

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, MAY 8, 2020

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The Commission convened via
Teleconference at 10:00 a.m. EDT, 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

MAUREEN RUDOLPH, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD

MILDRED EDWARDS, Kansas SAC Member

ANNE LOFASO, West Virginia SAC Member

TINALOUISE MARTIN

DAVID MUSSATT

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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P R O C E E D I N G S

(10:01 a.m.)

OPERATOR: Good day and welcome to the Commission's telephonic business meeting. Today's meeting is being recorded. At this time, I would like to turn the conference over to Chair Catherine Lhamon. Please go ahead, ma'am.

CHAIR LHAMON: Thank you. This meeting of the U.S. Commission on Civil Rights comes to order at 10:01 a.m. Eastern Time on May 8, 2020. The meeting takes place over the phone. I'm Chair Catherine Lhamon.

I'd like to confirm that each of the commissioners is on the line, so I'll take a roll call here at the outset. Please say "present" when I say your name. Commissioner Adegbile? Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIR LHAMON: Thank you. Based on that,

1 a quorum of the commissioners is present. Is the
2 court reporter present?

3 COURT REPORTER: I'm here.

4 CHAIR LHAMON: Is the court reporter
5 present?

6 COURT REPORTER: Yes, sorry. I must have
7 been muted. I'm here.

8 CHAIR LHAMON: Thank you. Is the staff
9 director present?

10 MR. MORALES: I am present.

11 CHAIR LHAMON: Thank you. The meeting
12 shall now come to order.

13 I. APPROVAL OF AGENDA

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

16 COMMISSIONER KLADNEY: This is Kladney.
17 I move to approve the agenda.

18 CHAIR LHAMON: Thank you. Is there a
19 second?

20 COMMISSIONER YAKI: Commissioner Yaki
21 seconds.

22 CHAIR LHAMON: Thank you. I'll begin the
23 call for amendments with one of my own. I move to
24 amend the agenda to add a discussion and vote on
25 fiscal year 2020 program planning. Do I have a

1 second?

2 COMMISSIONER ADEGBILE: Commissioner
3 Adegbile seconds.

4 CHAIR LHAMON: Thank you and welcome. Are
5 there any other amendments? Commissioner Yaki, I
6 believe you had some amendments.

7 COMMISSIONER YAKI: Yeah, I did, sorry.
8 I'd like to amend the agenda to include a few
9 statements to be considered by the Commission. The
10 first is -- say what?

11 CHAIR LHAMON: No one said anything. Go
12 ahead.

13 COMMISSIONER YAKI: The first is statement
14 Announcing Opposition to the Executive Branch Action
15 Shutting Down Immigration for Permanent Residence
16 Seekers into the United States, and another statement
17 on Secure Nondiscrimination in the COVID-19 Pandemic
18 Context to Address Anti-Asian Racism and Xenophobia.

19 CHAIR LHAMON: Thank you, Commissioner
20 Yaki, and just for the court reporter's sake, I think
21 that you're a bit muffled as you're speaking, so maybe
22 move a little bit away from the mic. Is there a
23 second for Commissioner Yaki's motion?

24 COMMISSIONER KLADNEY: Dave Kladney, I'll
25 second.

1 CHAIR LHAMON: Are there any further
2 amendments? Hearing none, let's vote to approve the
3 agenda as amended. All those in favor, say, "Aye."

4 (Chorus of aye.)

5 CHAIR LHAMON: Any opposed? Any
6 abstentions? The motion passes unanimously. We will
7 hear first on our agenda from our West Virginia
8 Advisory Committee Member Anne Lofaso on the
9 Committee's Advisory Memorandum on the Interaction
10 Between Individuals with Mental Health Issues and the
11 Criminal Justice System in West Virginia. Ms. Lofaso?

12 MS. LOFASO: I just want to make sure
13 everyone can hear me.

14 CHAIR LHAMON: Yes, thank you very much.

15 A. PRESENTATION BY ANNE LOFASO

16 MS. LOFASO: Okay, Madam Chair and
17 Commissioners, on behalf of the members of the West
18 Virginia Advisory Committee, I hope that you and your
19 loved ones are keeping well during these uncertain
20 times.

21 I thank you for this opportunity to
22 present the Committee's published advisory memorandum
23 titled Interactions Between Individuals with Mental
24 Health Issues and the Criminal Justice System in West
25 Virginia.

1 Let me explain the origins of this
2 advisory memorandum. It was issued by the previously
3 appointed 2015-2019 West Virginia State Advisory
4 Committee which summarizes the work of the 2013-2015
5 Committee's daylong public briefing on mental health
6 and the criminal justice system in West Virginia.

7 Those members took testimony from experts
8 in a public hearing in Charleston, West Virginia on
9 August 14, 2015. Unfortunately, the members' terms
10 ended on November 17, 2015 before the plan's report
11 could be prepared and published.

12 This inability to issue the report during
13 the two-year appointment resulted from the significant
14 reduction in regional program staffing over the years.

15 This longstanding challenge for advisory
16 committees to select, examine, and advise the
17 Commission was one of the major reasons the Commission
18 agreed with regional staff recommendations that
19 Committee members' appointment terms be extended
20 beyond two years.

21 Starting in 2015, they were extended in
22 hopes that a four-year term would provide committees
23 with sufficient time to meet their advisory mandates.
24 The 2015-2019 West Virginia Advisory Committee
25 completed work on its civil rights project in 2019.

1 This report, Civil Rights Impacts and
2 Collateral Consequences in West Virginia, was
3 published in September 2019 and Committee Chair Lisa
4 Younis presented that report to the Commission the
5 same year on December 5.

6 There was insufficient time to examine a
7 new civil rights project. However, the committee
8 members recognized the rich record generated at the
9 2015 briefing and agreed to advise the Commission
10 about that examination.

11 The advisory memorandum is organized in
12 five parts. Part A states the problem. Part B
13 highlights the experts' presentations around several
14 common themes. Part C summarizes their observations
15 and conclusions. Part D provides a legislative
16 update, and Part E identifies possible future issues
17 for review.

