

U.S. COMMISSION ON CIVIL RIGHTS

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PUBLIC BUSINESS MEETING

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THURSDAY, JANUARY 30, 2020

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The Commission convened via  
teleconference at 10:30 a.m., Catherine Lhamon,  
Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

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(10:32 a.m.)

CHAIR LHAMON: This meeting of the U.S. Commission on Civil Rights comes to order at 10:32 a.m. Eastern Time on January 30, 2020. The meeting takes place over the phone. I'm Chair Catherine Lhamon. I would like to confirm each of the Commissioners is on the line, so I'll take the roll call here at the outset. Please say present when I say your name.

Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I'm here.

CHAIR LHAMON: Commissioner Kirsanow.

Commissioner Kirsanow, are you on the line?

COMMISSIONER KIRSANOW: I'm sorry. I was on mute. I'm here.

CHAIR LHAMON: Thank you. Commissioner Kladney.

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Here.

CHAIR LHAMON: Thank you. Based on that, a quorum of the Commissioners is present.

1 Is the Court Reporter present?

2 COURT REPORTER: Yes, ma'am.

3 CHAIR LHAMON: Thank you. Is the Staff  
4 Director present?

5 MR. MORALES: I am present.

6 CHAIR LHAMON: Thank you. The meeting  
7 shall now come to order.

8 AGENDA ITEM 1 - APPROVAL OF THE AGENDA

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

11 COMMISSIONER ADEGBILE: Commissioner  
12 Adegbile, so moved.

13 CHAIR LHAMON: Thank you. Is there a  
14 second?

15 COMMISSIONER KLADNEY: Dave Kladney, I  
16 second.

17 CHAIR LHAMON: Thank you. I'll begin the  
18 comments on amendments with one of my own. I move to  
19 amend the agenda to add consideration of a statement  
20 expressing concern about the treatment of Iranian  
21 Americans at our borders. Do I have a second?

22 COMMISSIONER ADEGBILE: Commissioner  
23 Adegbile seconds.

24 CHAIR LHAMON: Thank you. If there are no  
25 amendments in addition to that one, let's vote to

1 approve the agenda as amended. Are there any others?

2 Hearing none, I vote to approve the agenda  
3 as amended. All those in favor, say aye.

4 (Chorus of aye.)

5 CHAIR LHAMON: Any opposed? Any  
6 abstentions? The motion passes unanimously.

7 AGENDA ITEM 11.A - DISCUSSION AND VOTE ON CHAIR FOR  
8 ARKANSAS ADVISORY COMMITTEE TO THE COMMISSION

9 CHAIR LHAMON: The first item on our  
10 agenda is a discussion and vote on a new chair for the  
11 Arkansas Advisory Committee to the Commission. Based  
12 on the recommendation of the Staff Director, I move  
13 that the Commission appoint Robert Steinbrook to serve  
14 as chair of the Arkansas Advisory Committee. Do I  
15 have a second for this motion?

16 COMMISSIONER YAKI: Second from  
17 Commissioner Yaki.

18 CHAIR LHAMON: I heard Commissioner Yaki  
19 second. Thank you.

20 Is there any discussion on this? Hearing  
21 none, I'll call the question and take a roll call  
22 vote. Commissioner Adegbile, how do you vote?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Heriot.

25 COMMISSIONER HERIOT: I vote yes.

1 CHAIR LHAMON: Commissioner Kirsanow.

2 COMMISSIONER KIRSANOW: Abstain.

3 CHAIR LHAMON: Commissioner Kladney.

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Yaki.

6 COMMISSIONER YAKI: Aye.

7 CHAIR LHAMON: I vote yes. The motion  
8 passes. No Commissioner opposed. One Commissioner  
9 abstained. All others were in favor.

10 AGENDA ITEM 11.B - DISCUSSION AND VOTE ON TIMELINE,  
11 DISCOVERY PLAN AND OUTLINE FOR COMMISSION PROJECT ON  
12 MATERNAL HEALTH DISPARITIES

13 CHAIR LHAMON: The next item on our agenda  
14 is the discussion and vote on discovery materials.  
15 That means the discovery plan, and outline, and  
16 timeline for the Commission project on maternal health  
17 disparities. To begin discussion, is there a motion?

18 COMMISSIONER ADEGBILE: Madam Chair, this  
19 is Commissioner Adegbile and I move to adopt the  
20 timeline, outline, and research plan of the Maternal  
21 Healthcare Project as circulated to all Commissioners  
22 by the Director of OCRE, Kathy Culliton-Gonzalez, on  
23 January 22nd at 5:45 p.m.

