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U.S. COMMISSION ON CIVIL RIGHTS

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IMMIGRATION DETENTION SUBCOMMITTEE

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TELEPHONIC BUSINESS MEETING

+ + + + +

MONDAY, MAY 6, 2019

+ + + + +

The Commission convened via
teleconference at 1:30 p.m., Michael Yaki,
Commissioner, presiding.

PRESENT:

MICHAEL YAKI, Commissioner

DEBO P. ADEGBILE, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

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STAFF PRESENT:

MIRIAM ABAYA

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief ASCD

ALFREDA GREENE

CHARLES JONES

HILLARY KIPNIS

TINA LOUISE MARTIN

KATHERINE MATTHEWS

PILAR MCLAUGHLIN

CAROL STACHURSKI

FRAN TATU

WARREN ORR

BRIAN WALCH

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

ALISON SOMIN

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

2 (1:34 p.m.)

3 COMMISSIONER YAKI: I'm going to call the
4 meeting to order. This is a meeting of the --

5 OPERATOR: My apologies. Would you like
6 me to go ahead and begin the call?

7 COMMISSIONER YAKI: Yes.

8 OPERATOR: Okay. And who will I turn it
9 over to? Michael Yaki?

10 COMMISSIONER YAKI: Yes.

11 OPERATOR: Okay, perfect. Thank you. One
12 moment, please. Good day and welcome to the United
13 States Commission on Civil Rights Commission
14 Telephonic Business Meeting. At this time, I would
15 like to turn the conference over to Mr. Michael Yaki.
16 You may begin.

17 COMMISSIONER YAKI: Thank you very much.
18 Welcome to everybody who is listening. This is
19 Commissioner Michael Yaki, Chair of the Detention
20 Subcommittee, Immigration Detention Subcommittee of
21 the United States Commission of Civil Rights. It is
22 Monday, May 6, 2019, and it's 10:35 p.m. I am
23 going to first call the roll. Is Commissioner
24 Narasaki present?

25 COMMISSIONER NARASAKI: Here.

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1 COMMISSIONER YAKI: Is Commissioner
2 Kladney present?

3 COMMISSIONER KLADNEY: Present.

4 COMMISSIONER YAKI: Is Commissioner
5 Adegbile present?

6 COMMISSIONER ADEGBILE: Present.

7 COMMISSIONER YAKI: Is Commissioner
8 Kirsanow present?

9 (No audible response.)

10 COMMISSIONER YAKI: Commissioner Kirsanow
11 is not present. Commissioner Yaki is present, and I
12 think that's it. Any commissioners on the phone that
13 I did not call? Good.

14 We have --

15 COMMISSIONER KLADNEY: Is the vice chair a
16 member of the Committee?

17 MR. CASTRO: Yes, Marty Castro.

18 COMMISSIONER YAKI: Just one second. No,
19 she's not. The quorum being present, I'm going to
20 move for an approval of the agenda.

21 **I. APPROVAL OF AGENDA**

22 COMMISSIONER YAKI: I have one item to
23 move to put on the agenda. I would like to put first
24 on the agenda an item to allow for comments by, a
25 statement by our former chair, Marty Castro. Is there

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1 any objection to that being added to the agenda?

2 COMMISSIONER NARASAKI: I second.

3 COMMISSIONER YAKI: It's seconded by
4 Commissioner Narasaki. Without any objection, that
5 amendment is adopted. Approval of the agenda as
6 amended? Is there a motion?

7 COMMISSIONER ADEGBILE: So moved.

8 COMMISSIONER YAKI: So moved by
9 Commissioner Adegbile. Is there a second?

10 COMMISSIONER NARASAKI: Narasaki seconds.

11 COMMISSIONER YAKI: Seconded by
12 Commissioner Narasaki. Without objection, the agenda,
13 as amended, is approved. The first item on the agenda
14 is a statement, a special comment and statement from
15 our former chair, former Chairman and Commissioner
16 Martin Castro. Mr. Castro, are you with us?

17 **II. STATEMENT BY FORMER CHAIRMAN MARTIN CASTRO**

18 MR. CASTRO: Yes, I am, Mr. Yaki. Can you
19 hear me?

20 COMMISSIONER YAKI: We can indeed. The
21 floor is yours, and thank you very much.

22 MR. CASTRO: Thank you, Commissioner Yaki,
23 and all the commissioners present for allowing me to
24 say a few words on this really important topic. Some
25 of us obviously work together on this issue, and I'm

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1 extremely pleased to see that the Commission is
2 continuing the work that we started in 2015. In so
3 many ways, I think it's even more important today than
4 it was when we began the work a few years ago, and
5 some of those reasons are the following: Felipe
6 Alonzo, Jakelin Caal, Mariee Juarez, and a young 16-
7 year-old boy who died a week ago, all of whom died in
8 the last year, most of whom died in the last six
9 months in ICE custody. And while this is an issue of
10 high importance at all times, I think, when we look at
11 the fact that we have not only these children who died
12 in our government's custody very recently over, at
13 least as of January, over the last year, news outlets
14 have reported that at least 22 other immigrants,
15 refugees many of them, have died during their
16 detention in our federal government's custody. I
17 think this puts a special emphasis and a renewed
18 urgency on the issue that is before you and, again, I
19 commend you for the work that you're doing now.