18 The following five themes emerged from the
19 record. One, the criminal justice system cannot
20 adequately service individuals with mental health
21 issues.

22 Two, mental health courts significantly
23 reduce recidivism rates.

24 Three, increased and continuous training
25 and education of law enforcement agents about how to

1 interact with individuals with mental health issues
2 will reduce police encounters.

3 Four, although individuals with mental
4 health issues often have substance abuse issues, these
5 diseases should not be conflated. They should be
6 treated separately and also holistically.

7 And five, community-based care is a
8 necessary addition to West Virginia's approach to
9 treating individuals with mental health issues. Such
10 care can alleviate the burden on the criminal justice
11 system.

12 The panelists also agreed on six key
13 observations and conclusions. One, the West Virginia
14 criminal justice system generally lacks the tools
15 necessary to treat individuals with mental health
16 issues.

17 Two, more data are needed to accurately
18 measure the number of individuals with mental health
19 issues in the criminal justice system.

20 Three, continuously diverting funds from
21 community-based programs means jails and prisons will
22 continue as the lead providers for individuals with
23 mental health issues.

24 Four, untreated individuals with mental
25 health issues are likely to be re-arrested.

1 Five, individuals with mental health
2 issues often also have substance abuse issues.

3 And six, more training of all actors in
4 the criminal justice system is needed to identify and
5 properly interact with individuals with mental health
6 issues.

7 The 2015-2019 committee had insufficient
8 time to update the briefing record. However, the
9 advisory memorandum does include the legislative
10 update.

11 In 2019, the state legislature passed
12 legislation re-establishing veterans' treatment
13 courts, including the veterans' court component of the
14 northern panhandle mental health court that had been
15 abolished in 2017 for budgetary reasons.

16 This advisory memorandum has been shared
17 with the newly appointed 2019-2023 West Virginia
18 Advisory Committee.

19 The August 2015 briefing left open many
20 key questions for future study, for example, whether,
21 how, and to what extent increasing data collection
22 would help experts more adequately address this
23 problem?

24 How different are the mental hygiene and
25 involuntary commitment processes from their

1 counterparts in other states? If very different,
2 should West Virginia change its process to come more
3 in line with the processes of other states?

4 Is there a difference in recommended
5 treatments for juveniles and adults, veterans and non-
6 veterans? If so, what are those differences?

7 What are the pros and cons of combining
8 mental health courts, drug courts, and veterans courts
9 versus keeping them separate?

10 At the time of the hearing, information
11 gains by a 2014 partnership between West Virginia and
12 Pew Charitable Trust's Results First Initiative
13 regarding the cost of mental health courts in West
14 Virginia and the benefit of expected return was
15 expected soon. What were the results of that project?

16 Guidance from the regional program unit
17 cautioned against using time to acknowledge committee
18 members and Commission staff, but I must make a short
19 showing of gratitude.

20 First, I thank the members of the 2013-
21 2015 advisory committee for examining this most
22 important issue, and of course I thank the 2015-2019
23 committee for agreeing to publish this memorandum, and
24 to a person, they were committed to advising the
25 Commission about what we've learned from the 2015

1 briefing.

2 I'm a professor of law at the West
3 Virginia University College of Law and I especially
4 want to thank four class of 2021 law students, Mathew
5 Marshall, Andrew Matus, Timothy Moore, and Brice
6 Phillips, who met weekly with the West Virginia
7 Advisory Committee's designated federal official and
8 me throughout the summer of 2019, and without whom the
9 previously appointed advisory committee members could
10 not have agreed unanimously to publish this document.

11 By the way, the students reported that it
12 was the most exciting project they had worked on
13 during their first year. And my thanks to the
14 Commission for giving the West Virginia Advisory
15 Committee the resources that allowed this review to be
16 conducted.

17 In conclusion, the advisory memorandum
18 sheds light on two significant trends. First is the
19 well-intentioned but misguided treatment of persons
20 with mental illnesses who encountered the criminal
21 justice system, and second is the conflation of mental
22 illness and drug addiction.

23 Given the current opioid epidemic in West
24 Virginia, this advisory memorandum is a tool that
25 could help West Virginia stakeholders identify and

1 respond to the many issues highlighted by the
2 Committee's examination of this civil rights topic.
3 That concludes my statement. Thank you very much.

4 CHAIR LHAMON: Ms. Lofaso, thank you very
5 much for your presentation and it's now open for
6 questions from my fellow commissioners.

7 COMMISSIONER KLADNEY: Madam Chair, Dave
8 Kladney here.

9 CHAIR LHAMON: Go ahead, Commissioner.

10 COMMISSIONER KLADNEY: I'd like to thank
11 the West Virginia State Advisory Commission. I think
12 this is a very important report, especially in light
13 of the fact that drug courts have intervened in the
14 criminal justice system for almost 30 years now and I
15 think an analysis of them are very important.

16 I think they, along with the opioid issue
17 that has raised up in the country, a good look at them
18 is very important because they have actually become,
19 I think, and I'm not sure it's happening, and this is
20 probably my question, they have become really a major
21 player in keeping the people, one, out of the criminal
22 justice system, and two, providing them treatment. Do
23 you see that expanding in West Virginia any time soon?

24 MS. LOFASO: The drug courts, are they
25 coming back? Is that what you said?

1 COMMISSIONER KLADNEY: Yes, because you
2 said that one was put out because of budgetary
3 problems, and are they expanding or are they
4 maintaining their --

5 MS. LOFASO: Yes --

6 COMMISSIONER KLADNEY: -- size?

7 MS. LOFASO: Yeah, well --

8 COMMISSIONER KLADNEY: Okay.

9 MS. LOFASO: One thing we have a question
10 about is whether they will be expanding and that's
11 something that we want to do for future follow up, but
12 I did have a student last year who told me that,
13 because his dad was really involved in this, that they
14 do plan to expand and it's always a budget issue for
15 us.

