

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, AUGUST 21, 2020

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The Commission convened via
Teleconference at 12:00 p.m. EDT, Catherine Lhamon,
Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

STEPHEN GILCHRIST, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

STAFF PRESENT:

DIANE CITRINO, Ohio SAC Chair

PAMELA DUNSTON, Chief, ASCD

ALVINA EARNHART, Colorado SAC Chair

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

COMMISSIONER ASSISTANTS PRESENT:

ALEC DUELL

ALEXANDER HEIDEMAN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

RUKKU SINGLA

IRENA VIDULOVIC

A G E N D A

I. APPROVAL OF AGENDA 8

II. CLOSED SESSION N/A

III. BUSINESS MEETING

 A. PRESENTATION BY DIANE CITRINO,
 CHAIR OF OHIO ADVISORY COMMITTEE
 ON THE COMMITTEE'S REPORT, EDUCATION
 FUNDING AND CIVIL RIGHTS IN OHIO 16

 B. PRESENTATION BY ALVINA EARNHART,
 CHAIR OF COLORADO ADVISORY COMMITTEE
 ON THE COMMITTEE'S REPORT, CITIZENSHIP
 DELAYED: CIVIL RIGHTS AND VOTING RIGHTS
 IMPLICATIONS OF THE BACKLOG IN CITIZENSHIP
 AND NATURALIZATION APPLICATIONS. 22

 C. DISCUSSION AND VOTE ON COMMISSION
 ADVISORY COMMITTEES

 VERMONT ADVISORY COMMITTEE 33

 IDAHO ADVISORY COMMITTEE 40

 KANSAS ADVISORY COMMITTEE. 42

 D. DISCUSSION AND VOTE ON THE COMMISSION'S
 REPORT, NAVIGATING VOTING DURING THE
 COVID-19 PANDEMIC: CONSIDERATIONS IN
 ACCESS FOR MINORITY VOTERS 44

 G. DISCUSSION AND VOTE ON COMMISSION
 STATEMENT ON THE PASSING OF
 C.T. VIVIAN. 77

III. ADJOURN MEETING. 96

P R O C E E D I N G S

(12:02 p.m.)

OPEN SESSION

OPERATOR: Good afternoon, everyone.

Welcome to the Commission's telephonic business meeting. As a reminder, this call is being recorded. And at this time I would like to turn the conference over to Chairman Catherine Lhamon.

Please go ahead.

CHAIR LHAMON: Thank you, Operator.

This meeting of the U.S. Commission on Civil Rights comes to order at 12:02 p.m. Eastern Time on August 21, 2020. This meeting takes place over the phone.

I'm Chair Catherine Lhamon. I'd like to confirm each of the Commissioners is on the line, so I'll take a roll call here at the outset. I note that the composition of the Commission had recently changed. And following confirmation of our quorum, I'll take a moment to identify and congratulate the new appointees to the Commission.

Commissioners, please confirm your presence when I say your name.

Commissioner Adams.

COMMISSIONER ADAMS: Present.

1 CHAIR LHAMON: Commissioner Adegbile.

2 COMMISSIONER ADEGBILE: Present.

3 CHAIR LHAMON: Commissioner Gilchrist.

4 COMMISSIONER GILCHRIST: Present.

5 CHAIR LHAMON: Commissioner Heriot.

6 COMMISSIONER HERIOT: I'm here.

7 CHAIR LHAMON: Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: Here.

9 CHAIR LHAMON: Commissioner Kladney.

10 COMMISSIONER KLADNEY: Here.

11 CHAIR LHAMON: Commissioner Yaki.

12 COMMISSIONER YAKI: Here.

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

15 Is the court reporter present?

16 COURT REPORTER: I'm here.

17 CHAIR LHAMON: Thank you.

18 Is the staff director present?

19 MR. MORALES: I am present.

20 CHAIR LHAMON: Thank you. The meeting
21 will now come to order.

22 Before we begin with the agenda and our
23 business this morning, we have three new presidential
24 appointees among us whom I congratulate.

25 First, I congratulate Commissioner J.

1 Christian Adams on his appointment to the Commission.
2 President Trump appointed Commissioner Adams to serve
3 as a Commissioner on August 6, 2020. I witnessed when
4 the staff director swore Commissioner Adams in
5 virtually, because of the pandemic we continue to live
6 in, on August 13th, 2020.

7 In addition to serving on this Commission,
8 J. Christian Adams is the President and General
9 Counsel of the Public Interest Legal Foundation.
10 President Trump previously appointed Commissioner
11 Adams to be a member of the Presidential Advisory
12 Commission on Election Integrity established in 2017.

13 Before then, Commissioner Adams was an
14 attorney from 2005 to 2010 in the voting section at
15 the United States Department of Justice. Prior to his
16 time at the Justice Department he served as general
17 counsel to the South Carolina Secretary of State. He
18 has a law degree from the University of South Carolina
19 School of Law.

20 Commissioner Adams, welcome to one of the
21 finest federal institutions in this country. I look
22 forward to the work this Commission will do now that
23 we are again fully appointed.

24 We have some time for my fellow
25 Commissioners to offer their own congratulations to

1 our newest member.

2 We're showing unusual restraint. We can
3 just move on to our other new appointments.

4 COMMISSIONER HERIOT: Madam Chair. Madam
5 Chair.

6 CHAIR LHAMON: Go ahead, Commissioner
7 Heriot.

8 COMMISSIONER HERIOT: Sorry, I'm having a
9 hard time hearing everything from here.

10 I have already congratulated Commissioner
11 Adams, but let me do so again.

12 Welcome, Commissioner Adams.

13 COMMISSIONER ADAMS: Thank you.

14 CHAIR LHAMON: Perfect. Thank you.

15 In addition to Commissioner Adams' recent
16 appointment, President Trump also recently appointed
17 special assistants for Commissioner Gilchrist and for
18 Commissioner Heriot.

19 Alexander Heideman, special assistant to
20 Commissioner Heriot, is a graduate of Emory University
21 and the University of Mississippi School of Law. He
22 previously clerked for The Honorable Jim Greenlee at
23 the Mississippi Court of Appeals, and worked at the
24 EPA's Office of the Administrator.

25 Thomas Simuel, special assistant to

1 Commissioner Gilchrist, is a graduate of Winthrop
2 University with a degree in history and is a certified
3 mediator. He has 20 years of experience in the fields
4 of business, public relations, and political
5 campaigns.

6 Welcome to the newest special assistants.

7 I know that my work on this Commission has
8 been better informed and more effective because
9 President Obama appointed the incomparable and truly
10 phenomenal Rukku Singla to be my special assistant.
11 I wish for Commissioners Gilchrist and Heriot similar
12 delight with your working relations.

13 And with that we'll turn to our agenda for
14 today.

15 1. APPROVAL OF AGENDA

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

18 COMMISSIONER KIRSANOW: So moved, and
19 amended to remove the discussion vote on AI 5-9 and
20 the discussion vote on project planning.

21 COMMISSIONER HERIOT: Second.

22 CHAIR LHAMON: Thank you for your
23 volunteering. But let's, first let's move to approve
24 the agenda, or I'll just make that motion to approve
25 the agenda for the meeting.

1 Is there a second to that?

2 COMMISSIONER HERIOT: I think there's
3 already a motion pending.

4 CHAIR LHAMON: But we need to move to
5 approve the agenda before we can get to our motions
6 for amendment.

7 COMMISSIONER HERIOT: Well, the motion is
8 made, you know, as that. And that's not, I don't
9 think that's true.

10 CHAIR LHAMON: Is there a motion? I have
11 made a motion to approve the agenda. Is there a
12 second?

13 COMMISSIONER HERIOT: Kirsanow's motion is
14 pending. Point of order.

15 COMMISSIONER KIRSANOW: I had moved to
16 amend the -- I had moved to approve and amend.

17 CHAIR LHAMON: Well, there will be other
18 amendments as well.

19 So, let's move first to approve the agenda
20 so we can just move on.

21 COMMISSIONER HERIOT: Point of order.
22 Point of order. There's a motion pending.

23 CHAIR LHAMON: Okay. Commissioner
24 Kirsanow, please state your motion again.

25 COMMISSIONER KIRSANOW: Yes. I move to

1 approve the agenda and amend it to remove the
2 discussion and vote on AI 5-9, and the discussion and
3 vote on project planning.

4 CHAIR LHAMON: Thank you.

5 COMMISSIONER HERIOT: Second.

6 CHAIR LHAMON: Thank you. And with that
7 friendly amendment, I call for additional amendments
8 to the agenda.

9 I move to add consideration of a public
10 comment regarding a HUD proposed rule on shelters and
11 a letter to USCIS regarding the backlog of
12 naturalization applications.

13 Is there a second for that friendly
14 amendment?

15 COMMISSIONER KIRSANOW: I don't consider
16 that a friendly amendment.

17 CHAIR LHAMON: Is there a second to that
18 amendment?

19 COMMISSIONER YAKI: Second.

20 COMMISSIONER ADEGBILE: Second.

21 CHAIR LHAMON: Thank you.

22 Is there another amendment?

23 (No response.)

24 CHAIR LHAMON: Thank you.

25 If there's no further amendments, let's

1 vote to approve the agenda as amended.

2 All those in favor, say aye.

3 COMMISSIONER HERIOT: No. No, no, no, no,
4 no, no, no, no. No. You are moving to approve or not
5 approve your motion to amend. And that is all that is
6 on the table right now.

7 CHAIR LHAMON: Okay. Let's vote to
8 approve my amendment --

9 COMMISSIONER HERIOT: We've got to get
10 back to the (telephonic interference) before the
11 Commission. So, the only thing we are voting on is
12 the chair's motion to amend Commissioner Kirsanow's
13 motion, not the whole thing.

14 COMMISSIONER ADEGBILE: Point of order,
15 Madam Chair.

16 CHAIR LHAMON: Commissioner Adegbile.

17 COMMISSIONER ADEGBILE: I would like to
18 suggest that maybe a way that we could proceed which
19 might lead to greater clarity is if we could first
20 move the agenda by itself, and then make the motions
21 to amend the agenda in the various ways that the
22 Commissioners intend.

23 COMMISSIONER HERIOT: That's essentially
24 what we're doing, just in a different order. You
25 know, we're doing it in accordance with the Robert's

1 Rules.

2 You know, the original motion was made.
3 That is a motion that is still, you know, is pending,
4 but it's behind now the motion to amend that the chair
5 made. So, you vote first on the chair's motion, and
6 then you get back to the main motion.

7 You know, we've been sloppy about this in
8 the past because it's always been obvious, you know,
9 how things are going to come out. But it's not
10 obvious now. So, we ought to try to stick to Robert's
11 Rules. You know, it's something that, you know, I'm
12 not quite sure how we got this tradition, it's wrong
13 tradition, it's not just Chair Lhamon, of messing up
14 on this. So, let's try to do it right now.

15 CHAIR LHAMON: I think there's a motion
16 pending that is to add consideration of the public
17 comments regarding the HUD proposed rule on shelters
18 and a letter to USCIS regarding the backlog of
19 naturalization applications. And that motion has been
20 seconded.

21 Let's take a vote for approval of those
22 additions to the agenda.

23 Commissioner Adams, how do you vote?

24 COMMISSIONER ADAMS: I pass right now.

25 CHAIR LHAMON: That is an abstention.

1 Commissioner Adegbile.

2 COMMISSIONER ADEGBILE: Aye.

3 CHAIR LHAMON: Commissioner Gilchrist.

4 COMMISSIONER GILCHRIST: I'm abstaining.

5 CHAIR LHAMON: Commissioner Heriot.

6 COMMISSIONER HERIOT: No.

7 CHAIR LHAMON: Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: No.

9 CHAIR LHAMON: I'm sorry, did you vote no?

10 Commissioner Kirsanow, I couldn't hear you vote.

11 COMMISSIONER KIRSANOW: Yes, no. No. I
12 voted no.

13 CHAIR LHAMON: Thank you.

14 Commissioner Kladney.

15 COMMISSIONER KLADNEY: Yes.

16 CHAIR LHAMON: Commissioner Yaki.

17 (No response.)

18 CHAIR LHAMON: Commissioner Yaki.

19 COMMISSIONER YAKI: I vote aye.

20 CHAIR LHAMON: Thank you.

21 And I vote yes.

22 The motion passes. Two Commissioners
23 abstained, two Commissioners opposed, four in favor.

24 We'll turn back to --

25 COMMISSIONER HERIOT: I thought there was

1 a pass. And you have to go back to the pass.

2 CHAIR LHAMON: I think that actually, that
3 was an abstention. We count the votes as I call on
4 each of the Commissioners.

5 COMMISSIONER HERIOT: I thought
6 Commissioner Adams passed.

7 CHAIR LHAMON: Thank you, Commissioners.

8 COMMISSIONER GILCHRIST: He did.

9 CHAIR LHAMON: Thank you. And as I said,
10 I treat that as an abstention.

11 We're going back now. We've had a motion
12 on the agenda to approve it.

13 We'll vote on the approved agenda, as
14 amended.

15 Commissioner Adams, how do you vote?

16 COMMISSIONER ADAMS: Okay. Just to be
17 clear, are we voting on Commissioner Kirsanow's
18 amendments?

19 CHAIR LHAMON: We are voting on
20 Commissioner Kirsanow's motion to approve the agenda
21 as he stated it with the addition that I've added.
22 And that motion has passed.

23 COMMISSIONER ADAMS: With the addition
24 that -- the amendment that he proposed?

25 CHAIR LHAMON: No. Including his

1 additions and with the additions that I added.

2 COMMISSIONER ADAMS: Okay. I vote yes, as
3 long as that is with Commissioner Kirsanow's
4 amendment. I wasn't clear.

5 CHAIR LHAMON: Yes. Thank you.

6 Commissioner Adegbile.

7 COMMISSIONER ADEGBILE: Aye.

8 CHAIR LHAMON: Commissioner Gilchrist.

9 COMMISSIONER GILCHRIST: Aye.

10 CHAIR LHAMON: Commissioner Heriot.

11 COMMISSIONER HERIOT: Yes.

12 CHAIR LHAMON: Commissioner Kirsanow.

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIR LHAMON: Commissioner Kladney.

15 (No response.)

16 CHAIR LHAMON: Commissioner Kladney?

17 COMMISSIONER KLADNEY: Sorry. Yes.

18 CHAIR LHAMON: Thank you.

19 Commissioner Yaki.

20 COMMISSIONER YAKI: Aye.

21 CHAIR LHAMON: Thank you.

22 And I vote yes.

23 The motion passes unanimously.

24 We will now hear from our Ohio Advisory

25 Committee Chair Diane Citrino on the Committee's

1 recently-released report titled "Education Funding and
2 Civil Rights in Ohio."

3 Chair Citrino.

4 III. BUSINESS MEETING

5 A. PRESENTATION BY DIANE CITRINO,

6 CHAIR OF OHIO ADVISORY COMMITTEE

7 ON THE COMMITTEE'S REPORT,

8 EDUCATION FUNDING AND CIVIL RIGHTS IN OHIO

9 MS. CITRINO: Thank you.

10 Good afternoon. Thank you so much for the
11 privilege of discussing the Ohio Advisory Committee's
12 Report on Education Funding and Civil Rights in Ohio.

13 Our report examined the civil rights
14 implications of our state's education funding
15 allocations, including fulfillment of Ohio's
16 obligation to provide equal participation in a
17 thorough and efficient system of common schools, as
18 set forth in Ohio's Constitution.

19 From a civil rights perspective, questions
20 of adequacy in educational funding are salient,
21 particularly in Ohio, where the Ohio Supreme Court
22 held in a series of cases from 1991 to 2003, known as
23 DeRolph v. State of Ohio, that the state's educational
24 funding system is unconstitutional because it fails to
25 provide adequate funding, particularly for low income

1 districts.

2 While the Ohio Supreme Court has -- excuse
3 me -- the U.S. Supreme Court has stated that poverty
4 is not a protected class, lack of school funding or
5 grossly disproportionate allocation of funds between
6 school districts may have a disproportionate impact on
7 certain communities whose members largely represent a
8 protected class.

9 And, unfortunately, Ohio's General
10 Assembly has failed to remedy the flaws in Ohio's
11 educational funding identified by our highest court.

12 Significant disparities persist in
13 educational access and outcomes across the country
14 generally, and Ohio is no exception. Gaps in
15 educational outcomes between White and Black students,
16 as well as White and Hispanic students have persisted.
17 We've heard compelling testimony that children facing
18 challenges with disabilities do not have adequate
19 funding and resources to thrive.

20 Teachers noted that some students cost
21 more to educate than others. Inadequate resources
22 have the biggest impact on impoverished districts,
23 districts predominantly serving students of color and
24 students with disabilities, and may contribute to
25 cross-generational poverty and inequality.

1 Speakers who testified before us
2 identified specific areas in need of improvement.
3 Many of the speakers lamented the lack of a base cost
4 figure: what does it take to educate students in Ohio
5 based on an objective assessment of the needs of each
6 particular student?

7 One speaker pointed out that Ohio may
8 require more funding per student than is average
9 across the U.S. because Ohio has challenging
10 demographics. We have more large urban areas than any
11 state except California and Texas. And it also has a
12 very large, poor rural area in Appalachia.

13 Regardless of the specific funding
14 approach or priorities, nearly all the speakers agreed
15 that using evidence to determine student needs, then
16 funding that need at an adequate level that isn't
17 overly reliant on property taxes was needed.

18 Ohio offers a mosaic of education
19 opportunities to our students, including students from
20 disadvantaged backgrounds. They include traditional
21 public schools; private schools, including religious
22 schools; community or charter schools; magnet schools;
23 and schools with special educational programs.
24 Nonetheless, despite improvement, disparities continue
25 to exist, and they need to be addressed.