24 COMMISSIONER KIRSANOW: Could you be a  
25 little bit more precise about that?

1 (Laughter.)

2 COMMISSIONER ADEGBILE: Commissioner  
3 Kirsanow, you know from our long practice that I'm  
4 doing as ARENA (phonetic) directs me. Otherwise, I  
5 would have been a lot less precise.

6 COMMISSIONER YAKI: But you did not  
7 specify the time zone, Commissioner Adegbile, so there  
8 was a flaw there.

9 CHAIR LHAMON: And I will just remind my  
10 fellow Commissioners -- I will remind my fellow  
11 Commissioners that we are on a telephonic meeting so  
12 please say your name as you speak.

13 COMMISSIONER YAKI: That was Kladney.

14 (Laughter.)

15 CHAIR LHAMON: Let the record reflect  
16 that Commissioner Yaki said that that was Kladney.

17 COMMISSIONER ADEGBILE: Sorry,  
18 Commissioner Adegbile would just like to add this is  
19 part of my 2020 improvement plan

20 CHAIR LHAMON: Is there a second to  
21 Commissioner Adegbile's motion?

22 COMMISSIONER KLADNEY: Dave Kladney,  
23 second.

24 CHAIR LHAMON: Thank you. There are  
25 substantial movements we can hear on the phone, so if

1 you're not speaking, if you could mute, that would be  
2 helpful. Thank you.

3 Commissioner Adegbile, as the sponsor of  
4 this project would you like to begin the discussion?

5 COMMISSIONER ADEGBILE: Absolutely. Thank  
6 you to my fellow Commissioners for approving this  
7 important topic and examination for the Commission.

8 As we have discussed, the United States  
9 has the worst rate of maternal death in the developed  
10 world, and current data suggest that black women in  
11 our nation experience unacceptably poor maternal  
12 health outcomes including disproportionately high  
13 rates of death related to pregnancy or childbirth when  
14 compared to other people.

15 The Commission's investigation will  
16 analyze the current data regarding pregnancy-related  
17 and pregnancy associated deaths, including data  
18 collected by the Centers for Disease Control and  
19 Prevention, the National Institute of Minority Health  
20 and Health Disparities, and the Department of Health  
21 and Human Services State Partnership Initiative to  
22 address health disparities.

23 The Commission will also examine the  
24 current efforts of HHS offices regarding the  
25 prevention of disparities in maternal health outcomes

1 including the Office of Civil Rights Administration  
2 for Children and Families, Center for Medicare and  
3 Medicaid Services, and the Office of Minority Health.

4 The Commission's investigation and the  
5 subsequent report will aim to inform the work being  
6 carried out in the federal government and to address  
7 racial disparities in maternal health outcomes more  
8 broadly.

9 I would like to offer special thanks to  
10 Sarale Sewell of OCRE, and the OCRE director Kathy  
11 Culliton-Gonzalez for the considerable work that they  
12 have already invested in preparing for this briefing.  
13 I look forward to our briefing which will occur on  
14 March 20th. I don't yet have the start time but I  
15 will amend my remarks and provide time zones. Once I  
16 do, I appreciate your consideration and welcome  
17 discussion of the materials.

18 CHAIR LHAMON: Thank you, Commissioner  
19 Adegbile. Is there any other discussion of this  
20 motion? Hearing none, I'll call the question and take  
21 a roll call vote.

22 Commissioner Adegbile, how do you vote?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Heriot.

25 COMMISSIONER HERIOT: Abstain.

1 CHAIR LHAMON: Commissioner Kirsanow.

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIR LHAMON: Commissioner Kladney.

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Yaki.

6 COMMISSIONER YAKI: I would like to -- I  
7 did not get to say earlier that I wholly support this,  
8 having been a head in a local government that ran a  
9 county, a hospital system where we saw this first hand  
10 including birth defects and other things that occurred  
11 during the maternal process. This is a very important  
12 subject, and I vote aye.

13 CHAIR LHAMON: Thank you. I vote yes.  
14 The motion passes. No Commissioner opposed. One  
15 Commissioner abstained. All others are in favor.

16 AGENDA ITEM II.C - DISCUSSION AND VOTE

17 CHAIR LHAMON: The next item on our  
18 amended agenda is a discussion and vote on a proposed  
19 statement expressing concern over the treatment of  
20 Iranians and Iranian Americans at our borders.

21 Before we begin the discussion, as is our  
22 custom, I will read the statement so we are clear what  
23 we are voting on. The title is the U.S. Commission on  
24 Civil Rights Expresses Concern Over Treatment of  
25 Iranian Americans.