16 And obviously with the COVID right now,
17 there's no plans on anything, but yes, that is
18 something that is very important to us and that's
19 something we want to do future research on.

20 COMMISSIONER KLADNEY: And how adequate is
21 the mental health treatment inside your local jails?

22 MS. LOFASO: Well, the problem is they're
23 not properly trained. That's what we found out is
24 that they're not properly trained to do this. It's
25 not adequate at all. We do have excellent mental

1 health hospitals here, but they're not part of the
2 criminal justice system.

3 COMMISSIONER KLADNEY: So, there's no
4 interaction between the two?

5 MS. LOFASO: I think there is some
6 interaction because they'll often recommend out
7 patients, so that's based on my own personal
8 understanding of it as opposed to anything that came
9 out of the report.

10 COMMISSIONER KLADNEY: Well, thank you
11 very much. I thought it was an excellent report and
12 I'd appreciate for the committee if you could extend
13 my thanks. I'd appreciate that very much. Thank you.

14 MS. LOFASO: I will. Thank you so much.

15 CHAIR LHAMON: Are there other questions
16 from other commissioners? Ms. Lofaso, I echo
17 Commissioner Kladney's thanks to the West Virginia
18 Advisory Committee and I think it's deeply impressive
19 that you all took the moment to collect the testimony
20 from the prior committee and also to make it public.

21 So, I appreciate that this rich body of
22 work was not lost and we had a chance and others in
23 the state will have the chance to benefit from this
24 collection of resources. Thank you very much for
25 using your time so productively.

1 MS. LOFASO: Thank you very much.

2 CHAIR LHAMON: Then we will move to the
3 next item on our agenda, and thank you, Ms. Lofaso,
4 for your service and your leadership on the West
5 Virginia Advisory Committee and for taking the time to
6 speak with us today.

7 Now we'll hear from our Kansas Advisory
8 Committee Chair, Mildred Edwards, on the committee's
9 report titled Civil Rights and Education Funding in
10 Kansas. Chair Edwards?

11 B. PRESENTATION BY MILDRED EDWARDS

12 MS. EDWARDS: Good morning. Thank you for
13 the opportunity. I am here strictly just to give an
14 overview of the report that you have.

15 The proposal that we set out to address is
16 to examine the barriers to equal access to educational
17 opportunities in our space which may have a
18 discriminatory impact on students on the basis of
19 race, color, disability status, national origin and/or
20 sex or gender. The committee focused on the impact of
21 education funding on --

22 (Simultaneous speaking.)

23 MS. EDWARDS: I'm sorry?

24 CHAIR LHAMON: Go ahead, Chair. I think
25 there's some feedback on this.

1 MS. EDWARDS: Okay, the question then --
2 (Simultaneous speaking.)

3 MS. EDWARDS: -- that we tried to answer
4 is are the civil rights protections as currently
5 applied in practice sufficient to address our concerns
6 regarding equal access to education opportunity for
7 protected classes, particularly as it relates to our
8 state educational funding?

9 We have determined based on arguing, we
10 all said no, despite the protection, significant
11 disparities persist within educational access and
12 outcomes across the state.

13 So, the process that we undertook began in
14 the spring of 2018, and the committee held five more
15 hearings and heard from school administrators, policy
16 makers, educational funders, analysts, legislators,
17 and the attorneys that argued the case that we'll
18 address shortly in our report, and you can access that
19 list of panelists on page 27. It's the appendix A of
20 the report.

21 So, we heard from many of these
22 professionals and really tried to ascertain whether
23 our state had met both the equity and adequacy
24 requirements that had been outlined in previous
25 lawsuits.

1 We had a pending lawsuit within the state
2 that had been filed in 2010 and had several
3 iterations, they skipped the lawsuit at present, but
4 the findings of our report basically had seven
5 findings.

6 The state has an obligation to the
7 children of Kansas. Number two is our funding is
8 inadequate, three, student achievement is inadequate.
9 The courts found that the state is not only failing to
10 provide about a quarter of its public school K-12
11 students with basic math and reading schools, but
12 they're also leaving behind significant groups of how
13 to educate students.

14 We understand fully that funding affects
15 achievement, and then ethnic students are lagging
16 behind, which is widening the achievement block
17 annually. Our resources vary immensely depending upon
18 local property tax or what we would call our local
19 option budgets.

20 So, that is the hearing, and we had a case
21 in the Kansas Supreme Court that had been filed in
22 2010. They actually did come to a resolve in 2019, of
23 June, and they declared also that while they had been
24 missing adequate and equitable funding issues over
25 time.

1 In 2019, they said that funding was
2 adequate. This is a \$90 million lawsuit that the
3 state legislature then vowed to commit. Given our
4 history however in Kansas, if you look in the report
5 also, pages nine through 13, we have a long storied
6 history of compliance and then failure to meet the
7 obligations that we commit to.

8 And so the lawsuit is still open, and in
9 the event that the state legislature fails to comply
10 with the funding allocation that has been determined
11 in the June 2019 case, then we can reopen that case
12 and reach out to consider that.

13 So, a lot of issues are left unresolved.
14 The reality at present is more so about not whether
15 the amendment is there, although it did not meet
16 inflation requirements, but how the money is going to
17 be spent in school districts.

18 And we realize that we won't experience
19 any outcomes or changes in student achievement for
20 some time, but we are hopeful that local funding and
21 local expenditures of the funding will be resolved
22 over time.

23 So, I'm going to pause and allow any
24 questions that you might have. I want to thank --

25 (Simultaneous speaking.)

1 MS. EDWARDS: I'm sorry.

2 CHAIR LHAMON: Go ahead.

3 MS. EDWARDS: I want to thank our
4 supervisory chiefs, both of our Davids, Mussatt and
5 Barrares, our analysts who have been very, very
6 helpful with this report, and all of the work that
7 we've been doing in the state of Kansas, couldn't have
8 happened without you, thank you.