1 The Ohio Advisory Committee acknowledges
2 that funding is but one component in the quest to
3 improve student outcomes, but it remains an essential
4 element in providing the constitutionally-required
5 thorough and efficient system of common schools.

6 The state of Ohio did implement funding
7 reforms recently, in 2009 and 2011, that reduced
8 dependence on property taxes while fully funding and
9 implementing a series of research space interventions
10 in the schools. The reforms correlated with
11 significant improvements in student achievement.
12 However, the initiative was not continued.

13 A comparable initiative implemented in
14 Wyoming did show similar success to what we briefly
15 had in Ohio.

16 Our report was released in February 2020,
17 shortly before COVID-19 pandemic upended schooling
18 across the country. It may be, therefore, the perfect
19 time for initiatives to support evidence-based
20 interventions that help all of our children receive
21 the education they deserve.

22 I urge review of our committee's
23 thoughtful recommendations, including but not limited
24 to a request that the U.S. Commission on Civil Rights
25 urge our Ohio legislature to commission an independent

1 study to more accurately evaluate the amount of
2 funding needed to meet all students' needs,
3 particularly those in underperforming districts, to
4 seek reliance on -- to reduce reliance on property
5 taxes for public education funding in any funding
6 formula the legislature established, and further urge
7 the legislature to commission an independent study to
8 determine the impact of directing public funds to
9 private schools and community schools in a variety of
10 different methods.

11 We really appreciate the Commission's help
12 in moving forward on this urgent issue. And I would
13 like to thank the staff of the Commission, in
14 particular Melissa Mirowski, as well as all of the
15 members of our Ohio Committee who worked hard to
16 complete this report.

17 I'm happy to take any and answer any
18 questions the Commissioners may have.

19 CHAIR LHAMON: Thanks so much, Chair
20 Citrino.

21 We'll now open up for Commissioner
22 questions.

23 While folks are queuing, I'll start some
24 of my own. I thought it was interesting that the
25 report included information about the funding reforms

1 that the state had implemented between 2009 and 2011,
2 and what evidence those reforms show about effective
3 school funding. And appreciated your committee's
4 decision to shine a light on that important
5 information.

6 And, also, I imagine you know that the
7 U.S. Commission on Civil Rights took up a national
8 version of this question recently.

9 So, I'm pleased that the recommendations
10 that your committee makes to the U.S. Commission on
11 Civil Rights for national steps the Commission has
12 taken, and I believe that the recommendations also
13 have made sure that you know, Chair Citrino, and will
14 share with your committee members, that it is the
15 Commission's practice to forward on the
16 recommendations from the advisory committees to state
17 and local entities that the Advisory Committee makes
18 recommendations to.

19 So, we will also send those
20 recommendations on as well.

21 MS. CITRINO: Thank you.

22 CHAIR LHAMON: Of course. Are there other
23 questions or comments for Chair Citrino on this
24 report?

25 (No response.)

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CHAIR LHAMON: Well, hearing none, Chair Citrino, thank you very much for taking time out of your day and for your expertise and your service and leadership on the Ohio Advisory Committee.

Thank you so much.

MS. CITRINO: Thank you.

CHAIR LHAMON: So, next -- of course -- we'll next hear from our Colorado Advisory Committee Chair Alvina Earnhart on the committee's report titled "Citizenship Delayed: Civil Rights and Voting Rights Implications of the Backlog in Citizenship and Naturalization Applications."

Chair Earnhart.

B. PRESENTATION BY ALVINA EARNHART,

CHAIR OF COLORADO ADVISORY COMMITTEE

ON THE COMMITTEE'S REPORT,

CITIZENSHIP DELAYED: CIVIL RIGHTS AND

VOTING RIGHTS IMPLICATIONS OF THE BACKLOG

IN CITIZENSHIP AND NATURALIZATION APPLICATIONS

MS. EARNHART: Good afternoon and thank you, Chairwoman Lhamon and Commissioners.

In September 2019, the Colorado State Advisory Committee published its report on U.S. Citizenship and Immigration Service, commonly known as CIS, Naturalization Backlog in Colorado.

1 In September 2018, our staff voted to
2 study the civil rights implications of the CIS'
3 naturalization backlog, and hosted a hearing on
4 February 22, 2019. Our staff selected this topic in
5 an effort to understand how the backlog developed.

6 We sought to understand the consequences
7 of the backlog for civil rights and the fair
8 administration of law, as well as how any identified
9 institutional failures might be remedied,
10 specifically, how the backlog might be reduced and
11 naturalization processing times restored to the six-
12 months timeframe set by Congress.

13 We concluded that the naturalization
14 backlog is a particularly pressing civil rights
15 concern because naturalization is required for voting.
16 The Commission was created to address the
17 disenfranchisement of Black Americans, and voting
18 rights remains a core concern for the Commission.

19 It is also worth noting that the backlog
20 disproportionately impacts the voting rights of
21 individuals based on national origin, racial, and
22 religion, all protected by the Equal Protection clause
23 in civil rights laws.

24 Consequently, the naturalization backlog
25 potentially has significant effects on future

1 elections. Additionally, withholding the benefits of
2 citizenship to those who have otherwise earned them is
3 a violation of due process and the administration of
4 law.

5 The work on the report, the topic of which
6 was recommended and driven by committee member Ling Su
7 Chen, could not have been concluded without the strong
8 staff leadership from Barbara De La Viez, and the
9 support of Evelyn Rojas and the University of Colorado
10 Law School staff and students who provided research
11 and event support.

12 So, I would like to acknowledge and thank
13 each of them in this public forum.

14 The resulting report determined that the
15 CIS' national backlog in naturalization applications
16 as of September 2019 was over 738,000. And the
17 national average wait times ranged from 10 months to
18 nearly 3 years.

19 In the Denver Field Office, which receives
20 and processes applications for Colorado and Wyoming,
21 the backlog in naturalization applications was 9,325.
22 And the wait times ranged from 10 to 19.5 months.

23 Since our report was issued last year, the
24 backlog has grown again by 7 percent nationally, and
25 17 percent in the Denver Field Office. The most

1 recent data indicates that 700,885 naturalization
2 applications are still pending nationally, and almost
3 7,000 in the Denver Field Office.

4 Our SAC commends the CIS for working to
5 reduce the backlog over the 2019 fiscal year. In
6 2019, 833,000 new citizens were naturalized
7 nationally. Such efforts resulted in a decrease in
8 the backlog by 12 percent nationally and 36 percent in
9 the Denver Field Office.

10 However, these processing times still far
11 exceed the statutory timeframe of 6 months and impede
12 voting in a presidential election year. The
13 substantial delays to naturalization created by the
14 backlog negatively impacts voting rights, civil
15 rights, and the administration of justice.

16 The effect on voting rights is obvious:
17 the right to vote depends on completing the
18 naturalization process. As time passes, an
19 increasingly large number of otherwise eligible voters
20 will find themselves disenfranchised and unable to
21 participate in the political process. This means that
22 individual voting rights are suppressed, and legal
23 permanent residents are caught in the naturalization
24 backlog.

25 Panelists testified that at the present

1 processing times, individuals who would otherwise be
2 able to vote but were not naturalized in time to vote
3 in upcoming elections for 2019 and 2020. Effect on
4 voting rights has been further exacerbated due to
5 closures that occurred following the COVID-19
6 pandemic. This fact is outlined in a statement our
7 SAC released last month as a follow-up to this report.

8 To limit exposure risks of COVID-19, CIS
9 offices were closed for nearly 2 months. As a result,
10 oath of allegiance ceremonies, the final step in the
11 naturalization process, were postponed. Approximately
12 126,000 eligible immigrants were unable to naturalize.

13 Upon reopening, the CIS has commenced in-
14 person oath ceremonies in small groups that only allow
15 for one-tenth of the original capacity to conform with
16 social distancing precautions. The Denver Field
17 Office is resuming administration of the oath in the
18 office's oath ceremony room which can only accommodate
19 nine applicants at a time. At this reduced rate, it
20 is likely 189,000 otherwise eligible permanent
21 residents will be unable to vote in the November 2020
22 election.

23 Our recent SAC statement of concern
24 encourages the Commission to urge the CIS to take
25 affirmative measures that would expedite the process

1 of naturalization.

2 First, the CIS should consider changes to
3 the oath ceremony and allow the oath of allegiance
4 ceremony to be held remotely, outdoors, in drive-
5 throughs, or by using remote conferencing technology,
6 just as the Denver Field Office did when it
7 naturalized approximately 500 citizens in the parking
8 lot between May and June 2020.

9 Alternatively, the CIS could permit
10 administrative naturalization and waive the oath of
11 allegiance. Such authority to expedite the
12 naturalization process is granted under the statute.

13 Finally, CIS could partner with federal
14 courts in order to empower them to expand and expedite
15 oath ceremonies that can be administered judicially.
16 There are a number of options available to the CIS to
17 conduct the oath of allegiance, including waiving the
18 requirements to allow individuals awaiting the last
19 step to obtain citizenship to become citizens and
20 participate in the upcoming election.

21 Citizenship also carries many civil
22 rights, such as eligibility for employment, housing,
23 and other public benefits. These rights are impeded
24 by delaying acquiring citizenship.

25 Available data is insufficient to

1 determine whether specific populations of applicants
2 are disproportionately impacted by the backlog. The
3 apparent extent of the backlog in every group suggests
4 that civil rights are being infringed upon for each
5 subgroup, including protected subgroups such as race,
6 religion, and national origin.

7 The naturalization backlog gives rise to
8 other concerns about discrimination in the
9 administration of justice related to violations of the
10 statutory or due process rights of applicants.
11 Naturalization by eligible persons is a statutory
12 right and is not subject to agency discretion. If an
13 individual meets the eligibility requirements, it has
14 the right to be naturalized within 6 months.

15 As I conclude my remarks, I want to note
16 that the Colorado SAC recognizes that the causes of
17 the national and Colorado backlog are complex and
18 likely multifaceted. Based on the testimony from the
19 briefings, the SAC report offers some explanations for
20 the backlog.

21 First, CIS adopted policies and practices
22 increasing scrutiny of N-400 applications;

23 Second, CIS' insufficient response to
24 fluctuations in receipts;

25 Third, inefficient CIS operations, and;

1 Fourth, inadequate resources and funding
2 allocations for CIS.

3 Findings were made about each of these
4 hypothesized causes to the extent possible with
5 existing information outlined in our report. The SAC
6 believes that the backlog can potentially be reduced
7 by allowing impacted individuals to pursue
8 administrative and judicial remedies; Congress
9 increase funding for the CIS and encourage CIS
10 leadership to develop internal processes that use
11 technology and other adjudication procedures to
12 increase effectiveness, and provide greater
13 accessibility for applicants.

14 The CIS should also examine the efficacy
15 of fraud detection programs and operate with greater
16 transparency.

17 I would like to thank you all for giving
18 me this chance to present this report, and also for
19 the opportunity that I have had over the last several
20 years to chair the Colorado SAC.

21 Thank you.

22 CHAIR LHAMON: Chair Earnhart, thanks so
23 much for that presentation. And, of course, thank you
24 for your service and leadership on the Advisory
25 Committee as well.

1 I'll open for Commissioner questions.

2 COMMISSIONER YAKI: Commissioner Yaki.
3 I'd like to ask a question.

4 CHAIR LHAMON: Go ahead, Commissioner
5 Yaki.

6 COMMISSIONER YAKI: Hi. Well, thank you
7 very much for your report. I have a couple questions.

8 What is the -- if you have it -- what is
9 the average, what is the backlog or average wait time
10 of people who have been approved but not yet sworn for
11 citizenship in Colorado?

12 MS. EARNHART: I'm going to try to repeat
13 that question. You want to know what the average wait
14 time is for the individuals that are just awaiting the
15 oath of allegiance; is that correct?

16 COMMISSIONER YAKI: Yes. Yes.

17 MS. EARNHART: I don't believe we have
18 those specific percentages. But in my statement I did
19 allude to -- let me find the number I had referenced
20 here. We anticipated at least the production was
21 126,000 eligible immigrants would not be able to
22 naturalize because they're not able to perform that
23 last step of taking the oath of allegiance.

24 COMMISSIONER YAKI: And the -- I mean,
25 I've been involved in a lot of mass swearing-in

1 ceremonies. Even with COVID there can certainly be
2 alternatives that can be looked at.

3 What has been the response of the agency
4 with regard to utilizing parking lots, auditoriums
5 where everyone is spaced, even, well, even ZOOM or
6 DocuSign, or something like that? What has been their
7 response to trying to just get these folks who have
8 met all the requirements done rather than knowing the
9 requirements you mentioned earlier?

10 MS. EARNHART: It varies, Commission
11 Member, based on the field office. Unfortunately,
12 there is not a uniform approach that CIS has adopted
13 to provide options for each of the field offices.

14 We've looked at other options that have
15 been practiced. Like, for example, in California I
16 believe they were moving towards the drive-through
17 option, or holding ceremonies outdoors. So, they
18 really varied.

19 And it appears from our vantage point that
20 the field office is the one that is determining what
21 they could do based on with regards to other states
22 with respect to mandatory, you know, precautions that
23 are taken for these individuals, and limiting the
24 number of people that can be in one area.

25 So, there is no uniform approach to

1 determining how best to ensure that these individuals
2 are given the opportunity to take the oath of
3 allegiance. I am not aware of any of them adopting a
4 technology approach the way they would allow them to
5 be doing. But it is certainly something that they are
6 able to do.

7 But it is one of our recommendations that
8 we outlined in our statement to supplement this report
9 where we encouraged the Commission to make o the
10 recommendations to CIS, so that they can hopefully
11 adopt some uniform approach or one way to just
12 encourage the field offices to think outside the box,
13 essentially to increase those numbers.

14 I think the best approach would be for
15 them just to waive the requirement. These individuals
16 have complied with all other requirements expected of
17 them under the statute. And the final step is just to
18 take this oath of allegiance. That is in the way of
19 their opportunities to vote and participate in this
20 upcoming presidential election.

21 COMMISSIONER YAKI: Thank you. And thank
22 you for your leadership on this issue.

23 MS. EARNHART: Thank you.

24 CHAIR LHAMON: Thank you.

25 Are there other questions or comments from

1 Commissioners?

2 (No response.)

3 CHAIR LHAMON: I'll note that we have
4 started to pick up a letter that I will propose later
5 today to USCIS that incorporates much of the
6 information in your committee's report. So, I very
7 much appreciate the very careful review and the
8 committee's decision to draw attention to this
9 important issue.

10 And I hope that you will share with your
11 committee members that the Commission will take the
12 topic up as a topic to consider sending over to USCIS
13 as well.

14 Thank you very much for your presentation
15 today.

16 MS. EARNHART: Thank you, Chair. Thank
17 you very much for that. I will pass the information
18 on to my fellow committee members. And thank you,
19 again, to all Commission members for the opportunity
20 to present this.

21 CHAIR LHAMON: Thank you.

22 C. DISCUSSION AND VOTE ON COMMISSION

23 ADVISORY COMMITTEES

24 VERMONT ADVISORY COMMITTEE

25 IDAHO ADVISORY COMMITTEE

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KANSAS ADVISORY COMMITTEE

CHAIR LHAMON: And we'll now move to our next agenda item which is a discussion and vote on the Vermont Advisory Committee.

Given the nature of the discussion, I move to enter into a closed session to discuss appointments to both the Vermont and the Idaho Advisory Committees.

Do I have a second?

COMMISSIONER KLADNEY: Kladney. Second.

CHAIR LHAMON: Thank you. Commissioner Kladney seconds.

Madam General Counsel, per the Commission's regulations could you please provide us your opinion as to whether the meeting may be closed for the reasons specified in the motion?

MS. RUDOLPH: Yes, Madam Chair. As general counsel, I certify that this meeting can be closed, and the information may be withheld pursuant to the exemptions provided in the Commission's regulations at 45 CFR 702.53.

As the anticipated discussion concerns the appointment of Advisory Committee members, I find that the discussion falls within the exemption 2, when discussion is likely to disclose information related to internal personnel rules and practices of the

1 Commission; and exemption 6 where information is of a
2 personal nature, disclosure of which may be an
3 unwarranted invasion of personal privacy.

4 Further, in accordance with the
5 Commission's regulations, if the vote is in favor of
6 a closed session, a written copy of my certification
7 will be kept on file with the written transcript.

8 Thank you.

9 CHAIR LHAMON: Thank you. I'll call the
10 question and take a roll call vote.

11 COMMISSIONER HERIOT: Madam Chair.

12 COMMISSIONER YAKI: I'm sorry. This is
13 Commissioner Yaki. I have a question for the general
14 counsel.

15 CHAIR LHAMON: Go ahead, Commissioner
16 Yaki.

17 COMMISSIONER YAKI: General Counsel, what
18 are the rules inside of the closed session to end the
19 closed session?

20 MS. RUDOLPH: I believe that during your
21 discussion you guys can, obviously, discuss whatever
22 sort of options you think makes the most sense in
23 terms of the discussion and how to move forward.

24 Any sort of vote should be done back on
25 the public record. But --

1 COMMISSIONER YAKI: That's not the
2 question. That's not the question, Madam General
3 Counsel. But the question is how do you end a closed
4 session? Does it just go on forever?

5 MS. RUDOLPH: Oh, I apologize,
6 Commissioner Yaki. No. I believe you all can agree
7 to end the closed session and go back into the open
8 session.

9 COMMISSIONER YAKI: We have to agree.
10 Does it require a vote? And, if so required to vote,
11 how many votes? It takes four to go into a closed
12 session, does it take four to get out?

13 MS. RUDOLPH: I don't believe that the
14 regulations speak directly to this point. This is my
15 first closed session so I'm not sure what the
16 Commission's practice has been in the past. You may
17 have more information depending on the Commission
18 (telephonic interference).