20 As you know, during my chairmanship, we
21 covered a number of issues, but one of which I am the
22 most proud is the work that we did on issuing the
23 reports that we did during the Obama administration on
24 With Liberty and Justice for All: The State of Civil
25 Rights at Immigration Detention Centers because it's

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1 often forgotten that, yes, these immigrants, while
2 they're not United States citizens, they may not even
3 be formal approved residents or immigrants, they still
4 have constitutional rights under our government and
5 under our own regulation, so it's important that we
6 emphasize that now more than ever.

7 You all know that we issued a very tough
8 report on the conditions during the Obama
9 administration. Some would argue that that was a
10 friendly administration. Things have only gotten
11 worse in the last few years, and I think that the work
12 that you're about to do can have an even broader
13 impact than the work that we did in 2015.

14 When you look at the fact that families
15 that we talked to when we went down to the border,
16 moms and children were being threatened at the time
17 with family separation. And to see that not only did
18 that actually occur but it occurred in a way that was
19 beyond the pale sends a message that the work that we
20 need to continue is of utmost importance.

21 I think highlighting the fact that many of
22 these individuals and families and unaccompanied
23 minors and not only in the custody of the federal
24 government but our government continues to farm out
25 that important responsibility to for-profit companies.

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1 That industrial complex of detention has grown since
2 2015, and I think it's important to continue to
3 highlight that.

4 You all know when we went to Karnes it was
5 a difficult time. I'm still haunted by the
6 conversations I had with the mothers and especially
7 with the children there. I recall sitting down at a
8 lunch counter with three little children around 7 or 8
9 years old, two boys and a girl from Central America.
10 I asked them what they wanted to be when they grew up.

11 Two of them wanted to be a lawyer, and one of them
12 wanted to be a doctor. I don't know whatever happened
13 to those children. I don't know if not only will
14 those dreams ever come true, I don't even know what
15 conditions they were in when they went back to their
16 home countries where violence reigned. But I know
17 when I stood up from that table and tried to walk
18 away, that little boy, one of the little boys grabbed
19 me by the hand and said to me in Spanish please, sir,
20 don't leave me here, take me with you. And even as I
21 think about that now, it's very emotional for me. And
22 those children that have died in our custody are just
23 like those children that we spoke with.

24 So as you move forward with this continued
25 examination and investigation, I know there's many

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1 issues that you need to look at and I know from the
2 time I was with you that the resources are limited,
3 the time is limited. There are a number of challenges
4 that you have to overcome in order to be able to put
5 out a strong report. But I hope that in this process
6 you put a second emphasis on the deaths of Alonzo and
7 of Mariee and of Jakelin and the yet unnamed boy who
8 died a week ago because if you don't, if we don't
9 highlight this and put people to task and bring
10 accountability and bring justice to these children,
11 their deaths will be for naught. And I know you won't
12 allow that. I know that, hopefully, the results from
13 this work is that no more children or others will die
14 in the custody of our own government.

15 So I thank you again for letting me share
16 a few words, and I really appreciate that you're doing
17 this. Just so you know, I've asked members of the
18 Hispanic caucus to host congressional hearings on
19 this, and I am told that when this happened initially,
20 these two children died in December, I was told then
21 that hearings would take place. I have since reached
22 out again to members of Congress, the Latino caucus,
23 including Chuy Garcia, our newly-elected congressman
24 here in Illinois, and I'm assured that Congress will
25 be looking at this. And so I think, in tandem with

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1 the work that Congress I hope does and the work that
2 you're doing, we'll be able to shine the important
3 conscience of the Civil Rights Commission on this
4 issue.

5 So thank you for the opportunity to share
6 a few words, and I'm happy to answer any questions or
7 I'll just continue to listen and participate in your
8 meeting. Thanks.

9 COMMISSIONER YAKI: Former Chair, this is
10 Commissioner Yaki. For one, I wanted to thank you for
11 your leadership on the 2015 report and I agree this
12 has somewhat different and important ramifications
13 that go beyond what we've worked on then. But we
14 wouldn't be here had it not been for your initial
15 leadership on this issue and your courage in taking on
16 an administration that hatched and appointed you as
17 chair. I just wanted to thank you for that and thank
18 you for your comments today.

19 Colleagues, are there any questions that
20 any of you have for Chair Castro?

21 COMMISSIONER ADEGBILE: Just thank you to
22 the former chair for his comments and insights.

23 MR. CASTRO: Thank you, Commissioner.

24 COMMISSIONER YAKI: Great. With that,
25 thank you, thank you, Chair. I hope you will have fun

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1 listening to parliamentary procedure, and thank you
2 again. And don't be a stranger. Keep in touch.