9 CHAIR LHAMON: Thank you, Chair Edwards.
10 I'll open it for questions from fellow commissioners.
11 And while people are assembling their thoughts, I'll
12 say thank you very much for this extraordinarily
13 thorough report on a devastating topic.

14 I'd note that this report reaches a
15 conclusion that the Commission also reached recently
16 about the importance of school funding for student
17 achievement and equity. I thought that your money
18 matters distillation was short, to the point, and
19 correct, so I appreciated that point.

20 And the summary, as devastating as it is,
21 of the length of time that this issue has wound its
22 way through the Kansas courts to not achieve
23 resolution for equity and achievement for students in
24 the state is in itself very significant, so thank you
25 for putting it to paper and bringing your committee's

1 attention to this very critical issue.

2 MS. EDWARDS: Thank you.

3 CHAIR LHAMON: Are there questions or
4 comments from fellow commissioners? Hearing none, we
5 will move to our next item on our agenda.

6 In the meantime, thank you, Chair Edwards,
7 for your service and for your leadership on the Kansas
8 Advisory Committee, and for taking the time to speak
9 with us today. The next item on our --

10 MS. EDWARDS: Thank you.

11 C. DISCUSSION AND VOTE ON COMMISSION ADVISORY
12 COMMITTEES

13 CHAIR OF THE RHODE ISLAND ADVISORY COMMITTEE

14 CHAIR LHAMON: The next item on our agenda
15 is a discussion and vote on the chair for the Rhode
16 Island Advisory Committee to the Commission.

17 Before we begin discussion of this
18 nomination and other nominations, I remind my fellow
19 commissioners that objections to all of the advisory
20 committee slates that we consider today could have
21 been or already have been shared with all of the
22 commissioners.

23 To the extent that we would like to
24 discuss objections, I remind my fellow commissioners
25 that the Commission has a policy to not defame,

1 degrade, or incriminate any person. Each of these
2 individuals has agreed to volunteer time and energy in
3 the pursuit of the protection of civil rights.

4 With that said, I move that the Commission
5 appoint Margaux Morisseau to serve as Chair of the
6 Rhode Island Advisory Committee. Do I have a second
7 for this motion?

8 COMMISSIONER ADEGBILE: Commissioner
9 Adegbile seconds.

10 CHAIR LHAMON: Thank you. Any discussion
11 on this appointment? Hearing none, I'll call the
12 question and take a roll call vote. Commissioner
13 Adegbile, how do you vote?

14 COMMISSIONER ADEGBILE: Aye.

15 CHAIR LHAMON: Commissioner Heriot?

16 COMMISSIONER HERIOT: I vote yes.

17 CHAIR LHAMON: Commissioner Kirsanow?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIR LHAMON: Commissioner Kladney?

20 COMMISSIONER KLADNEY: Yes.

21 CHAIR LHAMON: Commissioner Yaki?

22 COMMISSIONER YAKI: Aye.

23 CHAIR LHAMON: I vote yes. The motion
24 passes unanimously.

25 CHAIR OF SOUTH DAKOTA ADVISORY COMMITTEE

1 CHAIR LHAMON: The next item on our agenda
2 is a discussion and vote on the Chair for the South
3 Dakota Advisory Committee to the Commission. I move
4 that the Commission appoint Brittany McKnight to serve
5 as Chair of the South Dakota Advisory Committee. Do
6 I have a second for this motion?

7 COMMISSIONER KLADNEY: Dave Kladney,
8 second.

9 CHAIR LHAMON: Thank you. Any discussion
10 on this appointment? I will call the question and
11 take a roll call vote. Commissioner Adegbile, how do
12 you vote?

13 COMMISSIONER ADEGBILE: Aye.

14 CHAIR LHAMON: Commissioner Heriot?

15 COMMISSIONER HERIOT: Yes.

16 CHAIR LHAMON: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Yes.

18 CHAIR LHAMON: Commissioner Kladney?

19 COMMISSIONER KLADNEY: Yes.

20 CHAIR LHAMON: Commissioner Yaki?

21 COMMISSIONER YAKI: Aye.

22 CHAIR LHAMON: And I vote yes. The motion
23 passes unanimously.

24 NEVADA ADVISORY COMMITTEE

25 CHAIR LHAMON: Our next agenda item, to

1 begin discussion, I move that the Commission appoint
2 the following individuals to the Nevada Advisory
3 Committee based on the recommendation of the staff
4 director, Wendell Blaylock, Michael Bowers, Sondra
5 Cosgrove, Kenneth Dalton, Carol Del Carlo, David
6 Edelblute, Debra Feemster, David Fott, Augusta Massey,
7 Theresa Navarro, Rudy Pamintuan, Myrton Running Wolf,
8 and David Sexton.

9 With this motion, the Commission will also
10 appoint Wendell Blaylock as the Chair of the Nevada
11 Advisory Committee. All of these members will serve
12 as uncompensated government employees.

13 If the motion passes, the Commission will
14 authorize the staff director to execute the
15 appropriate paperwork to the appointments which will
16 begin after the current committee expires. Do I have
17 a second for this motion?

18 COMMISSIONER KLADNEY: Dave Kladney
19 seconds.

20 CHAIR LHAMON: Thank you. I'll open the
21 floor for discussion. Then I'll call the question and
22 take a roll call vote. Commissioner Adegbile, how do
23 you vote?

24 COMMISSIONER ADEGBILE: Aye.

25 CHAIR LHAMON: Commissioner Heriot?

1 COMMISSIONER HERIOT: I don't think the
2 slate is very well balanced, but I think our staff
3 tried, so I vote yes.

4 CHAIR LHAMON: Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: Yes.

6 CHAIR LHAMON: Commissioner Kladney?

7 COMMISSIONER KLADNEY: Yes.

8 CHAIR LHAMON: Commissioner Yaki?

9 COMMISSIONER YAKI: Aye.

10 CHAIR LHAMON: And I vote yes. The motion
11 passes unanimously.

12 TENNESSEE ADVISORY COMMITTEE

13 CHAIR LHAMON: For our next agenda item,
14 to begin discussion, I move that the Commission
15 appoint the following individuals to the Tennessee
16 Advisory Committee based on the recommendation of the
17 staff director, Shaka Mitchell, Camela Blackmon, James
18 Blumstein, Meggan DeWitt, Diane Dilanni, Demetria
19 Frank, Greg Grisham, Andrea Hatcher, John Phillips,
20 Mark Pickrell, Ammon Smartt, Valorie Vajdik, and Yesha
21 Yadav.