19 I'm new to the regulations. (Telephonic
20 interference) to go into closed session and
21 conditioned upon out of closed session.

22 COMMISSIONER HERIOT: Madam Chair.

23 CHAIR LHAMON: Commissioner Heriot.

24 COMMISSIONER HERIOT: I'm not certain that
25 we need to do this. I think that at least some of us

1 are prepared to just vote.

2 CHAIR LHAMON: Well, there is a motion
3 pending. I appreciate that motion but we may not need
4 it. We can have a brief closed session.

5 Why don't we take the vote on it and go
6 into --

7 COMMISSIONER HERIOT: Well, I just would
8 argue --

9 (Simultaneous speaking.)

10 CHAIR LHAMON: Terrific. Appreciate the
11 information. And I think folks can take it into
12 consideration as they choose how to vote. And I'm
13 also happy now to take a roll call vote.

14 Okay. I call the question, take a roll
15 call vote whether to move into a closed session.

16 Commissioner Adams, how do you vote?

17 COMMISSIONER ADAMS: No.

18 CHAIR LHAMON: Commissioner Adegbile.

19 COMMISSIONER ADEGBILE: Aye.

20 CHAIR LHAMON: Commissioner Gilchrist.

21 COMMISSIONER GILCHRIST: No.

22 CHAIR LHAMON: Commissioner Heriot.

23 COMMISSIONER HERIOT: No.

24 CHAIR LHAMON: Commissioner Kirsanow.

25 COMMISSIONER KIRSANOW: No.

1 CHAIR LHAMON: Commissioner Kladney.

2 COMMISSIONER KLADNEY: Yes.

3 CHAIR LHAMON: Commissioner Yaki.

4 COMMISSIONER YAKI: No.

5 CHAIR LHAMON: And I'll vote no as well.

6 So, my own motion fails. Six

7 Commissioners opposed, no Commissioner abstained, all
8 others were in favor, and we will stay in the public
9 call.

10 Given that, moving forward I move the
11 Commission appoint the following individuals to the
12 Vermont Advisory Committee based on the
13 recommendations by the staff director: Natasha Chang,
14 Tracy Ballysingh, Luther Brown, Keegan Callanan, James
15 Diaz, Thomas Little, Tabitha Moore, Guy Page, Michelle
16 Paya, Sherwood Smith, and Julio Thomson.

17 With this motion, the Commission will also
18 appoint Nathasha Chang as the Chair of the Vermont
19 Advisory Committee.

20 All of these members will serve as
21 uncompensated government employees.

22 If the motion passes, the Commission will
23 authorize the staff director to execute the
24 appropriate paperwork for the appointments, which will
25 begin immediately.

1 Do I have a second to this motion?

2 COMMISSIONER YAKI: Second. Commissioner
3 Yaki.

4 CHAIR LHAMON: Thank you.

5 I now open the floor for discussion.

6 (No response.)

7 CHAIR LHAMON: Hearing none, I'll call the
8 question and take a roll call vote.

9 Commissioner Adams, how do you vote?

10 COMMISSIONER ADAMS: No.

11 CHAIR LHAMON: Commissioner Adegbile?

12 COMMISSIONER ADEGBILE: Aye.

13 CHAIR LHAMON: Commissioner Gilchrist.

14 COMMISSIONER GILCHRIST: No.

15 CHAIR LHAMON: Commissioner Heriot?

16 COMMISSIONER HERIOT: No.

17 CHAIR LHAMON: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: No.

19 CHAIR LHAMON: Commissioner Kladney.

20 COMMISSIONER KLADNEY: I'm going to pass
21 for a minute.

22 CHAIR LHAMON: And I'm going to take that
23 as an abstention.

24 COMMISSIONER HERIOT: No. You have to
25 take it as a pass.

1 CHAIR LHAMON: Commissioner Yaki.

2 COMMISSIONER KLADNEY: Please don't.

3 CHAIR LHAMON: So, Commissioner Kladney,
4 what was your vote?

5 COMMISSIONER KLADNEY: I will vote yes.

6 CHAIR LHAMON: All right. Commissioner
7 Yaki.

8 COMMISSIONER YAKI: Aye.

9 CHAIR LHAMON: And I vote yes.

10 The motion fails. Four Commissioners
11 opposed, no Commissioner abstained, four Commissioners
12 were in favor.

13 Next we will take up appointments by the
14 Idaho Advisory Committee.

15 I move that the Commission appoint the
16 following individuals to the Idaho Advisory Committee
17 based on the recommendation of the staff director:

18 Shakirra Sanders, Patricia Carter-
19 Goodheart, Dina Flores-Brewer, Edward Kammerer, Shin
20 Kue Ryu, Monique Lillard, Kathryn McConnell, Ronald
21 Nate, and Carole Valderrama-Echevarria.

22 With this motion, the Commission will also
23 appoint Shakirra Sanders as the Chair of the Idaho
24 Advisory Committee.

25 All of these members will serve as

1 uncompensated government employees.

2 If the motion passes, the Commission will
3 authorize the staff director to execute the
4 appropriate paperwork for the appointments, which will
5 begin immediately.

6 Do I have a second for this motion?

7 COMMISSIONER YAKI: Second. Commissioner
8 Yaki.

9 CHAIR LHAMON: Thank you.

10 No further discussion for the public
11 record, I'll call the question and take the roll call
12 vote.

13 Commissioner Adams, how do you vote?

14 COMMISSIONER ADAMS: No.

15 CHAIR LHAMON: Commissioner Adegbile.

16 COMMISSIONER ADEGBILE: Aye.

17 CHAIR LHAMON: Commissioner Gilchrist.

18 COMMISSIONER GILCHRIST: No.

19 CHAIR LHAMON: Commissioner Heriot.

20 COMMISSIONER HERIOT: No.

21 CHAIR LHAMON: Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: No.

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.

3 The motion fails. Four Commissioners
4 opposed, no Commissioner abstained, four Commissioners
5 were in favor.

6 Our next agenda item to begin discussion,
7 I move that the Commission appoint the following
8 individuals to the Kansas Advisory Committee based on
9 the recommendations of the supervisory chief of the
10 regional program's coordination unit, as designated by
11 the staff director:

12 Mildred Edwards, Michael Austin, Kenya
13 Cox, Moussa Elbayoumy, Marche Flemming-Randle, John
14 Fliter, Steven Gieber, Mary Lehoczky, Sally Murguia,
15 Phyllis Nolan, Kir Perucca, and Carla Pratt.

16 With this motion, the Commission will also
17 appoint Mildred Edwards as the Chair of the Kansas
18 Advisory Committee. All of these members will serve
19 as uncompensated government employees.

20 If the motion passes, the Commission will
21 authorize the staff director or his designee to
22 execute the appropriate paperwork for the
23 appointments, which will begin after the current
24 committee expires.

25 Do I have a second for this motion?

1 COMMISSIONER HERIOT: Second. Heriot.

2 CHAIR LHAMON: Thank you.

3 I'll open the floor for discussion.

4 (No response.)

5 CHAIR LHAMON: Hearing none, I'll call the
6 question and take a roll call vote.

7 Commissioner Adams, how do you vote?

8 COMMISSIONER ADAMS: Yes.

9 CHAIR LHAMON: Commissioner Adegbile.

10 COMMISSIONER ADEGBILE: Aye.

11 CHAIR LHAMON: Commissioner Gilchrist.

12 COMMISSIONER GILCHRIST: Aye.

13 CHAIR LHAMON: Commissioner Heriot.

14 COMMISSIONER HERIOT: Yes. The staff
15 tried on this one.

16 CHAIR LHAMON: Commissioner Kirsanow.

17 COMMISSIONER KIRSANOW: No.

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.

23 The motion passes. One Commissioner
24 opposed, no Commissioner abstained, all others were in
25 favor.

1 We move on. I will thank the staff for
2 their work on recruiting members for our advisory
3 committees and their efforts that we appreciate for
4 all these appointments.

5 D. DISCUSSION AND VOTE ON THE COMMISSION'S

6 REPORT, NAVIGATING VOTING DURING THE
7 COVID-19 PANDEMIC: CONSIDERATIONS IN
8 ACCESS FOR MINORITY VOTERS

9 CHAIR LHAMON: The next item on the agenda
10 is a discussion and vote on the Commission's report
11 titled "Navigating Voting During the COVID-19
12 Pandemic: Considerations in Access for Minority
13 Voters."

14 We'll hold two votes. First, we will
15 consider the report and; second, we will consider
16 findings and recommendations.

17 Open the floor for discussion. Is there
18 a motion?

19 COMMISSIONER YAKI: So moved.
20 Commissioner Yaki.

21 CHAIR LHAMON: Thank you.

22 And is there a second?

23 COMMISSIONER ADEGBILE: Second. Adegbile.

24 CHAIR LHAMON: Thank you. Hearing no
25 discussion, I'll turn it over to Commissioner Adegbile

1 who is the lead sponsor for this project.

2 Commissioner Adegbile.

3 COMMISSIONER ADEGBILE: Thank you, Madam
4 Chair.

5 I move that we adopt the report
6 "Navigating Voting During the COVID-19 Pandemic:
7 Considerations in Access for Minority Voters report
8 that was shared by my special assistant Irena
9 Vidulovic yesterday -- sorry, Wednesday, August 19th.

10 CHAIR LHAMON: Thank you. That motion has
11 already preceded, Commissioner Adegbile. Commissioner
12 Yaki moved that we approve it, and you seconded it.

13 So, is there now any discussion of the
14 project itself? Did you have any points you wanted to
15 make about the report?

16 COMMISSIONER ADEGBILE: Indeed I did,
17 Madam Chair. Thank you.

18 I want to take this report in context.
19 The United States Civil Rights Commission was founded
20 in part to address the issue of voting rights and the
21 barriers to voting rights in the United States. That
22 was part of the founding notion of the Commission in
23 '57. And, indeed, our first report in '59 was on this
24 topic. And we have returned to the topic more than 20
25 times in the ensuing years.

1 Most recently, in 2018 we issued a report
2 that examined voting rights and DOJ's enforcement of
3 the Voting Rights Act before and after the Supreme
4 Court's consequential decision in Shelby County v.
5 Holder.

6 This report is an update to that report
7 with the focus, as the title suggests, being on the
8 challenges that we face in this year's national
9 elections as a result of the COVID-19 pandemic.

10 As we note in the report, and as one of
11 the witnesses testified, this election may fairly be
12 regarded as the most logistically challenging since
13 the nation voted during the Civil War in light of the
14 health-related challenges that we face due to the
15 pandemic.

16 It's important to note, also, that the
17 country is very focused on this election. Everybody
18 believes that it's important to exercise one's right
19 to vote. And we know that there is a experience in
20 America of two approaches to voting. In a sense,
21 there are two paths to winning elections.

22 On the one hand, candidates can choose to
23 mobilize and galvanize more voters to support their
24 leadership and vision, and do the hard work of
25 building that support through engaging messages and

1 policies and with a focus on access and participation.
2 This is American democracy's high road.

3 But the high road is not the only road.
4 There's another proven path to attempting to win
5 elections, and that path is a path rather than
6 extending voting and expanding access is an effort to
7 erect barriers that diminish voter participation and
8 voter access, and can adversely affect election
9 outcomes. That I'll regard as democracy's low road.

10 They're two paths, both with historical
11 roots in our country, one high and one low, as I've
12 written in other contexts, but both deeply familiar.

13 This report is a mini-report in a sense,
14 not so much in that it is not voluminous -- it is --
15 but in a sense that we didn't have the same amount of
16 time that we ordinarily have, in part because we
17 wanted to do it in a window that would make it
18 available before the election. And so, there are a
19 number of things in the report, a number of proposed
20 findings and recommendations. And it perhaps is
21 helpful to focus on some of those.

22 Among other things, the proposed findings
23 in the report suggest that the November 2020 election
24 will be the most logistically complicated, as I said.
25 The findings note that voters lining up to vote

1 indoors on election day, especially in high volumes,
2 could pose health risks during a pandemic,
3 exacerbating risks of the virus transmission due to
4 people in close proximity to each other. And this is
5 a special concern in crowds.

6 Many states have voting mechanisms that
7 allow ways for voters to vote that could reduce
8 familiar election day voting lines. And people of
9 color face disproportionately high risks of
10 contracting and dying from COVID-19. The CDC data
11 shows that the rate of COVID-19 is roughly three times
12 higher among Black and Latino people than White
13 people.

14 Latino and Native American communities
15 have been hard hit by the COVID-19 pandemic because 20
16 percent of the deaths in those communities between
17 early March and July have been related to COVID-19.

18 With respect to access to mail-in voting
19 options, interest in voting by mail, including from
20 voters of color, has increased in 2020 due to the
21 health risks of voting in person imposed by the
22 pandemic. Prior to the COVID-19 pandemic, 10 percent
23 of states conducted their elections entirely by mail.
24 Nearly 70 percent of states had no excuse absentee
25 voting, effectively mail-in voting, at the start of

1 the pandemic.

2 Of the 17 states that specifically require
3 voters to provide an excuse to vote by mail, all but
4 three waived or created a COVID-specific exception to
5 the requirement during the primaries, though some only
6 changed the requirements after litigation, and the
7 status of those changes to the general election is
8 still uncertain in many of those states.

9 The three states that denied no excuse
10 mail-in voting -- Louisiana, Mississippi, and Texas --
11 were all formerly covered states under the pre-
12 clearance provision of the Voting Rights Act under
13 which covered jurisdictions were required to seek
14 approval of voting changes due to their history of
15 voting discrimination.

16 Twelve states currently require voters to
17 obtain a witness signature or notarization for their
18 absentee ballots. This requirement creates increased
19 health risks during a COVID-19 pandemic, especially
20 for those individuals who are not living with others
21 and who would have to break social distancing
22 guidelines to meet the requirement. A witness
23 requirement poses a disproportionate risk to voters of
24 color who are disproportionately impacted by the
25 pandemic.

1 Voters of color are disproportionately
2 impacted by restrictions on absentee balloting that do
3 not allow for exceptions due to COVID-19 because these
4 populations are already disproportionately impacted by
5 and empirically are at heightened risk from the virus.

6 Absentee voter excuse requirements are
7 especially restrictive for low income and minority
8 voters, many of whom may be essential workers and may,
9 therefore, lack the flexibility in their work and
10 child care schedules to vote at the polls because they
11 still lack a legally valid excuse while applying for
12 an absentee ballot.

13 Use of mail-in ballots increased
14 dramatically across the country for the 2020
15 primaries, accounting for a majority of ballots cast
16 in some states.

17 In contrast, in the 2018 general election,
18 only a quarter of all ballots were cast by mail.

19 Based on evidence from primary elections,
20 states were not prepared for the drastic influx of
21 absentee ballots as compared to the amount of absentee
22 ballots submitted in prior elections. States did not
23 make advance preparation for increased -- for the
24 increase, found themselves unable to properly and
25 efficiently mail out and count ballots.

1 Native American voters are
2 disproportionately impacted by restrictions on third
3 party ballot elections where individuals or
4 organizations collect and deliver completed ballots to
5 election officers, as rural and native communities
6 often lack consistent and reliable access to the
7 Postal Service, and driving to the post office can be
8 an hours-long commute.

9 I note parenthetically that that assumes
10 that driving is the way that you could get to a Post
11 Office. I know in some remote parts of our country,
12 including Alaska, there are other means, including
13 planes, that you might need to do so.

14 The lack of broadband access across tribal
15 lands make it difficult for Native American voters
16 living on reservations to register to vote or apply
17 for absentee ballots.

18 Mail-in ballots for voters of color are
19 disproportionately rejected at a higher rate than
20 mail-in ballots of White voters, sometimes as high as
21 two times higher for Black voters compared with White
22 voters. This high rate of rejection is especially
23 prevalent among young Black and Latino voters who are
24 likely using mail-in ballots for the first time.

25 Discretionary signature matching policies

1 lead to a wide variation in how ballots are rejected
2 across the states. And only 19 states require that
3 voters be given notice of an opportunity to clear
4 discrepancies in signatures.

5 Absentee ballots are often inaccessible to
6 those with limited English proficiency, as the ballots
7 are often only mailed out in English. In those
8 jurisdictions that fall under the language
9 requirements of Section 203 of the Voting Rights Act,
10 translating some but not all election documents did
11 not satisfy the requirements of the section.

12 Only 16 states and the District of
13 Columbia currently accept absentee ballots postmarked
14 by election day but received after. Thousands of
15 ballots were rejected from primaries in states with
16 strict election day deadlines. During the 2020
17 primary election conducted in the midst of the COVID-
18 19 pandemic, election officials too often failed to
19 send out ballots and election materials in a timely
20 manner, challenging an overburdened, underfunded
21 Postal Service, particularly in rural locations.

22 The process of applying for and receiving
23 absentee ballots often poses unnecessary barriers to
24 voters with disabilities. Photo identification laws
25 especially pose significant difficulty for many

1 individuals with disabilities who do not have I.D.
2 Many voters with disabilities are forced to vote in
3 person, as absentee ballots are inaccessible to them
4 without assistance.

5 Many people with disabilities are at
6 heightened risk for COVID-19 due to individual health
7 conditions and also as a result of their membership in
8 a high risk community.

9 Instances of voter fraud in mail-in voting
10 are exceedingly rare, appearing at less than .00006
11 percent of instances in a Heritage Foundation database
12 tracking allegations between the years 1982 and 2020.

13 With regard to access to safe and
14 accessible in-person voting in the 2020 primary
15 elections, in-person polling locations often face
16 issues with crowds, lack of proper personal protective
17 equipment, broken voting equipment, and untrained
18 workers. These deficiencies were most acute in
19 heavily minority areas.