3 MR. CASTRO: Absolutely. Thank you.

4 COMMISSIONER YAKI: Great. Thank you very
5 much. I will now move on to the next agenda item,
6 discussion of the report update and what our next
7 steps are going to be.

8 **III. DISCUSSION OF REPORT UPDATE FOLLOWING**

9 **PUBLIC COMMENT PERIOD**

10 COMMISSIONER YAKI: I think first I wanted
11 to thank Rukku for continued outstanding work in
12 assisting on this subcommittee, and I again want to
13 put out a special shout-out to her work in
14 volunteering to help the committee and myself move
15 forward on this.

16 Rukku had sent out two documents last
17 week. One was a draft outline, and one was a draft
18 time line. Now, before we get to the time line, I
19 wanted to first bring up did anyone have any thoughts
20 about any issues regarding the draft outline of the
21 report that was circulated last week?

22 COMMISSIONER KLADNEY: This is Kladney.
23 I've got a few.

24 COMMISSIONER YAKI: Okay.

25 COMMISSIONER KLADNEY: I'm trying to --

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1 we're going to take the 2015 report and outline it in
2 comparison to what's in the FY 19 report, correct?

3 COMMISSIONER YAKI: I don't think we're
4 going to compare it as much as we're going to update
5 it with additional information. I think it's going to
6 be a comparison, I mean there are going to be some
7 obvious issues of comparison in terms of the changes
8 since then. But I think those changes can be more in
9 one separate section than attempting to go back and
10 annotate the entire report. But maybe I'm
11 misunderstanding what you're looking for.

12 COMMISSIONER KLADNEY: I'm not sure how
13 we're going to go about updating this information. I
14 thought the update was actually in the outline. The
15 update was in the FY 19 report, and then we were going
16 to include -- I have another comment, too, but let's
17 resolve this first.

18 COMMISSIONER YAKI: Okay.

19 COMMISSIONER KLADNEY: Show me some
20 clarity.

21 COMMISSIONER YAKI: The issue is --

22 COMMISSIONER KLADNEY: For FY 19, FY 19
23 she says in number three background to be filled in
24 with material from FY 19 report, Chapter 8, DHS.

25 COMMISSIONER YAKI: Yes.

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1 COMMISSIONER KLADNEY: What's that --

2 COMMISSIONER YAKI: We received, as part
3 of our federal enforcement report, we received the
4 information from DHS that is also responsive to the
5 subject matter of this committee. So OCRE has agreed
6 to essentially allow us to utilize those sections as
7 part of what we believe to the statement. If we have
8 any response at all from the federal agencies that
9 refused our discovery, we are going to include that in
10 there as sort of a what we are able to glean from the
11 actual departments about what they have said relates
12 to the jurisdiction of this committee. It's not going
13 to be obviously a full response or even a real
14 response but simply information that we'll be able to
15 track regarding the subject matter of this committee
16 through other responses to the USCCR from the FY 19
17 report.

18 COMMISSIONER KLADNEY: The way I take this
19 outline is that taking within an outline the actions
20 that we've taken so far, and then we're going to take
21 the FY 15 report and outline the sections that deal
22 with the sections in number three and compare them to
23 the FY 15 report and the FY 19 report and just compare
24 them and then just add a couple of comments. That's
25 what this document that I'm looking at says. Does

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1 anybody else have a similar understanding or something
2 different?

3 MS. CULLITON-GONZALEZ: If I may, would it
4 be helpful for --

5 COMMISSIONER KLADNEY: Sure. Who?

6 MS. CULLITON-GONZALEZ: This is Kathy from
7 OCRE.

8 COMMISSIONER YAKI: Go ahead, Kathy.

9 MS. CULLITON-GONZALEZ: Okay. So I think
10 the idea was that OCRE has actually done research on
11 immigrant detention and family separation as part of
12 the FY 19 report and so not only the information we
13 received from DHS but also the write-up that we have
14 received for FY 19 could be helpful because there is
15 an analysis of the Flores Agreement and many issues
16 that came out during the public comment session. So
17 that was my understanding.

18 COMMISSIONER KLADNEY: Well, you've
19 already done that work and it's in the FY 19 report,
20 correct?

21 MS. CULLITON-GONZALEZ: I think the idea
22 is that we would leave it in both places.

23 COMMISSIONER KLADNEY: Well, I understand
24 that. What I was saying before was we're going to
25 take the FY 19 information and compare it to the '16

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1 report and just add the FY 19 information using
2 similar language and the same legal citations; is that
3 correct? I'm asking the Committee
4 actually because I think the Committee makes the
5 decision, but wasn't that the vision?