22 With this motion, the Commission will also
23 appoint Shaka Mitchell as the Chair of the Tennessee
24 Advisory Committee. All of these members will serve
25 as uncompensated government employees.

1 If the motion passes, the Commission will
2 authorize the staff director to execute the
3 appropriate paperwork for the appointments which will
4 begin after the current committee expires. Do I have
5 a second for this motion?

6 COMMISSIONER HERIOT: I second, Heriot.

7 CHAIR LHAMON: Thank you. I'll open the
8 floor for discussion. Then I'll call the question and
9 take a roll call vote. Commissioner Adegbile, how do
10 you vote?

11 COMMISSIONER ADEGBILE: Aye.

12 CHAIR LHAMON: Commissioner Heriot?

13 COMMISSIONER HERIOT: I vote yes.

14 CHAIR LHAMON: Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIR LHAMON: Commissioner Kladney?

17 COMMISSIONER KLADNEY: Yes.

18 CHAIR LHAMON: Commissioner Yaki?

19 COMMISSIONER YAKI: Aye.

20 CHAIR LHAMON: And I vote yes. The motion
21 passes unanimously.

22 D. THE U.S. COMMISSION ON CIVIL RIGHTS ANNOUNCES
23 OPPOSITION TO EXECUTIVE BRANCH ACTION SHUTTING DOWN
24 VIRTUALLY ALL IMMIGRATION OF PERMANENT RESIDENCE
25 SEEKERS INTO THE UNITED STATES

1 CHAIR LHAMON: Next, we'll move to the
2 first amended item on our agenda, consideration of a
3 Commission statement that Commissioner Yaki proposes
4 entitled, The U.S. Commission on Civil Rights
5 Announces Opposition to Executive Branch Action
6 Shutting Down Virtually All Immigration of Permanent
7 Residence Seekers into the United States.

8 So that we know what we are considering,
9 I'll ask Commissioner Yaki to read the statement.

10 COMMISSIONER YAKI: Yes, and I will
11 attempt to enunciate better than having a mushy first
12 of the morning mouth earlier. The statement reads,
13 and I will in tradition not read footnotes.

14 The U.S. Commission on Civil Rights
15 strongly objects to the Trump Administration's halting
16 of the issuance of green cards for people seeking
17 legal permanent residence in the United States as
18 having no rational relationship to the stated reasons
19 regarding the COVID-19 pandemic of protecting American
20 jobs.

21 We note that the Administration has
22 already taken steps that have severely constrained
23 immigrant and non-immigrant travel to the United
24 States through the State Department.

25 While there is considerable debate

1 regarding the wisdom of the actions which the
2 Administration took with regard to immigration on
3 April 22, 2020, they were performed solely to curtail
4 travel during the initial phases of the pandemic while
5 information on the virus' transmission and spread was
6 being studied by national and international
7 authorities.

8 Immigration has been, and continues to be,
9 a net positive good for this country. We are a nation
10 founded by immigrants. We have continued to be
11 refreshed and revitalized by the many and varied
12 communities who have come to our shores seeking a
13 better life.

14 Even during previous times of extreme
15 political, social, and economic duress, including the
16 1918 pandemic and World War II, the United States
17 allowed legal immigration to continue. As but one
18 compelling example of the contribution of immigrants
19 to our nation, one in six U.S. health care workers are
20 immigrants.

21 There is no evidence that immigration
22 caused the current pandemic. There is also no
23 evidence that immigration is causing job loss during
24 this pandemic recession.

25 All credible studies in the past that

1 examined the impact of legal immigration on jobs and
2 wages have buttressed the conclusion that there is no
3 harm done and, in fact, immigration is a net positive
4 contributor to the economy.

5 What this proposed policy makes clear is
6 that this is nothing more than a brazen attempt to
7 vilify and misdirect people's real and understandable
8 fears about the COVID-19 pandemic.

9 It will likely have the effect of
10 foreclosing opportunities and directing enmity at a
11 class of individuals who are often characterized by
12 discrete racial, ethnic, or national origins.

13 Moreover, the proclamation not only
14 discriminates against these immigrants, but also has
15 the foreseeable collateral consequence of heightening
16 the risks to Americans who share these racial, ethnic,
17 or national origin backgrounds.

18 It plays upon people's fears about the
19 economy and their economic well-being and creates a
20 linkage of blame to legal immigrants completely
21 unrelated to the pandemic's effect on job losses.

22 And, inevitably, it will continue to fan
23 the fires of xenophobia and racism against Americans
24 who can trace their origins from Asia and other
25 continents.

1 The Commission has previously stated our
2 concern over the Administration's efforts to curtail
3 or ban immigration by persons of the Muslim faith and
4 African origins. The Commission has also stated
5 concern over the Administration's efforts to impede
6 legal claims for asylum, a component of legal
7 immigration, at the southern border. Now, as the
8 nation's civil rights watchdog, we must once again
9 raise our voice to protest another attack on civil
10 rights by attacking immigration.

11 Our country has always aspired to be a
12 more perfect union, but the immigrant experience in
13 America has been far from perfect. Anti-immigrant
14 sentiment has waxed and waned throughout our history,
15 but it is instructive that a most egregious example,
16 the internment of U.S. citizens who happened to be
17 Japanese American, occurred during a national
18 emergency.

19 By implicitly blaming legal immigration
20 for the COVID-19 pandemic and the horrendous loss of
21 life and job losses it has created, the Presidential
22 Proclamation is weaponizing xenophobia against
23 Americans who are perceived as others and who could be
24 or are perceived as immigrants, particularly from
25 Asia.

