have what is called, I think it's goals  
5                   or guidelines to try to achieve a certain number.

6                   But it is not a requirement.  If you look  
7                   at the different judges, there are reports and the  
8                   number of cases that they're able to close vary.

9                   There is no minimum requirement.

10                  COMMISSIONER NARASAKI:  Thank you,  
11                  Commissioner Kladney.  As he notes, there are targets.

12                  But these are set in a way that it would actually  
13                  affect the judges' ratings and their ability to keep  
14                  their jobs, which induces a whole different incentive  
15                  in terms of how they react to cases.  And I also note  
16                  that immigration cases are not analogous to social  
17                  security cases where the laws are pretty clear and far  
18                  less complex than what you're facing with immigration  
19                  laws.

20                  And the loss for social security is  
21                  generally dollars, which can be made up on appeal.  
22                  But the loss in immigration cases is deportation,  
23                  sometimes to countries where people have been  
24                  persecuted and may actually lose their lives.  And  
25                  certainly, they'd be separated from families, from

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1 their businesses, from homes that they may have.

2 So there is a lot more at stake when  
3 you're talking about the immigration system when there  
4 are erroneous decisions and much harder to actually  
5 make up for those mistakes.

6 VICE CHAIR TIMMONS-GOODSON: Madam Chair,  
7 I'll be voting in favor of the statement. And in my  
8 mind, as a former judge, there is a huge difference in  
9 goals and quotas.

10 You know, when you're talking about quotas  
11 and whether or not someone's going to -- a judge is  
12 going to keep his or her job, you are getting into the  
13 judicial independence arena. And it's not something  
14 that we want to do. I hope that we'll do all we can  
15 to discourage the Administration from going forward  
16 with this.

17 CHAIR LHAMON: Any further discussion on  
18 this proposed statement?

19 COMMISSIONER KLADNEY: Madam Chair, this  
20 is Commissioner Kladney.

21 CHAIR LHAMON: Go ahead, Commissioner.

22 COMMISSIONER KLADNEY: If I may?

23 CHAIR LHAMON: Sure.

24 COMMISSIONER KLADNEY: I haven't been able  
25 to determine whether the government did any time

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1 management study at all in coming up with the figure  
2 of seven hundred cases. It appears that this was kind  
3 of picked out of the air.

4 And it does provide that 700 cases is a  
5 mandate rather than a goal or a guideline. I know in  
6 my district we have one judge. We have a two year  
7 backlog for cases here, and my judges would be very  
8 helpful. I think it would be interesting for the  
9 record if we actually set out the types of cases that  
10 these judges view.

11 As Commissioner Narasaki said, social  
12 security law is well set. And the case -- the cases  
13 have just fact patterns that have to fit into the law.

14 Here there are many different types of  
15 cases. First of all, there are two, only two  
16 hearings. There's a master hearing which is like, I  
17 think, a preliminary hearing. At least this is what I  
18 have been able to determine, you know. And then  
19 there's a merit hearing, which is a hearing on the  
20 facts.

21 And immigration judges do a very -- varied  
22 types of hearings and have to review the files prior  
23 to the hearing. They do green card cancellation and  
24 removal hearings. They do asylum hearings. They do  
25 42B application hearings on ten year residents. They

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1 do I751 hearings on the bona fides of marriages. They  
2 do proof of citizenship hearings where someone is  
3 arguing citizenship which will affect the jurisdiction  
4 of the court. And they do waiver hearings.

5 Whenever these hearings are conducted,  
6 they last two to three hours at a minimum. And I  
7 would note for the record that having done social  
8 security hearings, if you get a 30 minute hearing,  
9 you're doing pretty good.

10 So I think these judges are very busy.  
11 And I think the government by mandating the case is  
12 actually -- and mandating 700 cases a year is --  
13 violating the due process rights of the people who  
14 would be normally found to be able to stay in this  
15 country and not violating the immigration laws if in  
16 fact they get deported in the hearing where a judge  
17 feels rushed and has to get a number out.

18 For those reasons I think that we should  
19 all be supporting this letter. I don't believe any  
20 lawyer believes that a judge should be held to a  
21 certain number.

22 Clearly if, you know, there are guidelines  
23 and somebody is consistently failing to meet objective  
24 guidelines, that might be a reason for a training or  
25 something like that, but clearly not to affect the due

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1 process rights of the people that come before the  
2 judge. Thank you.

3 COMMISSIONER HERIOT: Madam Chair?

4 CHAIR LHAMON: Commissioner Heriot?

5 COMMISSIONER HERIOT: I just want to point  
6 out, I'm looking at the document right now. It does  
7 use the term goals, not quotas.

8 So if the concern is that these are quotas  
9 and not goals, and I think that the difference is  
10 often overstated. But it says goals, it doesn't say  
11 quotas.

12 COMMISSIONER NARASAKI: I would like to  
13 note that in fact my statement notes that they act as  
14 quotas. They're not being called quotas for obvious  
15 reasons.

16 But because of -- it's a set number. And  
17 because it automatically notes and then you will be  
18 considered to be performing less than satisfactory,  
19 then it is in fact a quota.

20 COMMISSIONER HERIOT: Madam Chair?

21 CHAIR LHAMON: Commissioner Heriot?

22 COMMISSIONER HERIOT: I just want to point  
23 out that the next time we talk about quotas and goals,  
24 I hope that Commissioner Narasaki will retain her view  
25 that goals really are quotas.

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1           Usually people who are left of center are  
2 arguing it the other way.

3           COMMISSIONER NARASAKI: We can debate what  
4 is a quota. But I'm saying in the way this is being  
5 used, it is in fact a quota.

6           And in fact, that is not just my personal  
7 view, but it's also the view of the American Bar  
8 Association and others who have raised this issue.

9           COMMISSIONER KLADNEY: I think it's more  
10 like a mandate.

11          CHAIR LHAMON: Okay. Unless there's  
12 further discussion, I'm going to call the question.  
13 Take a roll call vote.

14          Commissioner Adegbile, how do you vote?

15          COMMISSIONER ADEGBILE: Aye.

16          CHAIR LHAMON: Commissioner Heriot?

17          COMMISSIONER HERIOT: No.

18          CHAIR LHAMON: Commissioner Kirsanow?

19          COMMISSIONER KIRSANOW: No.

20          CHAIR LHAMON: Commissioner Kladney?

21          COMMISSIONER KLADNEY: Yes.

22          CHAIR LHAMON: Commissioner Narasaki?

23          COMMISSIONER NARASAKI: Yes.

24          CHAIR LHAMON: Commissioner Yaki?

25          COMMISSIONER YAKI: Aye.

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1 CHAIR LHAMON: Vice Chair Timmons-Goodson?

2 VICE CHAIR TIMMONS-GOODSON: Yes.

3 CHAIR LHAMON: And I vote yes. The motion  
4 passes. Two Commissioners opposed, no Commissioner  
5 abstained, all others were in favor.

6 **III. ADJOURN MEETING**

7 And if there is nothing further, I hereby  
8 adjourn our meeting at 11:44 a.m. Eastern Time. Thank  
9 you all.

10 (Whereupon, the above-entitled matter went  
11 off the record at 11:44 a.m.)

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