6 COMMISSIONER NARASAKI: Commissioner
7 Kladney, this is Commissioner Narasaki. I'm kind of
8 confused about why, I'm confused about what you're
9 thinking the incorporation of the 2015 report would be
10 because I don't see it as a comparison between our
11 2019, what's in our 2019 and our 2015 report. I'm not
12 --

13 COMMISSIONER KLADNEY: Well, we were
14 updating it. I just wanted --

15 COMMISSIONER NARASAKI: -- because that's
16 not how I understood it.

17 COMMISSIONER KLADNEY: How do you
18 understand it?

19 COMMISSIONER YAKI: One at a time.

20 COMMISSIONER KLADNEY: How do you
21 understand it? Because I need some help here.

22 COMMISSIONER NARASAKI: I understand it as
23 our OCRE director laid it out, which is basically so
24 we'll have an executive summary, we'll talk about the
25 Commission's role in our process here, we'll provide a

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1 background to the comments that we'll just pull from
2 the statutory report that we're working on now. I'm
3 assuming that the 2015 report, to the extent that
4 there needs to be anything discussed, will be
5 discussed in Part 2 but not in Part 3 because Part 2
6 has 2A, which is a summary of the 2015 report.

7 COMMISSIONER KLADNEY: Well, I mean, if we
8 have a summary of that, then we're going to summarize,
9 aren't we going to summarize just the sections of the
10 2015 report that deal with family separation as set
11 forth in Part 3? Because that's our charge is family
12 separation, not detention. If we do, if we're going
13 to update the entire '15 report, I think we're going
14 to get pretty unwieldy. I'm trying to limit it so
15 that we don't get far afield here, and I think family
16 detention is our charge.

17 COMMISSIONER NARASAKI: Right. I think
18 that we'll summarize in Part 2A the relevant portions
19 of our 2015 report, and then Part 3 is background
20 because the issues, some of the issues that are in
21 Part 3, like the zero-tolerance family separation and
22 how that interacts with the Flores Agreement and also
23 the asylum process just didn't exist because we didn't
24 have the zero-tolerance policy.

25 COMMISSIONER KLADNEY: Right. But all

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1 that is currently in the '19 report. We're just going
2 to be lifting it out of there.

3 COMMISSIONER NARASAKI: Right. For the
4 Part 3.

5 COMMISSIONER KLADNEY: We're not going to
6 be doing any original research.

7 COMMISSIONER NARASAKI: Correct.

8 COMMISSIONER KLADNEY: There's going to be
9 no more original research, just what the FY 19 report
10 contains; is that correct?

11 COMMISSIONER NARASAKI: Well, in terms of
12 the background.

13 COMMISSIONER KLADNEY: Well, what original
14 research are we looking at?

15 COMMISSIONER NARASAKI: I think it depends
16 on -- so I don't think that there's original, I agree
17 with you I don't think there's original research. I
18 think Part 4 is the summary of the public testimony
19 that we got in both through the hearing and also in
20 writing. So that is correct, Commissioner Kladney,
21 that we aren't asking staff to do any additional
22 research.

23 COMMISSIONER KLADNEY: Okay. I do have
24 another question in terms of how the report is going
25 to look. I understand during the public comment

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1 period that there were several comments on family
2 detention and then there was public comments on
3 general detention. And I think there's a proposal
4 having the interns summarize this document under their
5 supervision. And I was wondering whether it would be
6 better if we included the summary of the family
7 detention and the report proper and make an appendix
8 or an attachment to the report on the general
9 detention so that there's no confusion when someone is
10 reading the report and trying to deal with family
11 detention versus general detention. Did I make myself
12 clear there?

13 COMMISSIONER YAKI: Yes, Commissioner
14 Kladney. I think that, well, I think, as a general
15 rule, that would not be a bad idea. I think, as
16 applied, we are going to find it difficult to make
17 that separation because so much of this, of these
18 issues do apply to the conditions of separated
19 children or could apply to separated children under
20 this. But I think it would be good to try to make
21 that distinction and even ask the interns to do that.

22 I also wanted to respond to your issue of
23 original research because I think, one, there is some
24 original research that Kathy did as part of the FY 19,
25 so I don't want to make it seem like we don't have

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1 any. And, two, it is certainly my intention to
2 include in the discussion information that, new
3 information regarding this issue from the public
4 record where there is some testimony to community
5 jurisdiction in the Congress or other publicly-
6 available materials into this report. Now, whether we
7 call that original research or simply gathering
8 information of what has already been out there is, you
9 know, I think, a semantic issue. But it's certainly
10 my intention to supplement the material that DHS
11 refuse to send to us if we can find it from third-
12 party sources that are available publicly, whether in
13 congressional testimony or from other publicly-
14 available means.

15 COMMISSIONER KLADNEY: And the other
16 question I had was with the sufficiency review. How
17 are we going to not have to have that unless we only
18 deal with topics and information that we currently
19 have gone through the sufficiency review?

20 COMMISSIONER YAKI: Commissioner Kladney,
21 I can't answer that right now, but I will be able to
22 provide you with an answer after I consult with
23 Maureen and with the staff director. That's a good
24 question.

25 Is there anything else on the draft

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1 outline as presented?