20 Last minute --

21 CHAIR LHAMON: Commissioner Adegbile.

22 COMMISSIONER ADEGBILE: Yes?

23 CHAIR LHAMON: I apologize. I'm going to
24 ask you to speed up just in the interests of time so
25 that we can move forward with our discussion and vote

1 on this report.

2 COMMISSIONER ADEGBILE: Sure, Madam Chair.
3 COVID-19 has exacerbated the issues of polling place
4 closures, as polling places typically located in
5 schools or in churches are operating out of use and
6 poll workers typically are older Americans, who are at
7 risk of COVID-19 and are choosing not to participate,
8 leading to a shortage of poll workers.

9 There are a number of other challenges
10 that are contained in the findings and recommendations
11 in the context of in-person voting challenges,
12 including that black voters face disproportionate
13 closure and consolidation of polling places, while
14 counties that were majority White or do not have large
15 Black populations had close to their regular number of
16 precincts.

17 And these closures have exacerbated the
18 historically disproportionate wait times for voters of
19 color.

20 We have alluded to and there are several
21 findings about the access issues for limited English
22 proficient voters in the context of these elections
23 and the challenges associated with inadequate
24 assistance at the polls.

25 Access to early voting is another issue

1 that we identified and we are concerned that DOJ in
2 two VRA cases relating to COVID-19, where they filed
3 statements of interest, as cited, which states over
4 private litigants challenging absentee ballot witness
5 and notary requirements.

6 They did not follow any statements of
7 interests that supported VRA claims brought by private
8 litigants.

9 So, in closing, as I turn it back to you
10 Madam Chair, there are a number of recommendations
11 that go to expansions of early voting, of access to
12 absentee voting in ways that could ameliorate and
13 reduce the crowds on election day.

14 There are issues that contemplate the
15 deadline, so that mailing back changes that would
16 extend the deadline of mailing-back ballots in light
17 of the concerns that we have about the postal service
18 and the ability of the postal service and states in
19 jurisdictions to get out absentee ballots, mail-in
20 ballots in a timely fashion.

21 And we make specific recommendations, some
22 of which are directed at the jurisdictions that are
23 administering elections in the states, some of which
24 are directed at Congress, including that Congress
25 would pass legislation to provide financial health and

1 security of the Postal Service, to ensure full and
2 efficient access to verified mail opportunities.

3 And then we speak to DOJ as well, asking
4 for DOJ to use its powers to enforce access.

5 And with that Madam Chair, I turn it back
6 to you.

7 CHAIR LHAMON: Thank you, Commissioner
8 Adegbile.

9 Thank you for your leadership on this
10 project and I'll also offer thanks to our Staff,
11 particularly Catherine Gonzalez, Nick Baaer, and
12 Xavier Guire, as well as all of the other members of
13 our Staff who pitched in during the research and
14 developments of this project.

15 I'll open the floor for further
16 discussion. And then I'll call questions and take a
17 roll call.

18 COMMISSIONER YAKI: I'm sorry.

19 CHAIR LHAMON: Go ahead, Commissioner
20 Yaki.

21 COMMISSIONER YAKI: Yes, I just wanted to
22 thank the Staff and Commissioner Adegbile for the
23 leadership on this.

24 I just wanted to bring up that the
25 importance of this topic is made even more clear by

1 the recent developments regarding the United States
2 Postal Service.

3 I had thought about doing a letter but I
4 thought I'd wait to see what happens with the
5 Congressional hearings in order to go further with it.
6 But it just goes to show that we know that the error
7 rate, Commissioner Yaki, log signatures, those kinds
8 of things, aside from the delay, which is another
9 issue, are disproportionately felt by voters in the
10 black American, Asian American community.

11 The only way that, and where 19 states do
12 have the ability for voters to go in and correct their
13 ballots, there must be sufficient time to respond to,
14 check, respond, notice, and for the voter to come and
15 cure.

16 And this situation right now with the
17 United States Postal Service, where it is unsure
18 whether they have the capability and certainly did not
19 have the capability in limiting the primary elections
20 to deal with the fact that we live in a different
21 world than we did six months ago.

22 I think it's terrible, it's shameful, and
23 points out further the need for the kinds of remedies
24 and alternatives mentioned in this report, whether
25 it's the expansion of growth or early voting, whether

1 it's the ability to create driving voting and other
2 kinds of alternatives that protect people's health but
3 allow them to exercise the franchise, rather than
4 engage in using COVID-19 as a cover to suppress the
5 votes, which is contrary to the spirit of American
6 democracy, is important.

7 So, I wholeheartedly support and commend
8 Commissioner Adegbile and the Staff for this update on
9 the report, and how timely it is in this very
10 different world in which we live in.

11 And I would encourage our Commissioners to
12 support it given the fact that it goes to our core
13 mission and our core right, and that is the ability of
14 people to vote.

15 And at this time, those are the people
16 that vote during the pandemic.

17 CHAIR LHAMON: Thank you, Commissioner
18 Yaki. It sounds like there's someone else on the
19 phone?

20 COMMISSIONER HERIOT: Madam Chair?

21 CHAIR LHAMON: Go ahead, Commissioner
22 Heriot.

23 COMMISSIONER HERIOT: I just want to go on
24 the record a bit on this one, and that is that I do
25 plan to vote no.

1 There's a lot in this report and so much
2 so that it's very difficult to be able to vote what's
3 on it, I would think, given there are just so many,
4 many issues covered in the report itself, and in the
5 findings and recommendations.

6 To me, some of them are conflicting.
7 There's one point at which the recommendation -- the
8 point is made that putting a polling place in the
9 Sheriff's Office is intimidating to some.

10 And then on the other hand, it recommends
11 that tribal buildings be used for polling places.

12 And as I stand up to matters listed number
13 10, the motion here is that you give them very small
14 policies and sometimes those are not the best places.

15
16 People can be intimidated by their local
17 governments, including the tribal governments.

18 And so, I have a problem with that, I have
19 a problem with the deadlines and such, so I'm going to
20 have to vote no on this report, and on the findings
21 and recommendations. I just wanted to be able to put
22 that on the record.

23 CHAIR LHAMON: Thank you. Is there any
24 other discussion?

25 COMMISSIONER KLADNEY: Madam Chair,

1 Commissioner Kladney, I would just like to point out
2 that I believe it was an excellent report, well done,
3 and I commend Commissioner Adebile for the work and
4 the Staff.

5 I think it's an important subject,
6 especially since we are receiving no help regarding
7 alternative needs for voting during this pandemic or
8 guidance from the Federal Government. Thank you.

9 CHAIR LHAMON: Thank you, Commissioner
10 Kladney. Any further discussion?

11 (Simultaneous speaking.)

12 CHAIR LHAMON: Go ahead, Commissioner
13 Gilchrist.

14 COMMISSIONER GILCHRIST: I just wanted to
15 commend Commissioner Lhamon for the report. I too
16 looked at the report on a number of items in the
17 report that some I agreed with and some I did not.

18 But one of the things that I wanted to
19 just point out, many of the issues raised in the
20 report were issues that were very consistent prior to
21 COVID.

22 And more specifically, the fact that now
23 that we see options to find other ways to deliver
24 ballots to the American people, I just want to make
25 sure that we don't disregard the fact that prior to

1 the COVID-19 situation that there were many of these
2 issues outlined in the report prior to that.

3 So I want to commend you, Commissioner,
4 for the work on the report, and the Staff, and I too
5 will be voting no both for the recommendations and the
6 findings in the report.

7 CHAIR LHAMON: Thank you. Any further
8 discussion? That's all the questions so I'll take
9 roll.

10 Commissioner Adams, how do you vote?

11 COMMISSIONER ADAMS: No.

12 CHAIR LHAMON: Commissioner Adegbile?

13 COMMISSIONER ADEGBILE: Yes.

14 CHAIR LHAMON: Commissioner Gilchrist?

15 COMMISSIONER GILCHRIST: No.

16 CHAIR LHAMON: Commissioner Heriot?

17 COMMISSIONER HERIOT: No.

18 CHAIR LHAMON: Commissioner Kirsanow?

19 COMMISSIONER KIRSANOW: No.

20 CHAIR LHAMON: Commissioner Kladney?

21 COMMISSIONER KLADNEY: Yes.

22 CHAIR LHAMON: Commissioner Yaki?

23 COMMISSIONER YAKI: Absolutely aye.

24 CHAIR LHAMON: And I vote yes. Election
25 failed. 12 Commissioners opposed, no Commissioner

1 abstained, 12 Commissioners were in favor.

2 I continue to think that we would be best
3 served with approving a full topical report, and in
4 the absence of that possibility, I believe it is
5 important that we missed out the expert testimony that
6 we received and issue Commissioner statements for the
7 public benefit from our collective expertise on the
8 topic, and in lieu of the report, release the written
9 statements we received from efforts, a company by
10 Commissioner statements written on the same timeline
11 as we had approved unanimously in June.

12 Commissioner statements due on Friday
13 September 11, 2020, with rebuttal due Friday September
14 25, 2020, and no surrebuttal time period.

15 Do I have a second?

16 COMMISSIONER YAKI: Second.

17 (Simultaneous speaking.)

18 CHAIR LHAMON: Thank you. Enthusiastic
19 seconds. Any discussion? Hearing none, I'll call
20 questions and take a roll call vote.

21 Commissioner Adams, how do you vote?

22 COMMISSIONER ADAMS: No.

23 CHAIR LHAMON: Commissioner Adegbile?

24 COMMISSIONER ADEGBILE: Aye.

25 CHAIR LHAMON: Commissioner Gilchrist?

1 COMMISSIONER GILCHRIST: No.

2 CHAIR LHAMON: Commissioner Heriot?

3 COMMISSIONER HERIOT: No.

4 CHAIR LHAMON: Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: No.

6 CHAIR LHAMON: Commissioner Kladney?

7 COMMISSIONER KLADNEY: Yes.

8 CHAIR LHAMON: Commissioner Yaki?

9 COMMISSIONER YAKI: Well, I would just
10 kind of note that this makes it very personal, how
11 we've done it before with these kinds of reports, but
12 we've only done exactly what Commissioner Lhamon has
13 suggested.

14 So, if we don't want even testimony in the
15 hearing record to be allowed, that's to me is
16 interesting. I vote aye.

17 CHAIR LHAMON: As far as interrupting your
18 vote, I'm sorry and I vote yes. The motion failed.
19 Four Commissioners opposed, no Commissioner abstained,
20 four Commissioners were in favor.

21 We can next consider findings and
22 recommendations for the report. I have in
23 anticipation of this broad outcome confirmed with our
24 General Counsel that we can publish findings and
25 recommendations as a report.

1 So, I will open the floor for discussion
2 for a motion to approve the findings and
3 recommendations to the report.

4 Is there such a motion?

5 COMMISSIONER YAKI: So moved, Commissioner
6 Yaki.

7 CHAIR LHAMON: Thank you. Is there a
8 second?

9 COMMISSIONER ADEGBILE: Adegbile seconds.

10 CHAIR LHAMON: Thank you. If there's no
11 discussion I'll turn it over to Commissioner Adegbile
12 who is, again, the lead sponsor for this project.

13 Commissioner Adegbile?

14 COMMISSIONER ADEGBILE: I had the
15 opportunity to share the context and import of the
16 findings and recommendations that our Staff worked
17 hard on in very short order for the purpose of trying
18 to add to the national conversation about a very
19 consequential election.

20 Every election is consequential, special
21 attention is paid to national elections, but in this
22 context, as we've already described, there are a lot
23 of challenges.

24 And one of the things that was evident in
25 the testimony, that regrettably this body decided not

1 to release and thus distribute actively to make it
2 available, is that there was a fair degree of support
3 across the political continuum that there are some
4 modifications that are necessary at this time to
5 facilitate the twin goals of good health and good
6 access for the American people at the time of this
7 election.

8 And the findings and recommendations are
9 pointed in that direction of understanding that
10 there's complexity, that this is not easy to do, that
11 there are a lot of pieces that have to be addressed,
12 as Commissioner Heriot points out, specifically
13 because elections are very complex aspects of our
14 democracy.

15 That's what we signed up for, that's what
16 we try and hold ourselves out to as an example for the
17 world.

18 And I think that we would benefit by
19 releasing the findings and recommendations associated
20 with this report.

21 CHAIR LHAMON: Thank you. Is there any
22 further discussion?

23 (Simultaneous speaking.)

24 CHAIR LHAMON: Go ahead, Commissioners.

25 COMMISSIONER HERIOT: I just wanted to say

1 there are some findings and recommendations that I'm
2 perfectly happy with on this list but there are others
3 that aren't.

4 So, in the end, it's very, very one-sided
5 and, alas, that has been the case with lots of the
6 voting rights issues in the last few years, not just
7 with this Commission but just generally within the
8 public debate.

9 I can't support it the way it is. I am
10 not necessarily against trying to hammer out something
11 that is not so one-sided, but it'll take time.

12 And that's where I am on this, this is
13 like a behemoth set of recommendations and they all go
14 in the same direction. And that won't work so I'm
15 going to have to vote no.

16 CHAIR LHAMON: Thank you, and it sounded
17 like Commissioner Kirsanow, you were trying to get in
18 as well?

19 COMMISSIONER KIRSANOW: No.

20 (Simultaneous speaking.)

21 CHAIR LHAMON: Thank you, Commissioner, I
22 apologize.

23 COMMISSIONER YAKI: Commissioner Yaki.
24 How dare you all confuse my voice with Commissioner
25 Kirsanow?

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(Laughter.)

(Simultaneous Speaking.)

COMMISSIONER YAKI: Commissioner Kirsanow can hear his own voice.

(Simultaneous speaking.)

COMMISSIONER YAKI: I would just like to say that we are going to have to adjust to a new normal on the Commission today. What we just did in not releasing the testimony of this project I think goes against that.

Because if you think about it and if you think about it for more than a second, our goal may be things you would agree on in terms of having a hearing or a briefing on, where we may not agree on what could be produced, we may not agree on probably what the report may say, but we would have an opportunity to have people to testify and bring evidence and witness subjects that we care about on both sides of the issue.

And by taking this presently today, I am telling you right now that my inclination to allow the records to be released in the future, that might have some stuff that you might want in the public record, is going to be looked at with a very jaundiced eye based on the vote here today.

1 This report has contained a lot of
2 testimony, there's a lot of information that people
3 went to great lengths to provide to this Commission,
4 and to simply bury it as if it never occurred is
5 contrary to transparency, contrary to what we have
6 done in the past, contrary to just the spirit of open
7 debate and discussion.

8 So, I would just ask those of you who
9 voted no to reconsider your vote in light of the fact
10 that there may be something in the future down the
11 line where you would want the record to be open, you
12 would want to be able to give comments on the record
13 in the statement.

14 But now with this vote today, you made it
15 clear that that's not going to happen.

16 COMMISSIONER HERIOT: Madam Chair?

17 CHAIR LHAMON: Go ahead, Commissioner
18 Heriot.

19 COMMISSIONER HERIOT: I just want to say
20 I respect there's going to be something salvageable
21 from all of this but we've got to regroup and figure
22 out exactly what that's going to be, that's all I can
23 say at this point.

24 COMMISSIONER ADEGBILE: Madam Chair?

25 CHAIR LHAMON: Commissioner Adegbile? Go

1 ahead, Mr. Adegbile.

2 COMMISSIONER ADEGBILE: Thank you.
3 Commissioner Heriot, I believe you made a good
4 suggestion that some aspect of the report or the
5 findings was very one-sided.

6 And I would just like to come back to my
7 opening remarks in which I point out that there are
8 sort of two ways to go about the elections.

9 One is trying to expand access as people
10 vote, their conscience and their views have access,
11 and then live with the result on, which is what
12 democracy requires and what we commit ourselves to and
13 hold ourselves out to, on both constitutionally and by
14 300 years of practice in the ways they have evolved
15 through a painful history, including some that we will
16 recount later in this meeting.

17 The other is to not fully commit to the
18 democracy that our country is hopefully aspiring to at
19 every turn, and to put barriers in the way of folks.

20
21 And so I just would like to caution that,
22 while people can have different views about policy
23 issues and approaches, we should not create a false
24 equivalency that those who are trying with positive
25 intention and in reasonable ways to expand access for

1 people who might face barriers. In this case,
2 barriers that could have deadly consequences,
3 approximately 175,000 Americans are not with us now
4 and won't be able to vote on the account of the
5 pandemic, the name of which we had never heard when
6 the clock struck 12:00 a.m. on December 31, 2019,
7 heralding this year.

8 And so we are in a serious time and we are
9 a serious body, and we are a body that is committed to
10 the civil rights of the people of the United States of
11 America.

12 And so this is not about Robert's rules,
13 though they apply, this is not about two sides, this
14 is about what this body stands for, what the
15 Constitution stands for, and what democracy requires.

16 And shrinking from that obligation is a
17 mark on a hallowed history of an important body.

18 COMMISSIONER HERIOT: Madam Chair?

19 CHAIR LHAMON: Commissioner Heriot?

20 COMMISSIONER HERIOT: I just want to point
21 out that there aren't just two ways that these
22 elections can go.

23 We hear that Commissioner Adebile talks
24 about the two ways and it's true, it's a thing, there
25 are those two ways.

1 But there's a third way and the third way
2 is also something this country has suffered in the
3 past, and that is voter fraud, corruption in
4 elections.

5 And those things are hard to detect. And
6 that's why it's important to have procedures in place
7 that will adjust corruption in elections, will lead
8 against that kind of disenfranchisement that comes
9 from votes that are inappropriate votes coming from
10 people who are not eligible voters, or perhaps don't
11 exist at all.

12 And that's what all this is all about.
13 It's evidently the case that the progressive caucus in
14 this Commission thinks that the threat of voter fraud
15 is very low and other people don't.

16 What's interesting is the original
17 progressive viewpoint in the late 19th and early 20th
18 centuries was utterly flipped from what it seems to be
19 now.