1 We urge the President to not stop legal
2 immigration in a manner that is contrary to our
3 history and values, and reiterate our call to the
4 President to not blame immigration for the pandemic
5 and our economic emergency.

6 The highest tradition of our nation is to
7 meet grave challenges with measures that reassert our
8 democratic values, and not that with measures that
9 demean them.

10 CHAIR LHAMON: Thank you, Commissioner
11 Yaki. To open the floor for discussion, is there a
12 motion?

13 COMMISSIONER YAKI: I move that this be
14 adopted.

15 CHAIR LHAMON: Thank you. Do we have a
16 second?

17 COMMISSIONER KLADNEY: Commissioner
18 Kladney will second.

19 CHAIR LHAMON: Thank you. I'll open the
20 floor for discussion.

21 COMMISSIONER YAKI: Madam Chair, this is
22 Commissioner Yaki.

23 CHAIR LHAMON: Go ahead, Commissioner
24 Yaki.

25 COMMISSIONER YAKI: Yes, I want to thank

1 the Chair, Commissioner Adegbile, and Commissioner
2 Kladney for their assistance on this statement. It
3 seems that we are having to do this on a somewhat
4 regular basis, but again, the scapegoating of
5 immigration despite the fact that there is no tie
6 between immigration and the COVID-19 pandemic is
7 something that we must continue to be vigilant and
8 voice our opinion on.

9 As someone who has seen and heard and
10 experienced anti-Asian sentiment in my life, and God
11 knows because of my father who was interned during
12 World War II, this is the exact wrong time to play to
13 the worst angels of our nature, and I thank my
14 colleagues for the consideration.

15 CHAIR LHAMON: Thank you. Unless there is
16 further discussion, I'll call the question and take a
17 roll call vote. Commissioner Adegbile, how do you
18 vote?

19 COMMISSIONER ADEGBILE: Aye.

20 CHAIR LHAMON: Commissioner Heriot?

21 COMMISSIONER HERIOT: I'm going to vote no
22 on this one.

23 CHAIR LHAMON: Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: No.

25 CHAIR LHAMON: Commissioner Kladney?

1 COMMISSIONER KLADNEY: Yes.

2 CHAIR LHAMON: Commissioner Yaki?

3 COMMISSIONER YAKI: Aye.

4 CHAIR LHAMON: And I vote yes. The motion
5 passes, two commissioners opposed, no commissioner
6 abstained, all others were in favor.

7 E. U.S. COMMISSION ON CIVIL RIGHTS ISSUES
8 RECOMMENDATIONS TO SECURE NONDISCRIMINATION IN THE
9 COVID-19 PANDEMIC CONTEXT, AND SPECIFICALLY TO
10 ADDRESS ANTI-ASIAN RACISM AND XENOPHOBIA

11 CHAIR LHAMON: Next, we will move to the
12 second amended item on our agenda, consideration of a
13 Commission statement that Commissioner Yaki proposes
14 entitled, U.S. Commission on Civil Rights Issues
15 Recommendations to Secure Nondiscrimination in the
16 COVID-19 Pandemic Context, and Specifically to Address
17 Anti-Asian Racism and Xenophobia.

18 Given the length of the statement, I'll
19 ask Commissioner Yaki to briefly summarize the
20 statement so that we know what we are considering.

21 COMMISSIONER YAKI: Thank you. I was just
22 about to freak out over having to read the entire
23 thing.

24 (Laughter.)

25 COMMISSIONER YAKI: Fellow commissioners,

1 we were contacted by members of the public and of the
2 Congress asking us to issue some recommendations
3 regarding how the federal government should be
4 reacting to ensure nondiscrimination in the COVID-19
5 pandemic, especially in the context of, as I noted
6 before, anti-Asian racism and xenophobia.

7 This is a statement put together with the
8 great assistance and work of the Chair, Commissioner
9 Adegbile, Commissioner Kladney, and myself. I'm just
10 reading because I -- to sort of help. To start this
11 off, but this is really a joint effort by all of you,
12 and I thank you for your efforts.

13 This details -- and I'll just briefly read
14 from the summary in the beginning that all federal
15 civil rights offices should use enforcement where
16 necessary to secure rights violated within their
17 jurisdictions, and that it's necessary for the federal
18 government to communicate and act in a manner that
19 demonstrates the community that it will protect all
20 Americans regardless of race, national origin, or
21 other protected characteristics, and especially in the
22 context of the particular needs of the Asian-American
23 community given the fact that we've identified
24 widespread concerns about discrimination involving and
25 impacting Asian Americans with regard to education,

1 employment, healthcare, housing, and immigration.

2 We want to make sure the federal
3 government takes into account the critical requirement
4 to address civil rights violation to these communities
5 and ensure that we do so in a way that works for these
6 communities and including the need to provide for
7 language access to communicate to any of them with
8 limited English proficient populations.

9 It enunciates extending into its core
10 language communication principles that should be
11 adhered to and makes recommendations to reduce the
12 anti-Asian sentiment that appears to be rising as a
13 result of the pandemic.

14 So, I thank again the Chair, and
15 Commissioner Adegbile, and Commissioner Kladney for
16 their work on this with me, and I submit this to the
17 Commission for consideration.

18 CHAIR LHAMON: Thank you. To open the
19 floor for discussion, is there a motion?

20 COMMISSIONER YAKI: Commissioner Yaki so
21 moves.

22 CHAIR LHAMON: The motion to approve the
23 statement.

24 (Simultaneous speaking.)

25 COMMISSIONER KLADNEY: Second.

1 CHAIR LHAMON: And Commissioner Kladney
2 seconds. Thank you.

3 I'll open the floor for discussion
4 beginning with a few points of my own. Last month, a
5 group of U.S. senators reached out to the Commission
6 requesting that we issue recommendations to federal
7 agencies in their words, quote, "to reduce the
8 dangerous and hateful spread of anti-Asian sentiment
9 that is on the rise during this pandemic," end quote.