2 COMMISSIONER ADEGBILE: I have a question.

3 It was just a suggestion. Sorry. Go ahead.

4 COMMISSIONER YAKI: I was going to say for
5 the court reporter Commissioner Adegbile.

6 COMMISSIONER ADEGBILE: Yes, thank you,
7 Commissioner Yaki. So there was a suggestion that the
8 research, the relevant research and analysis that has
9 been done in connection with the 2019 statutory
10 enforcement report could be used and finalized for
11 purposes of creating what is, largely, the substance
12 of Roman three in the outline. That's what the
13 current proposal is, correct?

14 COMMISSIONER YAKI: Yes.

15 COMMISSIONER ADEGBILE: And I'm just
16 trying to understand something I heard I think for the
17 first time, which is that that text and research would
18 be used in two places, both in this update and also in
19 the fiscal '19 report. Is that the proposal?

20 COMMISSIONER YAKI: Yes, that's what Kathy
21 said.

22 COMMISSIONER ADEGBILE: I may have some
23 concerns or at least need some more information about
24 how that would work as a practical matter, knowing
25 that that material will become final on different time

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1 frames and, thus, is likely to not end up being
2 completely aligned. And so, you know, there's at
3 least a risk that it could say different things in
4 different time frames, so I think that's a concern.

5 COMMISSIONER YAKI: Okay. Noted. I'll
6 discuss that with OCRE.

7 COMMISSIONER KLADNEY: OCRE is not writing
8 this up. This is being done by our committee, the SAs
9 and the interns.

10 COMMISSIONER YAKI: Yes, and we can
11 discuss how we interface that with their draft report
12 to make sure that we either have consistency or we
13 note where differences may or may not occur. But in
14 any event, it will involve some discussion with OCRE,
15 and OCRE can indicate a desire to assist in that
16 regard and report back to you about how we ensure that
17 we're not saying two different things with the same
18 information.

19 Anything else on the draft outline?

20 COMMISSIONER NARASAKI: This is
21 Commissioner Narasaki. In the due process --

22 COMMISSIONER ADEGBILE: Commissioner
23 Narasaki, this is Commissioner Adegbile. I apologize
24 for interrupting. I just wanted to add a small
25 addendum to my last point for clarity for the record.

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1 COMMISSIONER YAKI: Sure.

2 COMMISSIONER ADEGBILE: Could you indulge
3 me, Commissioner Narasaki, just to close out that last
4 discussion?

5 COMMISSIONER NARASAKI: Sure.

6 COMMISSIONER ADEGBILE: So, Commissioner
7 Yaki, I understand that when reports become final in
8 different time frames that it's possible that there's
9 new information or something that would cause material
10 to be reflected differently, right? So the passage of
11 time could lead to a bona fide substantive reason for
12 something to be different in a different time frame,
13 but there is the broader editorial concern about
14 alignment. So I just wanted to note that point for
15 clarity.

16 COMMISSIONER YAKI: Great. Thank you,
17 Commissioner. Commissioner Narasaki?

18 COMMISSIONER NARASAKI: Sorry,
19 Commissioner Adegbile. Are you done?

20 COMMISSIONER ADEGBILE: I am, and thanks
21 for the indulgence.

22 COMMISSIONER NARASAKI: Okay. So under
23 the due process line for the outline, number two is
24 language barriers/language access and then under that
25 is for discussion conditions of consignment needs and

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1 then understanding legal process and trust of process.

2 COMMISSIONER KLADNEY: Excuse me,
3 Commissioner. Where is that? You said number two --

4 COMMISSIONER YAKI: It's on Section 4,
5 Subsection 4, the second page --

6 COMMISSIONER KLADNEY: I got it.

7 COMMISSIONER YAKI: -- due process. Got
8 it? Okay.

9 COMMISSIONER NARASAKI: So Subsection
10 G(ii) and then 2 says legal cases, understanding the
11 process. So I am a little concerned that the legal
12 cases, understanding the process, is just under
13 language barriers. I think that's its own, I feel
14 like that its own section. It's not just an issue
15 about language barriers. Even if you speak English,
16 you may not understand it. So I didn't just quite
17 understand that.

18 COMMISSIONER YAKI: Okay. I believe
19 that's a good point. Let's break that down into its
20 own Subsection 3 and make sure that, if there's any
21 cross-pollination on language barriers, we note that.

22 COMMISSIONER NARASAKI: Yes. I just think
23 that there are process issues that aren't just about
24 whether you understand them or not that are going on.

25 COMMISSIONER YAKI: Yes, sure, sure. I

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1 agree. Okay. Anything else on the draft outline?
2 Seeing none, with the various representations, which
3 I'll have to get back to both Commissioner Kladney,
4 actually I should say to the subcommittee that have
5 been voiced by Commissioner Kladney and Commissioner
6 Adegbile. Do I have a motion to continue with this
7 outline, pending, of course, further adjustment by
8 staff or by others? And I'm not saying who's going to
9 do it. This is just a motion to approve the outline
10 as we've discussed it today. Is there any objection
11 to that going forward?