20 They were combating inactive voter fraud,
21 particularly in urban areas, and not just in urban
22 areas, and somehow progressives have forgotten that
23 history.

24 But that's an important history and voter
25 fraud is a serious problem because it's one that's

1 hard to detect. And that's why procedures are put in
2 place.

3 People are going to disagree about how
4 likely it is that voter fraud is taking place now,
5 took place yesterday, or will take place tomorrow. I
6 would say it's a moving target and unless you have
7 procedures in place that lean against it, make it less
8 likely to occur, you'll get more of it.

9 And when we're talking to you about what
10 procedures should be in place, we need stable
11 procedures.

12 And that's what I'm talking about, there's
13 not two ways to win elections but three, and we need
14 to be very careful in that.

15 CHAIR LHAMON: Sorry, was there discussion
16 on the motion?

17 COMMISSIONER ADEGBILE: I yield to
18 Commissioner Yaki.

19 CHAIR LHAMON: Go ahead, Commissioner
20 Yaki.

21 COMMISSIONER YAKI: I've been on this
22 Commission a long time. I have been through more
23 voting rights hearings, briefings, discussions than
24 Commissioner Kirsanow.

25 In all those hearings, in all those

1 briefings, it was seen as fantasy, the idea that there
2 is large-scale voter fraud in the mail.

3 And throughout this, there has been this
4 assertion that there is somehow undetectable voter
5 fraud that are local, state, and federal enforcement
6 is incompetent to crack down. And that's actually not
7 the case.

8 They do find it. There has been and
9 continues to be widespread fraud in voter
10 registration. I think that's something that I will
11 not disagree with.

12 But the idea that you conflate that to
13 people voting is a wholly separate inquiry, and one
14 where study after study shows that there is no
15 widespread -- certainly, enough to make a difference
16 -- voter fraud.

17 The one case that we had in North Carolina
18 with that one person who was harvesting ballots on
19 behalf of the Republican candidate at the time and
20 they had to redo the entire election.

21 Aside from that, it is rare and to
22 institute procedures to guard against a phantom is a
23 cover. It is a centrifuge, it is a means to stop
24 people from being able to vote who should be able to
25 vote.

1 I yield back.

2 COMMISSIONER ADEGBILE: Madam Chair,
3 Commissioner Adegbile.

4 CHAIR LHAMON: Go ahead, Commissioner
5 Adegbile.

6 COMMISSIONER ADEGBILE: In the report that
7 was circulated to the Commission and I think in the
8 findings as well, there are a couple of significant
9 facts and I'd like to think that sometimes facts
10 matter.

11 One fact is that, as I said earlier, ten
12 percent of states conducted elections entirely by mail
13 before the pandemic. Five states in our union had
14 done it that way, long traditions.

15 When you look at the states that have no
16 excuse, absentee voting, which is in effect an option
17 to vote entirely by mail, the percentage gets up to
18 over 70 percent I believe.

19 And so we were in a situation where states
20 have been conducting elections, in some substantial
21 measure, by mail over a long period of time, where
22 that access still exists for some.

23 And that this report had as its aim to
24 figure out how we could make additional adjustments in
25 the interest of trying to create maximum flexibility

1 for people who may face serious risks of what we all
2 regard, all eight of us, as a dreadful disease that is
3 having tremendous consequences in this country and
4 having serious consequences globally.

5 And yet, it is unchecked. And so I
6 conclude by saying that in addition to those facts, we
7 had the finding that according to the Heritage
8 Foundation's database, 0.0006 of the instances are
9 mail-in voting fraud.

10 And if you look for voting fraud more
11 broadly, you will probably wind up somewhere along the
12 lines of a recent presidential commission that got
13 nowhere on it, not that it never happens, it's just
14 that it doesn't happen to the degree that people who
15 like to hide behind it and try and use it as a tactic
16 to erect barriers to the polls say it does.

17 And that's why they can't demonstrate it.
18 And so this is serious business, it goes to the core
19 of the democracy and the mission of this body and we
20 owe it to the people of the United States to be
21 serious about it and not to make things up.

22 COMMISSIONER ADAMS: Madam Chair?

23 CHAIR LHAMON: Is this Commissioner
24 Gilchrist?

25 COMMISSIONER ADAMS: No, it's Commissioner

1 Adams.

2 CHAIR LHAMON: I'm sorry, Commissioner.

3 COMMISSIONER ADAMS: I'm going to be
4 voting no because this report has been overcome by
5 events.

6 We now have data that vote by mail
7 disenfranchises people at astonishing rates. From
8 hundreds of thousands of rejected ballots in Nevada to
9 a five percent error rate according to the U.S. postal
10 Inspector General.

11 So, the report gives no attention
12 whatsoever to the disenfranchising effect when voters
13 vote by mail. That's all they have.

14 I call the question.

15 CHAIR LHAMON: Thank you, I'll call the
16 question to be sure that there's no further
17 discussion, so I'll give one more opportunity for any
18 other Commissioner.

19 Hearing none, Commissioner Adams, how do
20 you vote?

21 COMMISSIONER ADAMS: No.

22 CHAIR LHAMON: Commissioner Adegbile?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Gilchrist?

25 COMMISSIONER GILCHRIST: No.

1 CHAIR LHAMON: Commissioner Heriot?

2 COMMISSIONER HERIOT: No.

3 CHAIR LHAMON: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: No.

5 CHAIR LHAMON: Commissioner Kladney?

6 COMMISSIONER KLADNEY: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: Absolute aye.

9 CHAIR LHAMON: And I vote yes. Commission
10 failed. Four Commissioners opposed, no Commissioner
11 abstained, four Commissioners were in favor.

12 G. DISCUSSION AND VOTE ON COMMISSION

13 STATEMENT ON THE PASSING OF C.T. VIVIAN

14 Next thing, we'll move to consideration of
15 a Commission statement on the passing of C.T. Vivian,
16 which we are considering. I'll ask Commissioner
17 Adegbile to read the statement.

18 COMMISSIONER ADEGBILE: Madam Chair, I'm
19 happy to read this statement, proposed statement, for
20 counting the light in sacrifice of the late, great
21 Reverend C.T. Vivian, whose death we noted during our
22 last Commission meeting as bad luck.

23 And history would have it, I believe, that
24 the late, great John Lewis died on the same day, a
25 fact that we didn't know at the time of our meeting.

1
2 But John, later that day, after we had
3 adjourned and we had released a statement of memorial
4 recognizing John Lewis's contribution, I say before I
5 read this statement that it is with some irony that we
6 remember the life of C.T. Vivian, who fought so
7 valiantly and literally at the risk of his life for
8 our democracy to make it better. And I propose that
9 we remember him with the following words and I believe
10 that at our last Commission meeting, Commissioner
11 Heriot suggested that we try and recall this
12 officially, with a statement of memorial.

13 During the Civil Rights Movement, many
14 Americans bravely urged our nation to keep its promise
15 of equality for all but very few in the face of
16 racism, violence, and fear with a clarion call for
17 justice that remains feared in the national memory.

18 We are willing to be beaten for democracy
19 and you misuse democracy in the streets, once said a
20 young Cordy Tindell, C.T., Vivian in Selma, Alabama to
21 share with Jim Clark as Vivian led a peaceful black
22 voter registration march in 1965.

23 Reverend Vivian offered these words after
24 Sheriff Clark, acting under color of law, punched
25 Vivian in the mouth on the Selma Courthouse steps in

1 front of television cameras with such force or with
2 force so great that it both made Vivian bleed and
3 broke Clark's hand.

4 This moment crystallized the contest and
5 the cost of gaping segregation, injustice, and
6 brutality with courage, fortitude and selflessness.

7 Sheriff Clark became the face of injustice
8 and Vivian the face of Americans seeking justice.
9 C.T. Vivian was an unrelenting advocate for non-
10 violent change, to which he was inalterably committed
11 throughout his life.

12 Recalling the courthouse confrontation,
13 Vivian recounted, and I quote, with Jim Clark it was
14 a clear engagement; you don't walk away from that, you
15 continue to answer it. Closed quote.

16 In his words, we had proven that we could
17 solve social problems without violence if we choose.
18 C.T. Vivian spoke of Black Americans' aspiration for
19 equality and, as we would learn, he spoke of destiny.

20 He was a fearless fighter for equality in
21 a cause that was paved with his sacrifices and those
22 of many others. Sheriff Clark later would lead the
23 assault on John Lewis and the burning lights marchers
24 on the Edmund Pettus Bridge.

25 Clark's resort to violence, however, could

1 not stop the unrelenting calls to let Black Americans
2 vote.

3 For nearly 100 years, Vivian, who began
4 his life of advocacy for racial equality as a child in
5 Illinois, fought to make America realize its
6 constitutional promises.

7 He was a legendary civil rights advocate,
8 who served as one of the Reverend Martin Luther King
9 Jr.'s chief allies and strategists. He led with his
10 words and his deeds and made the country better.

11 Once called the greatest preacher who ever
12 lived by the Reverend Martin Luther King Jr., Vivian,
13 freedom rider and leading Southern Christian
14 Leadership conference organizer, who studied with John
15 Lewis, was awarded the Presidential Medal of Freedom,
16 the nation's highest civilian honor, by President
17 Obama in 2013.

18 Honoring the will of the people as
19 expressed through their votes is the first principle
20 of democracy. It is the principle that C.T. Vivian
21 never forgot.

22 You are made by the struggles you choose,
23 Vivian once said, and his struggle was to deliver on
24 America's promise.

25 On this courthouse steps on that day in

1 Selma, C.T. Vivian declared you cannot turn your back
2 on the idea of justice.

3 As we remember his contributions to the
4 nation, we recognize that C.T. Vivian never did. And
5 today, the United States Commission on Civil Rights
6 pays tribute to his lifelong commitment as an
7 effective advocate for the non-violent pursuit of
8 equality and justice.

9 CHAIR LHAMON: Thank you, Commissioner
10 Adegbile. I'll open the floor for discussion and to
11 hear our motion.

12 COMMISSIONER HERIOT: So moved.

13 CHAIR LHAMON: Sounds like, Commissioner
14 Heriot, you're moving to approve the statement and it
15 sounds like, Commissioner Yaki, you're prepared to
16 second, is that correct?

17 COMMISSIONER YAKI: Sure, why not?

18 CHAIR LHAMON: Commissioner Heriot, was
19 that correct for you?

20 COMMISSIONER HERIOT: Absolutely, anyone
21 can second, I'd be happy to second too.

22 CHAIR LHAMON: Okay, thank you. I'll open
23 the floor for discussion, beginning with Commissioner
24 Adegbile.

25 COMMISSIONER ADEGBILE: I've done my best

1 to capture it with the words I just read.

2 I will only add that I had the great
3 pleasure to meet C.T. Vivian in connection with some
4 of the work that I've done at an earlier stage in
5 support of voting rights. And it was an honor.

6 Some people are athletes and want to see
7 the greats and the Hall-of-Famers. For me, being in
8 the presence of somebody who so fully committed
9 themselves to the cause of the nation and equality and
10 democracy with such personal risk was one of my
11 proudest moments, to just be in his presence.

12 And I'm grateful for all he gave us
13 through all his years.

14 CHAIR LHAMON: Thank you. If there's no
15 further discussion I'll call the question and take a
16 roll call vote. Commissioner Adams, how do you vote?

17 COMMISSIONER ADAMS: Yes. And as a point
18 of personal privilege, I'm going to have to exit the
19 call for a few moments.

20 So, I will try to call back in.

21 CHAIR LHAMON: Thank you. Commissioner
22 Adebile?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Gilchrist?

25 COMMISSIONER GILCHRIST: Aye.

1 CHAIR LHAMON: Commissioner Heriot?

2 COMMISSIONER HERIOT: Yes.

3 CHAIR LHAMON: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIR LHAMON: Commissioner Kladney?

6 COMMISSIONER KLADNEY: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: I want to thank
9 Commissioner Adegbile for his beautiful statement.
10 Aye.

11 CHAIR LHAMON: I vote yes. The motion
12 passes unanimously. Next we will move to the
13 consideration of the public comment in opposition to
14 the HUD's proposed rule about shelter.

15 Because the comment is too lengthy to read
16 into the record here, I will summarize its main points
17 as follows so you know what you're considering.

18 HUD has issued a notice of proposed
19 rulemaking to allow hard grant recipients to operate
20 single-sex shelters to establish policies that place
21 and accommodate individuals on the basis of biological
22 sex without regard to gender identity.

23 In this comment, we recommend but HUD not
24 implement the proposed rule and instead retain the
25 existing 2016 rule, which protects transgender

1 people's access to emergency shelters.

2 The comment discusses strong concerns that
3 HUD's proposed rule is a significant step backwards in
4 protecting the rights and wellbeing of transgender
5 individuals and is inconsistent with the relative law.

6 This proposed rule violates the safeguards
7 in the Fair Housing Act against discrimination on the
8 basis of sex in all housing-related activities.

9 It's the same core HUD justice term,
10 lengthy, that statutory language barring
11 discrimination on the basis of sex, protects against
12 discrimination on the basis of sex orientation and
13 gender identity.

14 The proposed rule, however, is flatly
15 inconsistent with the Supreme Court's recognition of
16 that quote, that it is impossible to discriminate
17 against a person for being homosexual or transgender,
18 without discriminating against that individual based
19 on sex, end quote.

20 The Commission reiterates our call to the
21 Trump Administration to, quote, drop its repeated and
22 ongoing efforts to perpetuate discrimination on the
23 basis of sex with respect to sexual orientation and
24 gender identity, end quote. To open the floor for
25 discussion, I move that the Commission approves the

1 public comments, as articulated by my special
2 assistant on Thursday, August 20th.

3 Do I have a second?

4 COMMISSIONER KLADNEY: Kladney seconds.

5 CHAIR LHAMON: Thank you. Now I'll open
6 the floor for discussing, beginning with a few points
7 of my own.

8 The transgender community is acutely
9 vulnerable in terms of house-related, social, and
10 economic barriers.

11 With respect to housing access,
12 transgender individuals are more likely than cisgender
13 individuals to experience poverty and homelessness
14 during their lives.

15 Transgender individuals already face
16 significant challenges in accessing shelters, sex
17 segregation in shelters on the basis of biological
18 sex, excluding the individual's gender identity.

19 This causes many transgender individuals
20 to go unsheltered and if they do go to be sheltered,
21 many transgender individuals face harassment and
22 physical and sexual violence from residents and staff.

23 The proposed rule's proposed remedy
24 requiring the shelter to further deny an individual to
25 an alternative shelter or a accommodation is not a

1 viable or safe option for many transgender
2 individuals.

3 The United States is in a time of
4 unprecedented national crisis due to COVID-19
5 pandemic, and this period particularly impacts
6 low-income and vulnerable people.

7 During this crisis, HUD should not be
8 promulgating rules that exclude, deny, and
9 disenfranchise transgender people from accessing
10 emergency shelters they need for survival and safety.

11
12 Is there any further discussion?

13
14 COMMISSIONER ADEGBILE: Madam Chair, I
15 just wanted to say briefly that whatever one's views
16 are, to think that there are human beings that would
17 be put at increased risk of being unsheltered at this
18 moment in time and in light of what the nation has
19 experienced recently is something that is beyond
20 thinking about the law.

21 It goes to the core of just basic humanity
22 and human dignity, and the idea that our government
23 would be participating in some way in exposing
24 vulnerable individuals to unnecessary risks or
25 heightened risks is something that it is my great hope

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we can come back from.

Thank you for your leadership on this issue, Madam Chair.

CHAIR LHAMON: Thank you. So, now our votes.

COMMISSIONER YAKI: Chair Lhamon? Thank you for this. This is an issue that I confronted years ago when I was both working at Congress and as a member of the Board of Supervisors. Having a robust and vibrant LGBTQ community we found first, before any other community, the kinds of difficulties, challenges, and hardships faced especially by those in the transgender community with regard to inclusion just in homeless shelters, emergency shelters after earthquakes, after fires.

These are things that we've had to deal with. And what's kind of tempting to do is, again, to sort of turn back the clock on the progress we've made as a society and in understanding and accepting and truly validating the rights of the LGBTQ community in situations such as this. So I commend you for this letter and fully support it.

CHAIR LHAMON: Thank you. Any other discussion? Okay, Commissioner Adams, it's your turn to vote.

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Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: No.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: And I vote yes.

The motion fails. Three Commissioners opposed, no Commissioner abstained, all others were in favor.

Next we will move to consideration of a letter to U.S. Citizenship and Immigration services about the significant backlog of naturalization applications.

Because the letter is too lengthy to read into the record here, I will summarize its main points as follows so you know what you're considering.

With this letter the Commission calls on USCIS to take necessary measures to address the backlogs of naturalization applications.

1 The backlog of citizenship applications
2 has consequences for the civil rights of eligible
3 lawful residents including the right to vote as
4 naturalized citizens.

5 Recent data indicates that there is still
6 a substantial backlog of naturalization applications
7 of 700,885 applications still pending, despite notable
8 efforts from USCIS in prioritizing completion of the
9 oaths of over 100,000 people whose naturalization
10 process was halted by the pandemic with only one step
11 remaining, the allegiance and oath ceremony.

12 The right of naturalized citizens to vote
13 depends on their completion of the naturalization
14 process prior to voter registration deadlines.

15 As we approached the 2020 general
16 election, the backlog of applications risks
17 disenfranchising thousands of individuals who would
18 otherwise be eligible to vote and participate in the
19 our political system.

20 As we heard this morning, our Palo Alto
21 Advisory Committee found that at the reduced rate of
22 naturalization, approximately 189,000 otherwise
23 eligible permanent residents will be disenfranchised.