1                   And the text of the statement is: "The  
2 U.S. Commission on Civil Rights expresses deep concern  
3 over the treatment of Iranians and Iranian Americans  
4 in airports, and calls on the Department of Homeland  
5 Security to take all necessary steps immediately to  
6 ensure equitable treatment of all people at America's  
7 borders and on the Department of Homeland Security's  
8 Office of Civil Rights and Civil Liberties to  
9 investigate reports of discriminatory treatment of  
10 Iranians and Iranian Americans at our borders and  
11 within the United States.

12                   "In early 2020, news reports emerged of  
13 Iranians -- including American citizens who are of  
14 Iranian descent -- who were subjected to particular  
15 and intense scrutiny by Customs and Border Patrol  
16 agents. This is in addition to the multiple news  
17 reports of Iranians with valid visas who were  
18 subjected to similar scrutiny, and in some instances  
19 barred from actually entering the United States.

20                   "Further, it seems that these actions are  
21 not based on any particularized suspicion or security  
22 risk. Accordingly, these reports appear to be the  
23 latest in a trend of federal actions that may be  
24 motivated by national origin and anti-Muslim, anti-  
25 immigrant sentiments advanced by the Administration.

1                    "In our recent investigation into hate  
2 crimes and the federal government's role in combating  
3 and preventing these incidents, the Commission heard  
4 testimony from several experts about the impact of  
5 policy decisions and other actions by an  
6 Administration that can `contribute to a climate of  
7 fear and hate.'

8                    "It is particularly alarming that in at  
9 least one instance, a federal judge issued an order to  
10 stay the removal of an Iranian student, but  
11 authorities still forced the student's departure from  
12 the United States.

13                   "Our democracy and protections enshrined  
14 in our constitution and law depends on checks and  
15 balances and recognition of the essential roles of the  
16 judicial branch. It remains imperative that our  
17 leadership not foster fear of and hostility against  
18 non-Americans.

19                   "Chair Catherine E. Lhamon expressed her  
20 concern: 'Regardless of religion, race, or national  
21 origin, all those at America's door deserve to be  
22 treated with respect and equally subject to the laws  
23 of the United States. And at no time is it ever  
24 lawful or appropriate to treat American citizens  
25 differently based on religion, race, or national

1 origin.'

2 "Freedom to move within our borders is  
3 fundamental to being American. The Commission calls  
4 on all leaders of the United States to resoundingly  
5 condemn actions to the contrary, and for the  
6 Department of Homeland Security to investigate these  
7 reported civil rights violations."

8 To open the floor for discussion, I move  
9 to approve the statement as I just read it and as  
10 stipulated by my special assistant on Wednesday,  
11 January 29th. Do I have a second?

12 COMMISSIONER YAKI: Second by Commissioner  
13 Yaki.

14 CHAIR LHAMON: Thank you. I'll begin our  
15 discussion with a few points. This statement is the  
16 latest in a series of statements that we as the United  
17 States Commission on Civil Rights have felt compelled  
18 to make about alarming reports of discrimination on  
19 the basis of national origin and religion at the hands  
20 of the federal government.

21 Once again, we cannot let the record stand  
22 that these actions are what American stands for.  
23 Today, January 30 is the day that we here in  
24 California where I live commemorate Fred Korematsu Day  
25 of Civil Liberties and the Constitution. It marks the

1 birthday of Fred Korematsu, the Japanese American  
2 Civil Rights activist who challenged the internment of  
3 Japanese Americans during World War II.

4 Remembering Fred Korematsu, as we heard so  
5 compellingly in 2017 from Karen Korematsu, Fred  
6 Korematsu's daughter, is critical. The internment of  
7 Japanese Americans was a dark time in American  
8 history. And a Supreme Court case endorsing the  
9 President's orders on internment remained the law  
10 until very recently.

11 Watching the combination of hostile  
12 messages from leaders in this country alongside the  
13 enactment of policies expressing similar hostilities,  
14 should give everyone reason for concern that we may be  
15 returning to those dark days in America's past that  
16 many thought we had left behind.

17 Today's statement to me is an important  
18 marker for us that we will not return to those days  
19 and that the Commission stands ready to protect and  
20 watch for all Americans' civil rights.

21 I'll open the floor for my fellow  
22 Commissioners' discussion on the statement.

23 COMMISSIONER HERIOT: Madam Chair.

24 CHAIR LHAMON: Commissioner Heriot.

25 COMMISSIONER HERIOT: I would be much more

1 inclined to send something that simply inquires as to  
2 what the policy is. My understanding is that some of  
3 the stuff reported in the Washington Post the  
4 Administration denies. It seems to be much more  
5 effective rather than talking about a climate of fear  
6 and hate to find out what the policy is.