12 COMMISSIONER NARASAKI: This is
13 Commissioner Narasaki. I move that we adopt the
14 outline with the revisions that we have discussed and
15 that have been contemplated by this discussion.

16 COMMISSIONER YAKI: Great. Is there a
17 second? I'll second it. Is there objections to this
18 moved and seconded?

19 COMMISSIONER KLADNEY: So are we going to
20 be able to amend this later? I mean, if we're
21 adopting it, we're adopting it and I have all these
22 questions and Commissioner Adegbile has questions, so
23 how do we handle that in the future?

24 COMMISSIONER YAKI: This is being adopted
25 as a working document. It's not a final document, but

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1 it will give structure to go forward.

2 COMMISSIONER KLADNEY: Very good.

3 COMMISSIONER YAKI: And so it's been moved
4 and seconded. Any objections?

5 (No audible response.)

6 COMMISSIONER YAKI: Hearing none, this
7 will be seen as approved. Next, we'll move on to the
8 draft time line, and I'm going to, I know that Rukku
9 sent out a time line earlier. In discussions with her
10 and the staff, I'd like to change that. And so to
11 begin discussion, I move that we approve a project
12 time line of the commissioners and the special
13 assistants and direct we put updates, including
14 incorporating input from staff as their time allows.

15 The project outline time line that I move
16 for approval deviates from what was circulated last
17 week and calls for a first draft to commissioners by
18 Friday, July 12th; commissioner edits due back Friday,
19 July 26th; a final draft circulated by Friday, August
20 2nd; the commissioners of the subcommittee voting on
21 the final text on Friday, August 16th.

22 Is there a second for this?

23 COMMISSIONER NARASAKI: I'd like to note
24 that there also needs to be an adjustment to the
25 publication release date, which is still, July 31st

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1 was the original date which obviously needs to be
2 moved.

3 COMMISSIONER YAKI: Right. And I am
4 basically replacing dates, and we will leave the dates
5 for the publication blank for the time being.

6 COMMISSIONER NARASAKI: Okay.

7 COMMISSIONER YAKI: Again, is there a
8 second for this?

9 COMMISSIONER NARASAKI: Commissioner
10 Narasaki seconds.

11 COMMISSIONER YAKI: Okay. Any discussion
12 on this? I have discussion. I would like to bring
13 up, and this will go, of course, to the publication
14 date. We want it to be timely, but we also want this
15 to be done correctly. I would like to be able to
16 have, I think it's important that we have commissioner
17 statements. I do not believe it's important to have
18 commissioner statements, surrebuttals, rebuttals and
19 surrebuttals, but I would like to just throw out there
20 the idea that two weeks or a week, depending, after
21 the adoption of the text and vote by the full
22 Commission on the report or the subcommittee, I forget
23 already which will suffice to do, but whatever the
24 final action is by either the Commission or the
25 subcommittee that commissioners have an opportunity to

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1 have a statement incorporated in the updated report
2 but a statement only with no requirements and
3 allowance for rebuttals and surrebuttals. And
4 according to legal counsel, we have the ability to
5 deviate from A1-6 because of the special nature of
6 this update and, because it is not a full briefing or
7 a full report, we have that ability.

8 I just wanted to turn that out there for
9 discussion, and that's all I have in terms of anything
10 to say about the time line.

11 COMMISSIONER NARASAKI: This is
12 Commissioner Narasaki. Is this where we would discuss
13 how we want the staff, how we want the staff getting
14 the pieces done?

15 COMMISSIONER YAKI: Sure.

16 COMMISSIONER KLADNEY: First, Commissioner
17 Yaki, so general counsel said we can set our own time
18 limits on statements and all the rebuttals or all of
19 that, even though the full Commission has to approve
20 this report?

21 COMMISSIONER YAKI: Yes.

22 COMMISSIONER KLADNEY: Or does the full
23 Commission have to approve this report?

24 COMMISSIONER YAKI: My belief is that it
25 does. Because this is a supplement to a report and

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1 does not have a briefing attached to it or went to a
2 hearing and because it's simply adding to an existing
3 report, the usual rules of AIs do not, regarding
4 statements, rebuttals, and surrebuttals, do not apply.

5 COMMISSIONER KLADNEY: So before the
6 Commission votes on it, the statements would be made?

7 Is that what you're proposing and is that --

8 COMMISSIONER YAKI: No, I'm saying that --

9 COMMISSIONER KLADNEY: -- according to
10 legal counsel?

11 COMMISSIONER YAKI: No, I'm saying that
12 after the update is approved and prior to publication,
13 statements will be, there will be a deadline for
14 statements to be made. Just as we do with reports
15 now, statements would be due after the actual update
16 or, in this case, amended report would be approved
17 either by the subcommittee or the full Commission. I
18 believe it's going to be the full Commission. And
19 then there would be a deadline for statements to
20 begin.