24 We ask that USCIS prioritize the
25 processing of applications of citizens to decrease the

1 current backlog and continue to prioritize the speedy
2 administration of oaths and allegiance ceremonies.

3 Additionally, we ask that USCIS take all
4 necessary measures, including waiving limiting
5 requirements as needed during the current pandemic,
6 and expanding small in person ceremonies in accordance
7 with the Centers for Disease Control's guidelines in
8 remotely administering oaths using videoconferencing
9 technology in order to address the backlog of
10 applications amid the unprecedented COVID-19 public
11 health crisis.

12 USCIS should also consider partnering with
13 federal courts in order to administer oath ceremonies
14 judicially, expanding and expediting access to these
15 ceremonies.

16 To open the floor for discussion, I move
17 that the Commission approve the public comment as
18 circulated by my Special Assistant on Thursday August
19 20th.

20 Do I have a second?

21 COMMISSIONER YAKI: I second.

22 CHAIR LHAMON: Thank you. And now I'll
23 open the floor for discussion, beginning with a few
24 points of my own.

25 I'll point out that that were bipartisan

1 letters from both Senators and Congressional Members
2 calling on USCIS to ensure eligible applicants have an
3 opportunity to participate in oath and allegiance
4 ceremonies, either by remote administration of oaths
5 or expanding small, in-person ceremonies consistent
6 with CDC's public health guidelines.

7 Thousands of residents remain at earlier
8 stages of the citizenship process, resulting in a
9 legal limbo.

10 These lawful residents also face the risk
11 of USCIS limiting its operations in the event of an
12 Agency furlough, which may still occur at the end of
13 August.

14 Taking the steps we call for in this
15 letter would ensure that eligible applicants have
16 access to the full benefits and privileges of
17 citizenship, including voting in upcoming elections.

18
19 It would strengthen our national fabric
20 and importantly, safeguard civil rights, allowing
21 these residents to contribute fully to the timing of
22 their communities and our diverse nation.

23 Is there any other discussion?

24 Hearing none, I'll call the question --

25 COMMISSIONER YAKI: Commissioner? I'm

1 sorry, Madam Chair, thank you.

2 This is merely one of the literal no-
3 brainers of what we were doing here today.

4 All of us agree, whatever your position on
5 immigration is or is not, these are individuals who
6 play by the rules, have done everything correctly,
7 passed a rigorous test, and have demonstrated their
8 desire to be loyal citizens of the United States.

9 And that I can tell you from my own
10 experience in working with and attending and presiding
11 over many of these citizenship ceremonies in my
12 lifetime is the excitement of privileges of
13 citizenship that come with it, and that's one
14 privilege that many of them talk about, is the right
15 to vote.

16 This is not partisan, this is not Democrat
17 or Republican or liberal or conservative, this is
18 about giving individuals who have placed their faith
19 and trust and willingness to work within the rules to
20 be citizens of our United States to complete the final
21 step.

22 And think about what it says as a country
23 for us to make these individuals who have waited
24 years, and as I said, played by the rules, done their
25 homework, stood in line, and now they have been told,

1 well, we'd like you to be citizens but we need you to
2 wait.

3 We don't know when we're going to get to
4 you.

5 That's not how America should be working.

6 CHAIR LHAMON: Thank you, I quite agree.

7 Is there any further discussion?

8 COMMISSIONER HERIOT: Madam Chair?

9 CHAIR LHAMON: Commissioner Heriot?

10 COMMISSIONER HERIOT: I'd just like to say
11 there's quite a lot, actually, that I would agree with
12 Yaki on what he just said. I'm not going to be able
13 to vote for this letter.

14 There are things in it that I disagreed
15 with but I suspect that we can work out a letter later
16 on after the meeting.

17 I bet we can do this one but not the way
18 it's written now.

19 CHAIR LHAMON: Thank you. We have a
20 motion pending so why don't we take a vote on this
21 motion?

22 And if this motion fails, I'll be
23 delighted to work with you on an alternate.

24 COMMISSIONER HERIOT: Yes, I'm not going
25 to be able to do it right after we get off the phone,

1 I'm afraid.

2 COMMISSIONER YAKI: Chair Lhamon? I
3 would just say in the spirit of Commissioner Heriot's
4 bipartisanship, I would just ask that if this vote
5 does not go the way it should but we try to work
6 together on additional language, given the exigency of
7 time, if we can agree to do it by notational vote.
8 That's all I want to say.

9 CHAIR LHAMON: Does anyone object to
10 Commissioner's notational vote? Hearing none,
11 perfect.

12 Why don't I call the question on this vote
13 and we can see if we even need to do more.
14 Commissioner Adams, did you return to vote?
15 Commissioner Adegbile?

16 COMMISSIONER ADEGBILE: Aye.

17 CHAIR LHAMON: Commissioner Gilchrist?

18 COMMISSIONER GILCHRIST: No.

19 CHAIR LHAMON: Commissioner Heriot?

20 COMMISSIONER HERIOT: No.

21 CHAIR LHAMON: Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: No.

23 CHAIR LHAMON: Commissioner Kladney?

24 COMMISSIONER KLADNEY: Yes.

25 CHAIR LHAMON: Commissioner Yaki?

1 COMMISSIONER YAKI: Aye.

2 CHAIR LHAMON: I vote yes. The motion
3 fails, three Commissioners opposed, no Commissioners
4 abstained, four Commissioners were in favor.

5 Commissioner Heriot, I would welcome
6 having our special assistant meet with the expert to
7 see how we can move forward with the applicants to
8 work with them to open this.

9 And thank you very much for the idea. I
10 think we can work together on this, thank you.

11 Next we can turn to our Staff Directors.

12 COMMISSIONER YAKI: Hang on, Madam Chair?
13 Madam Chair?

14 CHAIR LHAMON: Commissioner Yaki?

15 COMMISSIONER YAKI: A quorum is -- at this
16 time, the Commissioners are voting with seven. Isn't
17 four a majority of seven?

18 CHAIR LHAMON: The General Counsel shared
19 information shortly before this meeting about our
20 voting rules and, as I read the General Counsel rule,
21 even if a Commissioner is absent, the denominator
22 remains, and the denominator changes only if a
23 Commissioner is recused or abstaining.

24 COMMISSIONER YAKI: Okay.

25 CHAIR LHAMON: Thank you. So, with that

1 we can turn to the monthly report, Mr. Staff
2 Director's.

3 MR. MORALES: Thank you, Madam Chair.
4 Madam Chair, in the interest of time, I have nothing
5 further to add than what's already contained in the
6 report.

7 As always, I am available to discuss any
8 specific item contained in the report with any
9 Commissioner at their pleasure.

10 Thank you.

11 CHAIR LHAMON: Thank you Mr. Staff
12 Director. That concludes the business on the agenda
13 for today's business meeting. And if there is nothing
14 further, I hereby adjourn the meeting at 1:56 p.m.
15 Eastern Time. Thank you all.

16 (Whereupon, the above-entitled matter went
17 off the record at 1:56 p.m.)
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A		
a.m 70:6	61:11 62:21,22 75:22	33:23,24,25 34:1,4,7
ability 55:18 57:12 58:1 58:13	75:25 76:1,3,19,21	34:22 38:12,19 40:14
able 26:2 30:21,22 32:6	82:16,17 87:24 94:14	40:16,24 42:8,18 44:2
59:2,21 68:12 70:4	Adams' 7:15	89:21
73:24,24 93:12,25	add 10:9 12:16 64:18	advocacy 80:4
above-entitled 96:16	82:2 96:5	advocate 79:9 80:7
absence 62:4	added 14:21 15:1	81:7
absent 95:21	addition 6:7 7:15 14:21	affect 47:8
absentee 48:24 49:18	14:23 75:6	affirmative 26:25
50:2,6,12,21,21 51:17	additional 10:7 74:24	afraid 94:1
52:5,13,23 53:3 55:4	94:6	afternoon 4:4 16:10
55:12,19 74:16	Additionally 24:1 90:3	22:20
Absolute 77:8	additions 12:22 15:1,1	agency 28:12 31:3
Absolutely 61:23 81:20	address 23:16 45:20	91:12
abstained 13:23 38:7	88:24 90:9	agenda 3:2 5:22 8:13
40:11 42:4 43:24 62:1	addressed 18:25 65:11	8:15,17,24,25 9:5,11
63:19 77:11 88:15	Adegbile 1:14 5:1,2	9:19 10:1,8 11:1,20
95:4	10:20 11:14,16,17	11:21 12:22 14:12,13
abstaining 13:4 95:23	13:1,2 15:6,7 37:18	14:20 34:3 42:6 44:9
abstention 12:25 14:3	37:19 39:11,12 41:15	96:12
14:10 39:23	41:16 43:9,10 44:23	ago 57:21 87:8
accept 52:13	44:23,25 45:2,3,11,16	agree 36:6,9 67:13,14
accepting 87:19	53:21,22 54:2 56:8,22	67:15 92:4 93:6,11
access 3:18 17:13 44:8	58:8 60:3 61:12,13	94:7
44:12 45:7 47:1,6,8	62:23,24 64:9,9,11,13	agreed 18:14 60:17
48:18 51:6,14 53:13	64:14 68:24,25 69:1,2	ahead 4:9 7:6 30:4
54:21,25 55:11 56:2,4	70:23 72:17 74:2,3,5	35:15 56:19 58:21
65:6 69:9,10,25 74:22	74:6 76:22,23 77:17	60:12 65:24 68:17
84:1 85:11 90:14	77:18 81:10,24,25	69:1 72:19 74:4
91:16	82:22,23 83:9 86:14	AI 8:19 10:2
accessibility 29:13	88:1,2 94:15,16	aim 74:23
accessible 53:14	adequacy 16:20	Alabama 78:20
accessing 85:16 86:9	adequate 16:25 17:18	alas 66:5
accommodate 26:18	18:16	Alaska 51:12
83:21	adjourn 3:24 96:14	ALEC 2:14
accommodation 85:25	adjourned 78:3	Alexander 2:15 7:19
account 70:4	adjudicated 29:11	allegations 53:12
accounting 50:15	adjust 67:7 71:7	allegiance 26:10 27:3
accurately 20:1	adjustments 74:24	27:11,17 30:15,23
achievement 19:11	administer 90:13	32:3,18 89:11 90:2
acknowledge 24:12	administered 27:15	91:3
acknowledges 19:1	administering 55:23	allies 80:9
acquiring 27:24	90:8	allocation 17:5
Act 46:3 49:12 52:9	administration 23:8	allocations 16:15 29:2
84:7	24:3 25:15 26:17 28:9	allow 26:14 27:3,18
acting 78:24	84:21 90:2 91:4	32:4 48:7 50:3 58:3
actively 65:1	administrative 27:10	67:21 83:19
activities 84:8	29:8	allowed 63:15
acute 53:18	Administrator 7:24	allowing 29:7 91:20
acutely 85:8	adopt 32:11 45:5	allude 30:19
Adams 1:13 4:24,25 6:1	adopted 28:21 31:12	alluded 54:20
6:2,4,8,11,13,20 7:11	adopting 32:3	alternate 93:23
7:12,13 12:23,24 14:6	advance 50:23	alternative 60:7 85:25
14:15,16,23 15:2	adversely 47:8	Alternatively 27:9
37:16,17 39:9,10	advisory 3:5,7,11,12,12	alternatives 31:2 57:24
41:13,14 43:7,8 61:10	3:13 6:11 15:24 16:6	58:2
	16:11 19:1 21:16,17	Alto 89:20
	22:4,8,15,23 29:24	Alvina 2:9 3:7 22:9,14
		ameliorate 55:12
		amend 9:16,16 10:1
		11:5,12,21 12:4
		amended 8:19 11:1
		14:14
		amendment 9:6 10:7,14
		10:16,18,22 11:8
		14:24 15:4
		amendments 9:18 10:7
		10:25 14:18
		America 46:20 70:11
		80:5 93:5
		America's 80:24
		American 47:2 48:14
		51:1,15 57:10,10 58:5
		60:24 65:6
		Americans 23:17 54:6
		70:3 78:14 79:8 80:1
		Americans' 79:18
		amid 90:10
		amount 20:1 47:15
		50:21
		AMY 2:17
		answer 20:17 79:15
		anticipated 30:20 34:21
		anticipation 63:23
		apologize 36:5 53:23
		66:22
		Appalachia 18:12
		apparent 28:3
		Appeals 7:23
		appearing 53:10
		appears 31:19
		applicants 26:19 28:1
		28:10 29:13 91:2,15
		95:7
		applications 3:9 10:12
		12:19 22:12,19 24:15
		24:20,21 25:2 28:22
		88:19,25 89:1,6,7,16
		89:25 90:10
		apply 51:16 70:13
		applying 50:11 52:22
		appoint 38:11,18 40:15
		40:23 42:7,17
		appointed 6:2,10,23
		7:16 8:9
		appointees 4:21 5:24
		appointment 6:1 7:16
		34:22
		appointments 7:3 34:6
		38:24 40:13 41:4
		42:23 44:4
		appreciate 20:11 33:7
		37:3,10 44:3
		appreciated 21:3
		approach 18:14 31:12
		31:25 32:4,11,14

approached 89:15
approaches 46:20
 69:23
appropriate 38:24 41:4
 42:22
approval 3:2 8:15 12:21
 49:14
approve 8:17,23,24 9:5
 9:11,16,19 10:1 11:1
 11:4,5,8 14:12,20
 45:12 64:2 81:14
 90:17
approved 14:13 30:10
 62:11
approves 84:25
approving 62:3
approximately 26:11
 27:7 70:3 89:22
area 18:12 31:24
areas 18:2,10 53:19
 71:21,22
argue 37:8
articulated 85:1
ASCD 2:8
Asian 57:10
aside 57:8 73:21
asking 56:3
aspect 69:4
aspects 65:13
aspiration 79:18
aspiring 69:18
assault 79:23
Assembly 17:10
assertion 73:4
assessment 18:5
assistance 53:4 54:24
assistant 7:19,25 8:10
 45:8 85:2 90:18 95:6
assistants 2:13 7:17
 8:6
associated 54:23 65:19
assumes 51:9
astonishing 76:7
athletes 82:6
attempting 47:4
attending 92:10
attention 33:8 64:21
 76:11
attorney 6:14
auditoriums 31:4
August 1:5 4:13 6:3,6
 45:9 85:2 90:18 91:13
Austin 42:12
authority 27:11
authorize 38:23 41:3
 42:21
available 27:16,25
 47:18 65:2 96:7

average 18:8 24:17
 30:9,9,13
awaiting 27:18 30:14
awarded 80:15
aware 32:3
aye 11:2 13:2,19 15:7,9
 15:20 37:19 39:12
 40:8 41:16 42:1 43:10
 43:12,21 61:23 62:24
 63:16 76:23 77:8
 82:23,25 83:10 88:2
 88:12 94:16 95:1

B

B 3:7 22:14
Baer 56:11
back 11:10 12:6 13:24
 14:1,11 35:24 36:7
 55:9,15 56:5 69:6
 74:1 81:1 82:20 87:1
 87:18
backgrounds 18:20
backlog 3:9 10:11
 12:18 22:11,18,25
 23:3,5,7,10,14,19,24
 24:15,21,24 25:5,8,14
 25:24 28:2,3,7,17,20
 29:6 30:9 88:19 89:1
 89:6,16 90:1,9
backlogs 88:25
backwards 84:3
bad 77:22
ballot 50:12 51:3 55:4
balloting 50:2
ballots 49:18 50:13,15
 50:18,21,22,25 51:4
 51:17,18,20,24 52:1,5
 52:6,13,15,19,23 53:3
 55:16,19,20 57:13
 60:24 73:18 76:8
Ballysingh 38:14
Barbara 24:8
barriers 45:21 47:7
 52:23 69:19 70:1,2
 75:16 85:10
barring 84:10
base 18:3
based 5:13 18:5 23:21
 28:18 31:11,21 38:12
 40:17 42:8 50:19
 67:25 84:18
basic 86:21
basis 83:21 84:8,11,12
 84:23 85:17
beaten 78:18
beautiful 83:9
began 80:3
beginning 81:23 85:6

90:23
behalf 73:19
behemoth 66:13
beings 86:16
believe 21:12 30:17
 31:16 35:20 36:6,13
 60:2 62:4 69:3 74:18
 77:23 78:9
believes 29:6 46:18
benefit 62:7 65:18
benefits 24:1 27:23
 91:16
best 32:1,14 59:14 62:2
 81:25
bet 93:17
better 8:8 78:8 80:10
beyond 86:19
biggest 17:22
biological 83:21 85:17
bipartisan 90:25
bipartisanship 94:4
bit 58:24
black 17:15 23:17 48:12
 51:21,23 54:12,15
 57:10 78:21 79:18
 80:1
bleed 79:2
Board 87:9
body 64:25 70:9,9,14
 70:17 75:19
box 32:12
brainers 92:3
bravely 78:14
break 49:21
Bridge 79:24
brief 37:4
briefing 67:14
briefings 28:19 72:23
 73:1
briefly 19:14 86:15
bring 56:24 67:17
broad 63:23
broadband 51:14
broadly 75:11
broke 79:3
broken 53:17
brought 55:7
Brown 38:14
brutality 79:6
building 46:25
buildings 59:11
burning 79:23
bury 68:4
business 1:3 3:4 4:5
 5:23 8:4,17 16:4
 75:18 96:12,13