10 We are glad to take up this charge in
11 keeping with our mission to advise the President,
12 Congress, and the American public about the state of
13 civil rights in the country.

14 I support this statement as Commissioner
15 Yaki has introduced it, and I look forward to
16 continuing to work with federal agencies to ensure
17 that our civil rights laws are enforced to the full
18 extent possible to protect all Americans.

19 Any further discussion? Hearing none,
20 I'll call the question and take a roll call vote.
21 Commissioner Adegbile, how do you vote?

22 COMMISSIONER ADEGBILE: Aye.

23 CHAIR LHAMON: Commissioner Heriot?

24 COMMISSIONER HERIOT: I'm going to have to
25 abstain on this one. I mean, most of the

1 recommendations strike me as okay, though I definitely
2 hesitate on the use of guidances here. There's been
3 far too much abuse of guidances, but I think the
4 overall tone of both law and fact is misleading, so
5 I'm going to have to abstain.

6 CHAIR LHAMON: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: I concur with
8 Commissioner Heriot and I abstain also.

9 CHAIR LHAMON: Commissioner Kladney?

10 COMMISSIONER KLADNEY: Yes.

11 CHAIR LHAMON: Commissioner Yaki?

12 COMMISSIONER YAKI: Aye.

13 CHAIR LHAMON: And I vote yes. The motion
14 passes unanimously, no commissioner opposed, two
15 commissioners abstained, all others were in favor.

16 F. FISCAL YEAR 2020 PROJECT PLANNING

17 CHAIR LHAMON: We will now move to the
18 next item on our amended agenda, discussion and vote
19 for fiscal year 2020 project planning.

20 As we are all aware, due to the global
21 pandemic, the Commission has been reevaluating our
22 programmatic calendar and how best the Commission can
23 address the civil rights issues in this time.

24 I now move that we postpone the August
25 2020 briefing on bail reform until 2021 in order to

1 focus our attention instead on coronavirus-related
2 short term projects, assessing civil rights
3 implications of the pandemic. These projects will
4 expand on work that the Commission has already done in
5 these areas and previous reports.

6 The two focus areas for these short term
7 projects will likely be racial health disparities and
8 impacts on the Native American community and federal
9 response.

10 Working with staff, we will develop
11 detailed proposals, timelines at our June business
12 meeting to further define the scope of these projects.

13 For each focus area, we will likely either
14 request written public comment or hold a mini virtual
15 briefing, such as one panel with speakers, in summer
16 2020.

17 We will share project focus areas with our
18 advisory committees in case there is interest from
19 committees to hold virtual briefings and take in
20 state-specific testimony on these issues.

21 We will work with the staff director to
22 manage the appropriate staffing needs for these
23 projects. Is there a second for this motion?

24 COMMISSIONER KLADNEY: Dave Kladney, I
25 second.

1 CHAIR LHAMON: Thank you. I now open the
2 floor for discussion beginning with a few points of my
3 own.

4 The Commission's role as an independent
5 fact-finding agency is particularly relevant in this
6 time when circumstances are frequently changing and we
7 have reason to believe that government actors may not
8 incorporate civil rights considerations into their
9 decision making.

10 We will approach these short term projects
11 related to the coronavirus pandemic in the same way we
12 approach all of our projects, with the objective to
13 share with the public critical information about
14 current civil rights issues, as well as to gather
15 evidence that inform the Commission's understanding of
16 the issues we are examining.

17 We will look forward to working with our
18 staff on the most efficient mechanisms that we can
19 under this difficult circumstance that we are all
20 concerned with the pandemic response.

21 I'm glad our staff has continued to push
22 forward with the work and that we can do it remotely,
23 and I'm grateful for their willingness to address the
24 particular civil rights concerns of this moment.

25 I now open the floor for discussion.

1 Hearing none, I'll call the question and take a roll
2 call vote. Commissioner Adegbile, how do you vote?

3 COMMISSIONER ADEGBILE: Aye.

4 CHAIR LHAMON: Commissioner Heriot?

5 COMMISSIONER HERIOT: Yes.

6 CHAIR LHAMON: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIR LHAMON: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIR LHAMON: Commissioner Yaki?

11 COMMISSIONER YAKI: Aye.

12 CHAIR LHAMON: And I vote yes. The motion
13 passes unanimously.

14 G. UPDATE FROM STAFF DIRECTOR ON VIRTUAL BRIEFINGS

15 CHAIR LHAMON: Next, as discussed at our
16 last business meeting, we will hear from Staff
17 Director Mauro Morales about updated information on
18 the possibility of virtual briefings before the
19 Commission.

20 MR. MORALES: Thank you, Madam Chair and
21 Commissioners. I appreciate the opportunity to
22 address all of you.

23 In light of the changes decided today a
24 few moments ago, I respectfully request the
25 opportunity to consult with staff on our ability to

1 conduct a virtual briefing. We have been planning on
2 the virtual briefing or an in-person briefing in
3 August, you know, on some of the information provided
4 to us previously.

5 I will say I do believe we can do a
6 virtual briefing, so, you know, I just want to say and
7 make that very clear. You know, as I mentioned, we
8 were anticipating a more complicated briefing in
9 August.

10 And I'd like the opportunity to discuss
11 with staff our ability to do such a briefing and also
12 in consultation with special assistants as
13 representatives of commissioners so that we are able
14 to meet whatever expectations.

15 And as I did previously, I will work with
16 the SAs to more fully understand the expectations of
17 commissioners and to work with our staff to ensure
18 that we can meet those expectations.

19 So, we'd like the opportunity to look at
20 this and put together, you know, a plan to meet all of
21 your expectations.

22 CHAIR LHAMON: Thank you, Mr. Staff
23 Director. I think it's eminently fair that if we are
24 changing the approach in the moment, it would be
25 useful to hear that considered response, so thank you

1 for that.