7 CHAIR LHAMON: Well, Commissioner Heriot,  
8 in the statement, if it is voted for, the statement  
9 does call for the Department of Homeland Security to  
10 investigate the reports, and that investigation would  
11 include finding out whether the reports are fully  
12 accurate and what the concern. I think it is  
13 incredible --

14 COMMISSIONER HERIOT: There's no inquiries  
15 that would allow us to find out what happened here.  
16 Instead most of this is accusatory. Let's find out  
17 what the policy is.

18 CHAIR LHAMON: Commissioner Heriot, I'll  
19 just remind you that we are in a telephonic meeting so  
20 when one Commissioner is speaking, let the  
21 Commissioner finish. And as I was saying, the  
22 investigation that the statement calls for would find  
23 out both what policy is and what actual practice is,  
24 and whether the reports are fully accurate and what  
25 has happened.

1           There is certainly a basis for concern  
2           that I feel, that I know many Americans feel, about  
3           what is happening at our borders and a reason for this  
4           Commission to call on assurance from the Department of  
5           Homeland Security that all who come to our borders  
6           will be treated equally.

7           COMMISSIONER HERIOT: You don't actually  
8           ask them to report to the Commission. Instead it's  
9           basically an accusatory statement. You're not going  
10          to get a report based on this statement; it's just not  
11          going to happen. You're going to get their backs up,  
12          for one thing, but it doesn't call upon the Department  
13          to report to us. I mean I think that's what you want  
14          to do.

15          CHAIR LHAMON: That's actually not what I  
16          want to do, which is why it's not what I asked for in  
17          the statement. But I appreciate that you and I have  
18          different paths.

19          I feel concern, and I hope we all feel,  
20          following our fiscal year 2019 investigation, that the  
21          Department of Homeland Security lacks sufficient  
22          resources in its Office of Civil Rights and Civil  
23          Liberties to be able to investigate all reports that  
24          come to us.

25          And I think it's important for that office

1 to hear from this Commission that this Commission  
2 believes it is important for it to investigate these  
3 very serious allegations that have been reported.

4 COMMISSIONER KIRSANOW: Madam Chair,  
5 Kirsanow here.

6 CHAIR LHAMON: Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: Thank you. At  
8 this point I think I'm probably inclined to at best  
9 abstain for similar reasons that Commissioner Heriot  
10 articulated. I read all of the media reports that are  
11 footnoted in the statement, and it's unclear to me  
12 based on that that the Customs and Border Protection  
13 folks have violated the -- I think it's the protocol  
14 that is set forth in footnote 3.

15 It looks like it was established under  
16 Obama Administration. It says the use of race should  
17 not be considered, or national origin, unless to the  
18 extent there is trustworthy information relevant to  
19 the locality or time frame that links persons  
20 possessing a particular listed characteristic to an  
21 identified criminal incident, scheme, organization, or  
22 a threat to national security.

23 I don't know if all these individuals did.  
24 I don't know what the reports are because they are  
25 media reports that the Customs and Border Patrol

1 denies. They say that reports that Iranian Americans  
2 are being refused entry because of country of origin  
3 are false. But we're not addressing this in a vacuum.

4 Just a few weeks ago, we had a strike  
5 against Soleimani, and we had retaliatory strikes and  
6 promises of -- not promises, threats of further  
7 retaliatory strikes that came from the top of the  
8 Iranian regime, and we can't discount the fact that  
9 Iran is the world's greatest sponsor of terrorism.  
10 They are responsible for hundreds of American deaths.

11 So in that context, I would like a lot  
12 more information about what is being done to implement  
13 this particular protocol, how is it being implemented,  
14 to what extent are they violating the protocol. And  
15 none of that is contained in reports that I see other  
16 than the Border Protection says they're false.

17 CHAIR LHAMON: Commissioner Kirsanow, I  
18 think you're quite right that the stated policy is  
19 that where there's particularized suspicion, then more  
20 intense scrutiny may be warranted. And the draft  
21 statement is careful to recognize both that policy and  
22 that there does not appear in the news reports to have  
23 been a nexus between such particularized suspicion and  
24 the treatment of Iranians including Iranian Americans  
25 at the border.

1           The reason to call on the Department of  
2 Homeland Security to investigate those reports is to  
3 evaluate the degree to which particularized suspicions  
4 may have existed, and the degree to which the reports  
5 are or are not accurate.