C

C 3:10 4:1 33:22
C.T 3:22 77:13,15,21
 78:6,20 79:9,18 80:20
 81:1,4 82:3
California 18:11 31:15
call 4:6,17 5:14 10:7
 14:3 35:9,10 37:13,14
 37:15 38:9 39:7,8
 41:11,11 43:5,6 56:16
 56:17 62:19,20 76:14
 76:15 78:16 82:15,16
 82:19,20 84:20 91:14
 91:24 94:12
Callan 38:14
called 80:11
calling 91:2
calls 80:1 88:23
cameras 79:1
campaigns 8:5
candidate 73:19
candidates 46:22
capability 57:18,19
capacity 26:15
capture 82:1
care 50:10 67:18
careful 33:7 72:14
CARISSA 2:16
Carla 42:15
Carole 40:21
Carolina 6:17,18 73:17
carries 27:21
Carter- 40:18
case 66:5 70:1 71:13
 73:7,17
cases 16:22 55:2
cast 50:15,18
Catherine 1:9,12 4:8,15
 56:11
caucus 71:13
caught 25:23
cause 79:21 82:9
causes 28:16 29:4
 85:19
caution 69:21
CDC 48:10
CDC's 91:6
Centers 90:7
centrifuge 73:23
centuries 71:18
ceremonies 26:10,14
 27:15 31:1,17 90:2,6
 90:13,15 91:4,5 92:11
ceremony 26:18 27:3,4
 89:11
certain 17:7 36:24
certainly 31:1 32:5
 57:18 73:15
certification 35:6

certified 8:2
certify 34:17
CFR 34:20
chair's 11:12 12:5
Chairman 4:8
Chairwoman 22:21
challenges 17:18 46:8
 46:14 54:9,11,23
 64:23 85:16 87:12
challenging 18:9 46:12
 52:20 55:4
chance 29:18
Chang 38:13,18
change 79:10
changed 4:19 49:6
changes 27:2 49:7,14
 55:15 95:22
charter 18:22
check 57:14
Chen 24:7
chief 2:8 42:9 80:9
child 50:10 80:4
children 17:17 19:20
choose 37:12 46:22
 79:17 80:22
choosing 54:7
Christian 1:13 6:1,8
 80:13
churches 54:5
circulated 74:7 90:18
CIS 22:25 25:4 26:8,13
 26:24 27:2,9,13,16
 28:21,25 29:2,9,9,14
 31:12 32:10
CIS' 23:2 24:15 28:23
cisgender 85:12
cited 55:3
citizens 25:6 27:7,19
 89:4,12,25 92:8,20
 93:1
citizenship 3:8,9 22:10
 22:11,17,19,24 24:2
 27:19,21,24 30:11
 88:18 89:1 91:8,17
 92:11,13
Citrino 2:7 3:4 15:25
 16:3,5,9 20:20 21:13
 21:21,23 22:2,6
civil 1:1 3:6,8 4:12 16:2
 16:8,12,13,19 19:24
 21:7,11 22:10,17 23:2
 23:7,14,23 25:14
 27:21 28:4 45:19
 46:13 70:10 78:13
 80:7 81:5 89:2 91:20
civilian 80:16
claims 55:7
clarion 78:16

clarity 11:19
Clark 78:21,24 79:7,13
 79:22
Clark's 79:3,25
class 17:4,8
clause 23:22
clear 14:17 15:4 52:3
 56:25 68:15 79:14
clearance 49:12
clerked 7:22
clock 70:6 87:18
close 48:4 54:15
closed 3:3 26:9 34:6,14
 34:18 35:6,18,19 36:3
 36:7,11,15,20,21 37:4
 37:15 79:15
closing 55:9
closure 54:13
closures 26:5 54:4,17
collect 51:4
collective 62:7
color 17:23 48:9,20
 49:24 50:1 51:18
 54:19 78:24
Colorado 2:9 3:7 22:8
 22:15,22,25 24:9,20
 28:16,17 29:20 30:11
Columbia 52:13
combating 71:20
come 5:21 12:9 57:14
 69:6 87:1 92:13
comes 4:12 71:8
coming 71:9
commenced 26:13
commend 58:7 60:3,15
 61:3 87:21
commends 25:4
comment 10:10 83:13
 83:15,23 84:2 90:17
comments 12:17 21:23
 32:25 68:12 85:1
commission 1:1,8 3:10
 3:20 4:11,18,21 6:1,7
 6:12,22 8:7 11:11
 19:24,25 20:7,13 21:7
 21:10,11 23:16,18
 26:24 31:10 32:9
 33:11,19,22 35:1
 36:17 38:11,17,22
 40:15,22 41:2 42:7,16
 42:20 45:19,22 66:7
 67:8 68:3 71:14 72:22
 74:7 75:12 77:9,12,15
 77:22 78:10 81:5
 84:20,25 88:23 90:17
Commission's 3:15 4:5
 20:11 21:15 34:13,19
 35:5 36:16 44:5,10

Commissioner's 94:10
Commissioners 4:16
 4:22 5:14 6:25 8:11
 11:22 13:22,23 14:4,7
 20:18 22:21 33:1 38:7
 40:10,11 42:3,4 58:11
 61:25 62:1 63:19,20
 65:24 77:10,11 88:14
 95:3,3,4,16
commit 69:12,17
commitment 81:6
committed 70:9 79:10
 82:8
committee 3:5,7,12,12
 3:13 15:25 16:6 19:1
 20:15 21:10,14,17
 22:4,8,15,23 24:6
 29:25 33:11,18,24,25
 34:1,4,22 38:12,19
 40:14,16,24 42:8,18
 42:24 89:21
committee's 3:5,8
 15:25 16:7,11 19:22
 21:3 22:9,16 33:6,8
committees 3:11 21:16
 33:23 34:7 44:3
common 16:17 19:5
commonly 22:24
communities 17:7
 48:14,16 51:5 91:22
community 18:22 20:9
 53:8 57:10 85:8 87:10
 87:11,13,20
commute 51:8
company 62:9
comparable 19:13
compared 50:21 51:21
compelling 17:17
complete 20:16 92:20
completed 51:4
completing 25:17
completion 89:8,13
complex 28:17 65:13
complexity 65:10
complicated 47:24
complied 32:16
component 19:2
composition 4:18
concern 23:15,18 26:23
 48:5
concerned 55:1
concerns 28:8 34:21
 55:17 84:2
conclude 28:15 75:6
concluded 23:13 24:7
concludes 96:12
conditioned 36:21
conditions 53:7

conduct 27:17
conducted 48:23 52:17
 74:12
conducting 74:20
conference 4:7 80:14
conferencing 27:5
confirm 4:16,22
confirmation 4:19
confirmed 63:23
conflate 73:12
conflicting 59:6
conform 26:15
confrontation 79:12
confronted 87:7
confuse 66:24
congratulate 4:20 5:24
 5:25
congratulated 7:10
congratulations 6:25
Congress 23:12 29:8
 55:24,24 87:8
Congressional 57:5
 91:1
connection 82:3
conscience 69:10
consequences 23:6
 70:2 75:3,4 89:2
consequential 46:4
 64:19,20
Consequently 23:24
conservative 92:17
consider 10:15 27:2
 33:12 44:15,15 63:21
 90:12
consideration 10:9
 12:16 37:12 77:14
 83:13 88:17
Considerations 3:17
 44:7,12 45:7
considering 77:16
 83:17 88:22
consistent 51:6 60:20
 91:5
consolidation 54:13
Constitution 16:18
 70:15
constitutional 80:6
constitutionally 69:13
constitutionally-requ...
 19:4
contained 54:10 68:1
 96:5,8
contemplate 55:14
contest 79:4
context 45:18 54:11,22
 64:15,22
contexts 47:12
continue 6:5 18:24 62:2

79:15 90:1
continued 19:12
continues 73:9
continuum 65:3
contracting 48:10
contrary 58:5 68:5,5,6
contrast 50:17
contribute 17:24 91:21
contribution 78:4
contributions 81:3
Control's 90:7
convened 1:8
conversation 64:18
coordination 42:10
copy 35:6
Cordy 78:20
core 23:18 58:12,13
75:18 84:9 86:21
correct 30:15 57:12
81:16,19
correctly 92:6
correlated 19:10
corruption 71:3,7
cost 17:20 18:3 79:5
counsel 1:22 6:9,17
34:12,17 35:14,17
36:3 63:24 95:18,20
count 14:3 50:25
counties 54:14
counting 77:20
country 6:21 17:13
19:18 46:17 47:11
50:14 51:11 69:18
71:2 75:3 80:10 92:22
County 46:4
couple 30:7 74:8
courage 79:6
course 21:22 22:7
29:23
court 5:15,16 7:23
16:21 17:2,3,11
Court's 46:4 84:15
courthouse 78:25
79:12 80:25
courts 27:14 90:13
cover 58:4 73:23
covered 49:11,13 59:4
COVID 31:1 60:21
COVID- 52:17
COVID-19 3:17 19:17
26:5,8 44:7,11 45:6
46:9 48:10,11,15,17
48:22 49:19 50:3 53:6
54:3,7 55:2 58:4 61:1
86:4 90:10
COVID-specific 49:4
Cox 42:13
crack 73:6

create 58:1 69:23 74:25
created 23:16 25:13
49:4
creates 49:18
crisis 86:4,7 90:11
cross-generational
17:25
crowds 48:5 53:16
55:13
crystallized 79:4
cure 57:15
current 42:23 90:1,5
currently 49:16 52:13

D

D 3:1,15 4:1 44:5
dare 66:24
data 25:1 27:25 48:10
76:6 89:5
database 53:11 75:8
DAVID 1:18 2:11
day 22:3 48:1,8 52:14
52:16 55:13 77:24
78:2 80:25
De 24:8
deadline 55:15,16
deadlines 52:16 59:19
89:14
deadly 70:2
deal 57:20 87:16
death 77:21
deaths 48:16
debate 66:8 68:7
DEBO 1:14
December 70:6
decided 64:25
decision 21:4 33:8 46:4
declared 81:1
decrease 25:7 89:25
deeds 80:10
deeply 47:12
deficiencies 53:18
degree 6:18 8:2 65:2
75:14
delay 57:8
Delayed 3:8 22:10,17
delaying 27:24
delays 25:13
delight 8:12
delighted 93:23
deliver 51:4 60:23
80:23
democracy 58:6 65:14
69:12,18 70:15 75:19
78:8,18,19 80:20
82:10
democracy's 47:2,9
Democrat 92:16

demographics 18:10
demonstrate 75:17
demonstrated 92:7
denied 49:9
denominator 95:21,22
Denver 24:19,25 25:3,9
26:16 27:6
deny 85:24 86:8
Department 6:15,16
dependence 19:8
depending 36:17
depends 25:17 89:13
DeRolph 16:23
described 64:22
deserve 19:21
designated 42:10
designee 42:21
desire 92:8
despite 18:24 89:7
destiny 79:19
detect 71:5 72:1
detection 29:15
determine 18:15 20:8
28:1
determined 24:14
determining 31:20 32:1
develop 29:10
developed 23:5
developments 56:14
57:1
Diane 2:7 3:4 15:25
16:5
Diaz 38:15
died 77:24
difference 73:15
different 11:24 20:10
57:20 58:10 69:22
difficult 51:15 59:2
difficulties 87:11
difficulty 52:25
dignity 86:22
diminish 47:7
Dina 40:19
directed 55:22,24
directing 20:8
direction 65:9 66:14
directly 36:14
director 1:21 2:10,11
5:18 6:4 38:13,23
40:17 41:3 42:11,21
96:12
Director's 96:2
Directors 95:11
disabilities 17:18,24
52:24 53:1,2,5
disadvantaged 18:20
disagree 72:3 73:11
disagreed 93:14

disclose 34:24
disclosure 35:2
discrepancies 52:4
discretion 28:12
Discretionary 51:25
discriminate 84:16
discriminating 84:18
discrimination 28:8
49:15 84:7,11,12,22
discuss 34:6 35:21
96:7
discusses 84:2
discussing 16:11 85:6
discussion 3:10,15,20
8:19,20 10:2,2 33:22
34:3,5,21,23,24 35:21
35:23 39:5 41:10 42:6
43:3 44:5,10,17,25
45:13 53:25 56:16
59:24 60:10 61:8
62:19 64:1,11 65:22
68:7 72:15 76:17
77:12 81:10,23 82:15
84:25 86:12 87:24
90:16,23 91:23 93:7
discussions 72:23
disease 75:2 90:7
disenfranchise 86:9
disenfranchised 25:20
89:23
disenfranchisement
23:17 71:8
disenfranchises 76:7
disenfranchising 76:12
89:17
disparities 17:12 18:24
disproportionate 17:5
17:6 49:23 54:12,18
disproportionately
23:20 28:2 48:9 49:24
50:1,4 51:2,19 57:9
disregard 60:25
distancing 26:16 49:21
distribute 65:1
District 52:12
districts 17:1,6,22,23
20:3
diverse 91:22
documents 52:10
DocuSign 31:6
doing 11:24,25 32:5
57:3 92:3
DOJ 55:1 56:3,4
DOJ's 46:2
dramatically 50:14
drastic 50:20
draw 33:8
dreadful 75:2

drive- 27:4
drive-through 31:16
driven 24:6
driving 51:7,10 58:1
drop 84:21
due 24:3 26:4 28:10
 46:14 48:3,20 49:14
 50:3 53:6 62:12,13
 86:4
DUELL 2:14
DUNSTON 2:8
dying 48:10

E

E 1:12 3:1 4:1,1
earlier 31:9 74:11 82:4
 91:7
early 48:17 54:25 55:11
 57:25 71:17
earned 24:2
Earnhart 2:9 3:7 22:9
 22:13,14,20 29:22
 30:12,17 31:10 32:23
 33:16
earthquakes 87:15
Eastern 4:12 96:15
easy 65:10
economic 85:10
Edmund 79:24
EDT 1:9
educate 17:21 18:4
education 3:5 16:1,8,12
 16:14 18:18 19:21
 20:5
educational 16:20,23
 17:11,13,15 18:23
Edward 40:19
Edwards 42:12,17
effect 25:16 26:3 74:16
 76:12
effective 8:8 21:2 81:7
effectively 48:25
effectiveness 29:12
effects 23:25
efficacy 29:14
efficient 16:17 19:5
 56:2
efficiently 50:25
effort 23:5 47:6
efforts 25:7 44:3 62:9
 84:22 89:8
eight 75:2
either 91:4
Elbayoumy 42:13
election 6:12 25:12
 26:22 27:20 32:20
 46:11,17 47:8,18,23
 48:1,8 49:7 50:17

51:5 52:10,14,16,17
 52:18,19 55:13 61:24
 64:19,20 65:7 73:20
 89:16
elections 24:1 26:3
 46:9,21 47:5 48:23
 50:19,22 51:3 53:15
 54:22 55:23 57:19
 64:21 65:13 69:8
 70:22 71:4,7 72:13
 74:12,20 91:17
element 19:4
eligibility 27:22 28:13
eligible 25:19 26:12,20
 28:11 30:21 71:10
 89:2,18,23 91:2,15
emergency 84:1 86:10
 87:14
Emory 7:20
empirically 50:5
employees 38:21 41:1
 42:19
employment 27:22
empower 27:14
encourage 29:9 32:12
 58:11
encouraged 32:9
encourages 26:24
enforce 56:4
enforcement 46:2 73:5
engage 58:4
engagement 79:14
engaging 46:25
English 52:6,7 54:21
ensuing 45:25
ensure 32:1 56:1 91:2
 91:15
enter 34:6
Enthusiastic 62:18
entire 73:20
entirely 48:23 74:12,17
entities 21:17
EPA's 7:24
equal 16:16 23:22
equality 78:15 79:19,20
 80:4 81:8 82:9
equipment 53:17,17
equivalency 69:24
erect 47:7 75:16
error 57:6 76:9
especially 48:1 49:19
 50:7 51:22 52:25 60:6
 87:12
essential 19:3 50:8
essentially 11:23 32:13
establish 83:20
established 6:12 20:6
evaluate 20:1

Evelyn 24:9
event 24:11 91:11
events 76:5
Everybody 46:17
evidence 18:15 21:2
 50:19 67:17
evidence-based 19:19
evident 64:24
evidently 71:13
evolved 69:14
exacerbated 26:4 54:3
 54:17
exacerbating 48:3
exactly 63:12 68:22
examine 29:14
examined 16:13 46:2
example 31:15 65:16
exceed 25:11
exceedingly 53:10
excellent 60:2
exception 17:14 49:4
exceptions 50:3
excitement 92:12
exclude 86:8
excluding 85:18
excuse 17:2 48:24 49:3
 49:9 50:6,11 74:16
execute 38:23 41:3
 42:22
exemption 34:23 35:1
exemptions 34:19
exercise 46:18 58:3
exigency 94:6
exist 18:25 71:11
existing 29:5 83:25
exists 74:22
exit 82:18
expand 27:14 69:9,25
expanding 47:6 90:6,14
 91:5
expansion 57:25
expansions 55:11
expected 32:16
expedite 26:25 27:11
 27:14
expediting 90:14
experience 8:3 46:19
 85:13 92:10
experienced 86:19
expert 62:5 95:6
expertise 22:3 62:7
expires 42:24
explanations 28:19
exposing 86:23
exposure 26:8
expressed 80:19
extend 55:16
extending 47:6

extent 28:3 29:4
eye 67:24

F

fabric 91:19
face 46:8,14 48:9 53:15
 54:12 70:1 75:1 78:15
 79:7,8 85:15,21 91:10
faced 87:12
facilitate 65:5
facing 17:17
fact 26:6 57:20 58:12
 60:22,25 68:9 74:11
 77:25
facts 74:9,9 75:6
failed 17:10 52:18
 61:25 63:18 77:10
fails 16:24 38:6 40:10
 42:3 88:14 93:22 95:3
failures 23:9
fair 23:7 65:2 84:7
fairly 46:11
faith 92:18
fall 52:8
falls 34:23
false 69:23
familiar 47:12 48:8
fantasy 73:1
far 25:10 63:17
fashion 55:20
favor 11:2 13:23 35:5
 38:8 40:12 42:5 43:25
 62:1 63:20 77:11
 88:16 95:4
fear 78:16
feared 78:17
fearless 79:20
February 19:16 23:4
federal 6:21 27:13 60:8
 73:5 90:13
fellow 6:24 33:18
felt 57:9
field 24:19,25 25:3,9
 26:16 27:6 31:11,13
 31:20 32:12
fields 8:3
fighter 79:20
figure 18:4 68:21 74:24
file 35:7
filed 55:2
final 26:10 32:17 92:20
Finally 27:13
financial 55:25
find 25:20 30:19 34:22
 60:23 73:8
finding 75:7
findings 29:3 44:16
 47:20,22,25 54:10,21