21 COMMISSIONER KLADNEY: Okay. So on our
22 time line now, August 16th, you have the subcommittee
23 voting on the report. Are we going to have the date
24 for the Commission to vote on the report or it's going
25 to be sometime after that? Is that how we're going to

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1 frame that?

2 COMMISSIONER YAKI: I think that would
3 depend on the timing of the Commission calendar and
4 what's on the Commission calendar, but I don't want to
5 hem either us or the Commission date in, given that
6 things may flip between now and then. So this is just
7 a time line for us to get this date, get this date
8 done and approved and moving forward. And then if we
9 have to make any adjustments we will, but the idea
10 being that we will have our section done by mid-
11 August. I could see how it could be in the September
12 meeting. Hopefully, that's when it would be for
13 approval.

14 COMMISSIONER KLADNEY: Thank you.

15 COMMISSIONER YAKI: Any other comments or
16 discussion? Any strong feelings one way or the other
17 about commissioner statements and statements either as
18 a matter of --

19 COMMISSIONER NARASAKI: Commissioner Yaki?

20 COMMISSIONER YAKI: -- in this report?
21 Yes?

22 COMMISSIONER NARASAKI: Commissioner Yaki,
23 I don't have the same understanding about what the
24 general counsel's interpretation is of everything, so
25 I would suggest that that doesn't need to be settled

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1 now.

2 COMMISSIONER YAKI: Okay.

3 COMMISSIONER NARASAKI: Because I think
4 that's probably something that the whole Commission
5 probably needs to act on anyway.

6 COMMISSIONER YAKI: Okay. I just wanted
7 to put that out there. So with the amendment that the
8 publication release date on the proposed time line
9 would be left blank, with the changes proposed --
10 Commissioner Narasaki, you wanted to discuss staffing.

11 COMMISSIONER NARASAKI: Well, there's two
12 things. On the time line, so I think it needs to be
13 clear that Roman two, final report and vote, is final
14 report and vote of the subcommittee and not the full
15 Commission.

16 COMMISSIONER YAKI: Yes.

17 COMMISSIONER NARASAKI: And that before
18 publication and release, you actually need to have
19 another date which is to be figured out later, which
20 is the vote of the full Commission.

21 COMMISSIONER YAKI: I agree.

22 COMMISSIONER NARASAKI: So it was my
23 understanding that there are commissioners who are, I
24 think very legitimately, concerned because we lost a
25 month with the shutdown that this report, that we have

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1 to balance this report with or this whatever we're
2 calling it with all of the other reports that are
3 pending, given our limited staff capacity. So I think
4 people want to make sure that commissioners and staff
5 are all on the same page about the priorities in terms
6 of the other reports that need to get done by the end
7 of the year and that the intention is, one of the
8 reasons why we were discussing pushing back all of the
9 dates by a month was to enable us to use the intern
10 help that will be here this summer, which I support.
11 Commissioner Yaki, you and I will be sharing an
12 intern, and I think we could probably devote that
13 intern fully to whatever needs to happen with the
14 report. But I just wanted to make sure that all the
15 commissioners and staff were on the same page because
16 earlier we had discussed perhaps, like the general
17 counsel staff had offered perhaps that they would be
18 able to lend some support, but I think that people are
19 concerned about how that might impact getting all the
20 other reports done. So I just want to make sure we're
21 clear on who's doing what.

22 COMMISSIONER YAKI: Okay. Yes, it is a
23 motion on the outline, as well. It's commissioners,
24 SAs, and by that implication would be the supervision
25 of interns. That's why they gave us pushback. It

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1 contemplates any potential staff time as a level
2 required and necessary. I'm actually going to discuss
3 with the staff director whether we could have an
4 intern who might be willing to simply, under our
5 supervision, work directly on the report. That is
6 separate from the intern that you and I would share,
7 so I'm in discussions with that right now.

8 But, again, the idea is not to use paid staff time to
9 do this to the extent that it is humanly possible, and
10 I appreciate you working to push back the deadlines to
11 allow interns to be part of what I think would be a
12 very educational and useful process.

13 STAFF DIRECTOR MORALES: This is Staff
14 Director Morales. Can I weigh in momentarily here?

15 COMMISSIONER YAKI: Staff Director?

16 STAFF DIRECTOR MORALES: Yes, sir. I'd
17 like to go ahead and weigh in here. Can you hear me?

18 Yes, thank you. So I think, you know, given
19 everybody's obviously legitimate concerns about the
20 impact of current reports and briefings and everything
21 we have pending, we've, internally amongst the staff,
22 have discussed how we can, you know, participate
23 without impacting any other deadlines we have pending
24 or that the commissioners have voted on. So we've
25 preliminarily discussed a working group amongst OCRE,

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1 OGC, special assistants, and any administrative
2 assistants we may need. We believe, you know, we can
3 minimize, by working together as a team, minimize any
4 impact of other time lines and assist the subcommittee
5 in getting their document out that they wish to have.