6           It is also I think imperative for this  
7 Commission to remind our country of our stated values  
8 and our long-standing policy of non-discrimination  
9 including at the border, and there are now huge  
10 concerns among many Americans about the way that some  
11 among us are treated and will be treated when crossing  
12 and coming to the borders.

13           That's the reason for asking for an  
14 investigation and asking for public assurance that our  
15 non-discrimination values and principles will continue  
16 to be lived.

17           COMMISSIONER YAKI: This is Commissioner  
18 Yaki. May I be recognized?

19           CHAIR LHAMON: Commissioner Yaki, go  
20 ahead.

21           COMMISSIONER YAKI: Part of me understands  
22 the purely data-focused nature of both Commissioner  
23 Kirsanow and Commissioner Heriot's concerns. And if  
24 there is a way to add something in there to get their  
25 support, that would be acceptable to me. But I would

1 like to take the lens back a little bit from this  
2 closeup and circle back to something that the Chair  
3 had said earlier.

4 Korematsu. I knew Mr. Korematsu, and one  
5 of the greatest moments of my political life was being  
6 with him on a panel, having dinner with him  
7 afterwards, talking to him and his family, and getting  
8 to know him during the time that he was on this earth.

9 The fallacy that people have is that  
10 somehow the coronavirus cases is brought by people  
11 including our former Commissioner Karen Narasaki.  
12 They vindicated the individuals, but they did not  
13 vindicate the constitutional position.

14 Korematsu is still recognized by many  
15 legal scholars as -- the underpinning of Korematsu is  
16 still constitutional law. That stain still remains,  
17 but it remains in a way that it continues to be -- can  
18 be, and could be, invidiously applied in any situation  
19 including when Commissioner Kirsanow said when he  
20 described what threats Iran's government made against  
21 us after our assassination of Qasem Soleimani.

22 This is the kind of reaction that could  
23 still be justified under Korematsu, and it goes beyond  
24 detention or examination at the airport and follows  
25 that person into their community and into their homes

1 and into their families and others.

2 This is just -- in many ways, this letter  
3 is just a marker for concern about a policy at a  
4 border fed by the same kind of paranoia that led to  
5 the internment of my father and his family in 1942.  
6 So I support this, but I would say there are broader  
7 implications here beyond the border, beyond a policy.

8 It's whether or not the government is  
9 using a justification that can be used in furtherance  
10 of the types of policies that still unfortunately  
11 remain within the constitutional interpretation of the  
12 due process and equal protection clauses of this  
13 country.

14 CHAIR LHAMON: Thank you, Commissioner  
15 Yaki. Is there further discussion? Hearing none,  
16 I'll call the question and take a roll call vote.

17 Commissioner Adegbile, how do you vote?

18 COMMISSIONER ADEGBILE: Aye.

19 CHAIR LHAMON: Commissioner Heriot.

20 COMMISSIONER HERIOT: Abstain.

21 CHAIR LHAMON: Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: Abstain.

23 CHAIR LHAMON: Commissioner Kladney.

24 COMMISSIONER KLADNEY: Yes.

25 CHAIR LHAMON: Commissioner Yaki.

1 COMMISSIONER YAKI: Aye.

2 CHAIR LHAMON: And I vote yes. The motion  
3 passes unanimously. Two Commissioners abstained. All  
4 others were in favor.

5 Next we will hear from Staff Director  
6 Mauro Morales for the Monthly Staff Director's Report.

7

8 AGENDA ITEM 11.D - STAFF DIRECTOR'S REPORT

9 MR. MORALES: Thank you, Madam Chair. I  
10 just wanted to let you know I have nothing further to  
11 add that isn't already contained in the report. I'm  
12 always available to discuss with any Commissioners any  
13 particular items that you see in the report.

14 I would, however, like to take a moment to  
15 acknowledge the work of Brian Wallach and LaShonda  
16 Brenson. They have recently left our agency and we  
17 want to wish them well. We thank them for their  
18 service and dedication to the Commission and the work  
19 that we do in carrying out our mission over the last  
20 few years. We really wish them well and hope that  
21 they thrive in their new endeavor. So thank you all.  
22 We wish you the best, and we'll wish them well. Thank  
23 you.

24 CHAIR LHAMON: Thank you, Mr. Morales.

25 III. ADJOURN MEETING

1                   CHAIR LHAMON: That concludes the business  
2 on the agenda for today's business meeting. If there  
3 is nothing further, I hereby adjourn the meeting at  
4 10:56 a.m. Eastern Time. Thank you all.

5                   (Whereupon, the above-entitled matter went  
6 off the record at 10:56 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Business Meeting

Before: USCCR

Date: 01-30-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



-----  
Court Reporter

**NEAL R. GROSS**

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