2 COMMISSIONER KLADNEY: Madam Chair, I have
3 a question. Dave Kladney here.

4 CHAIR LHAMON: Go ahead, Commissioner.

5 COMMISSIONER KLADNEY: Mr. Director, are
6 we going to get an outline of what you think can be
7 accomplished in this period of time and how it's going
8 to be conducted?

9 MR. MORALES: Yeah, was that your
10 question? I'm sorry. I didn't want to cut you off.
11 I think I cut you off.

12 COMMISSIONER KLADNEY: That is my
13 question. I mean, are we going to get a memo on how
14 you expect -- with the benchmarks and how we're going
15 to move forward and try and have this ready?

16 If you believe you can get the mini
17 briefings on in August, are we going to get an outline
18 of the benchmarks to be accomplished by when and how
19 it's going to be, how the briefing is going to be
20 conducted, whether we're going to carry it live on
21 YouTube or are people going to be able to call in just
22 on the Zoom line and listen or things like that?

23 You know, how are you going to go about
24 getting this done with certain goals and benchmarks
25 being met in time before the briefing?

1 MR. MORALES: Well, thank you for the
2 question. Yeah, I think a memo makes a lot of sense.
3 You know, there is some information we still need to
4 gather from, I think, the SAs, and again, what the
5 expectations are from the commissioners in order to
6 provide you that information.

7 We were in the process of doing that with
8 the more expanded, complicated virtual briefing. It
9 was contemplated in August with four panels and
10 potentially over four days with a potential public
11 comment component to it.

12 So, that has now changed obviously with
13 the decision that all of you have made, and so, you
14 know, we need to get back and have a conversation with
15 your SAs to again determine what are the expectations?
16 What are commissioners looking for in terms of, you
17 know, time, and date, and all of the rest of that?

18 So, yes, I think a memo that lays out the
19 best we can the information, as much information as we
20 have, makes a lot of sense. When I can compare that
21 or when I can have that ready, I can't tell you at
22 this time.

23 Hopefully we can turn that around over a
24 course of maybe a week or two weeks, or perhaps even
25 three. I don't know. I don't have enough information

1 at my hand at this point, but, yes, I would anticipate
2 providing you a framework and all commissioners a
3 framework of what a virtual briefing would look like.

4 COMMISSIONER KLADNEY: I was also
5 concerned, in the last memo I saw, I think there was
6 a cost associated with the briefing of \$9,000 or
7 something, and I'm not sure whether that was an extra
8 cost, or that was a cost of the whole briefing, or how
9 the \$9,000 was actually broken down in expenses. I
10 think that would be appropriate as well, the cost to
11 the Commission.

12 And just to add while I have you on the
13 line, just to add two cents on the public comment, if
14 that is too difficult to provide, I would think that
15 we could go back to the email public comment rather
16 than the Zoom as an alternative.

17 So, those are my comments for today and I
18 would like to be kept in the loop on this and perhaps
19 attend some of your meetings of the SAs. Thank you.

20 MR. MORALES: Certainly, we can -- you
21 know, when we are proceeding with, you know, your SAs,
22 and because a lot of times they're able to determine
23 information and oftentimes it's very hard to get
24 commissioners all together on the line.

25 And I think all commissioners would want

1 to have access to information that we're providing,
2 but we will put something together, a plan on how to
3 proceed forward as I have always done and as we have
4 always done, on how to approach briefings and how to
5 approach in particular this one and its uniqueness.

6 And we may have to have a, you know, where
7 we practice, a practice session prior to that, so I
8 hope commissioners are flexible. I hope they are
9 available to assist us as we try to move into this new
10 reality and this new process, and so we look forward
11 to your participation and I will do the best I can to
12 advise commissioners as I always have.

13 CHAIR LHAMON: Thank you.

14 H. MANAGEMENT AND OPERATIONS

15 STAFF DIRECTOR'S REPORT

16 CHAIR LHAMON: Unless there is anything
17 further, we can now turn to the next item on our
18 agenda which is to hear again from Staff Director
19 Morales.

20 MR. MORALES: Thank you, Madam Chair and
21 commissioners.

22 CHAIR LHAMON: Go ahead.

23 MR. MORALES: I'm sorry. Thank you, Madam
24 Chair and commissioners. In the interests of time, I
25 have nothing further to add than what's already

1 contained in the report.

2 As always, I'm available to discuss with
3 the commissioners, a single commissioner or all of the
4 commissioners, anything contained in the report.

5 I would like to add and, you know, commend
6 all of the staff on their ability to telework, how
7 they've come together, and worked together, and
8 undertaken our mission during this COVID-19 crisis
9 which they, you know, personally are affected, and
10 their families are affected, and of course their
11 abilities to do their jobs are affected.

12 I'm actually in the office at the moment.
13 The issue isn't, of course, the danger in the office.
14 It's the interaction with other human beings who may
15 or may not have the COVID virus.

16 We're working with OMB and OPM to see
17 what, you know, the government's views are going to be
18 into the future as to reopening or how to conduct our
19 mission in our agency, and so the staff is all
20 together working on that as well trying to figure that
21 out.

22 There is a lot of evolving information as
23 you well know. We are in the DMV area with Virginia,
24 Maryland, and D.C., and they all have different
25 benchmarks and timelines for opening up the

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government, and we also have an office in California and Chicago.

So, we're doing the best we can to figure all of this out and we'll advise you once we have more information, but I really wanted to thank the staff for having come together and worked together and collaborated, so thank you, Madam Chair.

CHAIR LHAMON: Thank you, Mr. Staff Director, and that concludes the business on the agenda for today's business meeting.

III. ADJOURN MEETING

CHAIR LHAMON: If there is nothing further, I hereby adjourn the meeting at 10:53 a.m. Eastern Time. Thank you all.

COMMISSIONER YAKI: Thank you.

COMMISSIONER KLADNEY: Thank you.

MR. MORALES: Thank you.

(Whereupon, the above-entitled matter went off the record at 10:53 a.m.)

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Before: US CCR

Date: 05-08-20

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