6 And so that's been the commitment, and
7 we'll continue to work down that line. I think we
8 have a good working relationship amongst all of us.
9 And as all of us are equally concerned about the
10 impact on women and children, I think folks feel, you
11 know, they're willing to volunteer whatever extra time
12 they have to accomplish this. So thank you.

13 COMMISSIONER KLADNEY: I don't know what
14 that means, Mr. Director, in terms of staff time for
15 this project because it's my understanding the
16 Commission has already voted there would be no staff
17 time, except as the chair, our subcommittee chair said
18 just as necessary, like if it needs legal review or
19 something like that. But that's my understanding of
20 what the Commission itself directed, and I don't know
21 if we can change that sua sponte without their
22 permission.

23 STAFF DIRECTOR MORALES: Well, you and I
24 had a pretty good conversation the other day, and I
25 assured you that there would be no impact to reports,

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1 including your report, coming. And, you know, I think
2 the staff wants to help, and I think everybody
3 understands that we don't want to impact any other
4 deadlines. But if they feel that they can volunteer
5 and assist, then we want to make sure and assure it's
6 a high-quality report, along with all the other things
7 that we've done, Commissioner, and I'm committed to
8 not impact any other deadlines and make sure that we
9 accomplish what the commissioners need and what the
10 subcommittee would like done.

11 COMMISSIONER KLADNEY: That's fine with
12 me, Mr. Director. It's just that we have to take that
13 input from the Commission that you're talking about
14 working on it or just doing supplemental at the
15 committee's request. I'm not exactly sure where we
16 are in terms of what the Commission has directed of
17 this subcommittee.

18 GENERAL COUNSEL RUDOLPH: May I weigh in
19 on that for just one moment?

20 COMMISSIONER YAKI: Yes.

21 GENERAL COUNSEL RUDOLPH: Thank you.
22 Commissioner Kladney, I've gone back and looked at the
23 specific delegation that was given by the full
24 Commission to the subcommittee, along with, at the
25 time, what was a four-part motion by Commissioner

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1 Yaki. And while there was, with regard to the motion,
2 there were, of course, you know, concerns about
3 impacting other time lines in there and, you know, as
4 is always our concern, there was not actually a
5 specific prohibition on staff working on this project.

6 So I just wanted to clarify that for everyone who is
7 on the phone. Thank you.

8 COURT REPORTER: Excuse me. This is the
9 court reporter. Can that speaker recite their name?

10 GENERAL COUNSEL RUDOLPH: Oh, I'm sorry.
11 This is Maureen Rudolph. I apologize.

12 COURT REPORTER: Thank you.

13 COMMISSIONER YAKI: Any other comments,
14 Commissioner Kladney?

15 COMMISSIONER KLADNEY: No.

16 COMMISSIONER YAKI: Okay. On the --

17 COMMISSIONER KLADNEY: As long as --
18 excuse me. I just want to, for the record, state that
19 there will be no delay in any other reports pending,
20 according to the Director. Thank you.

21 STAFF DIRECTOR MORALES: I'd like to
22 clarify that, if I may. No changes pending that will
23 impact from the work that the subcommittee is doing or
24 the work that the staff will be doing for the
25 subcommittee. There could be other circumstances that

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1 have nothing to do with the subcommittee that could
2 impact release of reports, so I just want to make sure
3 that we're clear on that, that the work that we're
4 doing, the commitment is to not impact whatever work
5 that the staff does to help the subcommittee. Okay?
6 Thank you.

7 COMMISSIONER YAKI: Right.

8 COMMISSIONER KLADNEY: You're saying,
9 absent any unforeseen, absent any unforeseen
10 occurrence of another --

11 COMMISSIONER YAKI: Yes, I mean, basically
12 --

13 MR. MORALES: So thank you.

14 COMMISSIONER YAKI: I believe the staff
15 director was very clear, to the extent they can help
16 in any way that does not prejudice their ability to do
17 any other work. Of course, if the government shuts
18 down, all bets are off.

19 Okay. So I'm going to go back to the
20 motion, and that is adjust the project time line to
21 first draft set at Friday, July 12th; commissioner
22 edits Friday, July 26th; final draft to the Committee
23 on Friday, August 2nd; the subcommittee voting on
24 Friday, August 16th; vote by the Commission to be
25 determined; vote on publication date and the issue on

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1 commissioner statements to be deferred.

2 Is there any objection as to this motion?

3 Is there a second?

4 COMMISSIONER ADEGBILE: Second.

5 COMMISSIONER YAKI: That sounded like
6 Commissioner Adegbile. Any discussion? Being none,
7 this motion is adopted. Colleagues, thank you very
8 much. There will be no -- any other business any of
9 the commissioners would like to raise with regard to
10 this and not on the agenda? Otherwise, I will adjourn
11 the Committee. Going once, going twice.

12 **IV. ADJOURN MEETING**

13 COMMISSIONER YAKI: The subcommittee is
14 adjourned. Thank you very much.

15 (Whereupon, the above-entitled matter went
16 off the record at 2:25 p.m.)

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