59:5,20 61:6 63:21,24
64:2,16 65:8,19 66:1
69:5 74:8
finest 6:21
fires 87:15
first 5:25 8:23 9:19
11:19 12:5 27:2 28:21
36:15 44:14 45:23
51:24 80:19 87:10
fiscal 25:5
five 74:13 76:9
flatly 84:14
flaws 17:10
Flemming-Randle
42:13
flexibility 50:9 74:25
flipped 71:18
Fliter 42:14
floor 39:5 43:3 44:17
56:15 64:1 81:10,23
84:24 85:6 90:16,23
Flores-Brewer 40:19
fluctuations 28:24
focus 46:7 47:1,21
focused 46:17
folks 20:23 31:7 37:11
69:19
follow 55:6
follow-up 26:7
following 4:19 26:5
38:11 40:16 42:7 78:9
follows 83:17 88:22
force 79:1,2
forced 53:2
forever 36:4
forgot 80:21
forgotten 71:22
formerly 49:11
formula 20:6
forth 16:18
fortitude 79:6
forum 24:13
forward 6:22 20:12
21:15 35:23 38:10
53:25 95:7
fought 78:6 80:5
found 50:24 87:10
89:21
Foundation 6:9 53:11
Foundation's 75:8
founded 45:19
founding 45:22
four 13:23 36:11,12
40:10,11 42:3,4 63:19
63:20 77:10,11 95:4
95:17
Fourth 29:1
franchise 58:3

fraud 29:15 53:9 71:3
71:14,20,25 72:4 73:2
73:5,9,16 75:9,10
freedom 80:13,15
Friday 1:5 62:12,13
friendly 10:7,13,16
front 79:1
fulfillment 16:15
full 56:1 62:3 91:16
fully 6:23 19:8 69:17
82:8 87:22 91:21
funding 3:6 16:1,8,12
16:14,20,24,25 17:4
17:11,19 18:8,13,16
19:2,6,8 20:2,5,5,25
21:3 29:1,9
funds 17:5 20:8
furlough 91:12
further 10:25 20:6 26:4
35:4 41:10 56:15 57:5
57:23 60:10 61:7
65:22 76:16 82:15
85:24 86:12 93:7 96:5
96:14
future 23:25 67:22
68:10

G

G 3:1,20 4:1 77:12
GAIL 1:16
galvanize 46:23
gaping 79:5
Gaps 17:14
gender 83:22 84:13,24
85:18
general 1:22 6:8,16
17:9 34:12,17 35:13
35:17 36:2 49:7 50:17
63:24 76:10 89:15
95:18,20
generally 17:14 66:7
Gieber 42:14
Gilchrist 1:15 5:3,4
7:17 8:1,11 13:3,4
14:8 15:8,9 37:20,21
39:13,14 41:17,18
43:11,12 60:13,14
61:14,15 62:25 63:1
75:24 76:24,25 82:24
82:25 88:3,4 94:17,18
give 59:13 68:12 76:17
given 32:2 34:5 38:10
52:3 58:12 59:3 94:6
gives 28:7 76:11
giving 29:17 92:18
globally 75:4
goal 67:12
goals 65:5

Gonzalez 56:11
Goodheart 40:19
government 38:21 41:1
42:19 60:8 86:22
governments 59:17,17
graduate 7:20 8:1
grant 83:19
granted 27:12
grateful 82:12
greater 11:19 29:12,15
greatest 80:11
greats 82:7
Greenlee 7:22
grossly 17:5
group 28:3
groups 26:14
grown 24:24
growth 57:25
guard 73:22
guidance 60:8
guidelines 49:22 90:7
91:6
Guire 56:12

H

Hall-of-Famers 82:7
hallowed 70:17
halted 89:10
hammer 66:10
hand 46:22 59:10 79:3
Hang 95:12
happen 68:15 75:14
happens 57:4 75:13
happy 20:17 37:13 66:2
77:19 81:21
harassment 85:21
hard 7:9 20:15 46:24
48:15 64:17 71:5 72:1
83:19
hardships 87:12
harvesting 73:18
health 48:2,21 49:19
53:6 55:25 58:2 65:5
90:11 91:6
health-related 46:14
hear 13:10 15:24 22:8
67:4 70:23 81:11
heard 17:17 70:5 89:20
hearing 7:9 22:1 23:3
39:7 43:5 44:24 62:19
63:15 67:13 76:19
91:24 94:10
hearings 57:5 72:23,25
heavily 53:19
Heideman 2:15 7:19
heightened 50:5 53:6
86:25
held 16:22 27:4

help 19:20 20:11 60:6
helpful 47:21
heralding 70:7
Heriot 1:16 5:5,6 7:4,7
7:8,18,20 8:11,21 9:2
9:7,13,21 10:5 11:3,9
11:23 13:5,6,25 14:5
15:10,11 35:11 36:22
36:23,24 37:7,22,23
39:15,16,24 41:19,20
43:1,1,13,14 58:20,22
58:23 61:16,17 63:2,3
65:12,25 68:16,18,19
69:3 70:18,19,20 77:1
77:2 78:11 81:12,14
81:18,20 83:1,2 88:5
88:6 93:8,9,10,24
94:19,20 95:5
Heriot's 94:3
Heritage 53:11 75:7
Hi 30:6
hide 75:15
high 47:2,3,11 48:1,9
51:20,22 53:8
higher 48:12 51:19,21
highest 17:11 80:16
Hispanic 17:16
historical 47:10
historically 54:18
history 8:2 49:14 69:15
70:17 71:23,24 77:23
hit 48:15
hold 44:14 65:16 69:13
Holder 46:5
holding 31:17
homeless 87:14
homelessness 85:13
homework 92:25
homosexual 84:17
honor 80:16 82:5
Honorable 7:22
Honoring 80:18
hope 33:10 86:25
hopefully 32:10 69:18
hosted 23:3
hours-long 51:8
house-related 85:9
housing 27:22 84:7
85:11
housing-related 84:8
HUD 10:10 12:17 83:18
83:23 84:9 86:7
HUD's 83:14 84:3
human 86:16,22
humanity 86:21
hundreds 76:8
hypothesized 29:4

I

I.D 53:1
Idaho 3:12 33:25 34:7
 40:14,16,23
idea 73:1,12 81:2 86:22
 95:9
identification 52:24
identified 17:11 18:2
 23:8 55:1
identify 4:20
identity 83:22 84:13,24
 85:18
II 3:3
III 3:4,24 16:4
Illinois 80:5
imagine 21:6
immediately 38:25 41:5
immigrants 26:12
 30:21
immigration 22:24
 88:18 92:5
impact 17:6,22 20:8
impacted 28:2 29:7
 49:24 50:2,4 51:2
impacts 23:20 25:14
 86:5
impede 25:11
impeded 27:23
implement 19:6 83:24
implemented 19:13
 21:1
implementing 19:9
implications 3:9 16:14
 22:11,18 23:2
import 64:15
importance 56:25
important 21:4 33:9
 46:16,18 58:6 60:5
 62:5 70:17 71:6,24
importantly 91:20
imposed 48:21
impossible 84:16
impoverished 17:22
improve 19:3
improvement 18:2,24
improvements 19:11
in- 26:13
in-person 53:14,15
 54:11 91:5
inaccessible 52:5 53:3
inactive 71:20
inadequate 17:21 29:1
 54:23
inalterably 79:10
inappropriate 71:9
inclination 67:21
include 18:20
included 20:25

including 14:25 16:15
 18:19,21 19:23 27:17
 28:5 48:19 51:12,12
 54:12 55:24 59:17
 69:15 89:3 90:4 91:17
inclusion 87:13
income 16:25 50:7
incomparable 8:9
incompetent 73:6
inconsistent 84:5,15
incorporates 33:5
increase 29:9,12 32:13
 50:24
increased 48:20 49:18
 50:13,23 86:17
increasing 28:22
increasingly 25:19
independent 19:25
 20:7
indicates 25:1 89:5
individual 25:22 28:13
 53:6 84:18 85:24
individual's 85:18
individuals 23:21 26:1
 27:18 29:7 30:14
 31:23 32:1,15 38:11
 40:16 42:8 49:20 51:3
 53:1 83:21 84:5 85:12
 85:13,15,19,21 86:2
 86:24 89:17 92:5,18
 92:23
indoors 48:1
inefficient 28:25
inequality 17:25
influx 50:20
information 20:25 21:5
 29:5 33:6,17 34:18,24
 35:1 36:17 37:11 68:2
 95:19
informed 8:8
infringed 28:4
initiative 19:12,13
initiatives 19:19
injustice 79:5,7
inquiry 73:13
inside 35:18
Inspector 76:10
instances 53:9,11 75:8
institute 73:22
institutional 23:9
institutions 6:21
insufficient 27:25 28:23
Integrity 6:12
intend 11:22
intention 69:25
interest 6:9 48:19 55:3
 74:25 96:4
interesting 20:24 63:16

71:16
interests 53:24 55:7
interference 11:10
 36:18,20
internal 29:10 34:25
interrupting 63:17
interventions 19:9,20
intimidated 59:16
intimidating 59:9
invasion 35:3
involved 30:25
Irena 2:20 45:8
irony 78:5
issue 20:12 32:22 33:9
 45:20 54:25 57:9 62:6
 67:19 87:3,7
issued 24:23 46:1
 83:18
issues 53:16 54:3,21
 55:14 59:4 60:19,20
 61:2 66:6 69:23
it'll 66:11
item 34:3 42:6 44:9
 96:8
items 60:16

J

J 1:13 5:25 6:8
James 38:14
jaundiced 67:24
Jim 7:22 78:21 79:13
John 42:13 77:24 78:2
 78:4 79:23 80:14
Jr 80:12
Jr.'s 80:9
judicial 29:8
judicially 27:15 90:14
Julio 38:16
July 48:17
June 27:8 62:11
jurisdictions 49:13
 52:8 55:19,22
justice 6:15,16 25:15
 28:9 78:17 79:8 81:2
 81:8 84:9

K

Kammerer 40:19
Kansas 3:13 34:1 42:8
 42:17
Kathryn 40:20
Keegan 38:14
keep 78:14
Kenya 42:12
kept 35:7
kinds 57:7,23 58:2
 63:11 87:11
King 80:8,12

Kir 42:15
Kirsanow 1:17 5:7,8
 8:18 9:15,24,25 10:15
 13:7,8,10,11 15:12,13
 37:24,25 39:17,18
 41:21,22 43:16,17
 61:18,19 63:4,5 66:17
 66:19,25 67:3 72:24
 77:3,4 83:3,4 88:7,8
 94:21,22
Kirsanow's 9:13 11:12
 14:17,20 15:3
Kladney 1:18 5:9,10
 13:14,15 15:14,16,17
 34:9,11 38:1,2
 39:19,20 40:2,3,5
 41:23,24 43:18,19
 59:25 60:1,10 61:20
 61:21 63:6,7 77:5,6
 83:5,6 85:4,4 88:9,10
 94:23,24
knowing 31:8
known 16:22 22:24
Kue 40:20

L

La 24:8
lack 17:4 18:3 50:9,11
 51:6,14 53:16
lamented 18:3
lands 51:15
language 52:8 84:10
 94:6
large 18:10,12 25:19
 54:14
large-scale 73:2
largely 17:7
late 71:17 77:20,24
Latino 48:12,14 51:23
Laughter 67:1
law 6:18,19 7:21 23:8
 24:4,10 78:24 84:5
 86:20
lawful 89:3 91:10
laws 23:23 52:24
lead 11:19 45:1 52:1
 64:12 71:7 79:22
leadership 22:4 24:8
 29:10,24 32:22 46:24
 56:9,23 80:14 87:2
leading 54:8 80:13
lean 72:7
learn 79:19
led 78:21 80:9
legal 6:9 25:22 91:9
legally 50:11
legendary 80:7
legislation 55:25

legislature 19:25 20:6,7
Lehoczky 42:14
lengths 68:3
lengthy 83:15 84:10
 88:20
let's 8:23,23 9:19 10:25
 11:7 12:14,21
letter 10:11 12:18 33:4
 57:3 87:22 88:17,20
 88:23 91:15 93:13,15
letters 91:1
level 18:16
Lewis 77:24 79:23
 80:15
Lewis's 78:4
LGBTQ 87:10,20
liberal 92:17
lieu 62:8
life 78:6,7 79:11 80:4
lifelong 81:6
lifetime 92:12
light 21:4 46:13 55:16
 68:9 77:20 86:18
lights 79:23
Lillard 40:20
limbo 91:9
limit 26:8
limited 19:23 52:6
 54:21
limiting 31:23 57:19
 90:4 91:11
line 4:16 68:11 92:25
lines 48:8 75:12
Ling 24:6
lining 47:25
list 66:2
listed 59:12
literal 92:2
literally 78:7
litigants 55:4,8
litigation 49:6
Little 38:15
live 6:5 57:20 58:10
 69:11
lived 80:12
lives 85:14
living 49:20 51:16
local 21:17 59:16 73:5
located 54:4
locations 52:21 53:15
log 57:7
logistically 46:12 47:24
long 15:3 72:22 74:14
 74:21
look 6:21 74:15 75:10
looked 31:2,14 60:16
 67:24
lot 27:8 30:25 59:1

64:22 65:11 68:1,2
 93:11
lots 31:4 66:5
Louisiana 49:10
low 16:25 47:9,11 50:7
 71:15
low-income 86:6
loyal 92:8
luck 77:22
Luther 38:14 80:8,12

M

Madam 7:4,4 11:15
 34:12,16 35:11 36:2
 36:22 45:3,17 54:2
 55:10 56:5 58:20
 59:25 68:16,24 70:18
 74:2 75:22 77:18
 86:14 87:3 92:1 93:8
 95:12,13 96:3,4
magnet 18:22
mail 48:19,23 49:3
 50:18,25 56:2 73:2
 74:12,17,21 76:6,13
mail-in 48:18,25 49:10
 50:13 51:18,20,24
 53:9 55:19 75:9
mailed 52:7
mailing 55:15
mailing-back 55:16
main 12:6 83:16 88:21
majority 50:15 54:14
 95:17
mandatory 31:22
manner 52:20
march 48:17 78:22
Marche 42:13
marchers 79:23
mark 70:17
Martin 2:10 80:8,12
Mary 42:14
mass 30:25
matching 51:25
materials 52:19
matter 74:10 96:16
matters 59:12
MAUREEN 1:22
MAURO 1:21
maximum 74:25
McConnell 40:20
mean 30:24
means 25:21 51:12
 73:23
measure 74:21
measures 26:25 88:24
 90:4
mechanisms 48:6
Medal 80:15

mediator 8:3
meet 20:2 49:22 82:3
 95:6
meeting 1:3 3:4,24 4:6
 4:11,13 5:20 8:17,25
 16:4 34:14,17 69:16
 77:22,25 78:10 93:16
 95:19 96:13,14
meets 28:13
Melissa 20:14
member 6:11 7:1 24:6
 31:11 87:9
members 17:7 20:15
 21:14 33:11,18,19
 34:22 38:20 40:25
 42:18 44:2 56:12 91:1
membership 53:7
memorial 78:3,12
memory 78:17
mentioned 31:9 57:24
merely 92:2
messages 46:25
messaging 12:13
met 31:8
methods 20:10
Michael 1:19 42:12
Michelle 38:15
midst 52:17
Mildred 42:12,17
mini-report 47:13
minority 3:18 44:8,12
 45:7 50:7 53:19
minute 39:21 53:20
Mirowski 20:14
missed 62:5
mission 58:13 75:19
Mississippi 7:21,23
 49:10
misuse 78:19
mobilize 46:23
modifications 65:4
moment 4:20 79:4
 86:18
moments 82:11,19
Monique 40:20
month 26:7
monthly 96:1
months 23:12 24:17,22
 25:11 26:9 28:14
 57:21
Moore 38:15
MORALES 1:21 5:19
 96:3
morning 5:23 89:20
mosaic 18:18
motion 8:16,24 9:3,7,10
 9:11,13,22,24 11:5,12
 11:13 12:2,3,4,5,6,15

12:19 13:22 14:11,20
 14:22 15:23 34:15
 37:2,3 38:6,17,22
 39:1 40:10,22 41:2,6
 42:3,16,20,25 43:23
 44:18 45:10 59:13
 63:18 64:2,4 72:16
 81:11 83:11 88:14
 93:20,21,22 95:2
motions 9:5 11:20
Moussa 42:13
mouth 78:25
move 7:3 8:23 9:4,19
 9:20,25 10:9 11:20
 34:2,5 35:23 37:15
 38:10 40:15 42:7 44:1
 45:5 53:25 77:14
 83:12 84:25 88:17
 90:16 95:7
moved 8:18 9:15,16
 44:19 45:12 64:5
 81:12
Movement 78:13
moving 11:4 20:12
 31:16 38:10 72:6
 81:14
MULDER 2:16
multifaceted 28:18
Murguia 42:14
MUSSATT 2:11

N

N 1:17 3:1 4:1
N-400 28:22
N/A 3:3
name 4:23 70:5
Natasha 38:13
Nate 40:21
Nathasha 38:18
nation 46:13 78:14 81:4
 82:9 86:18 91:22
nation's 80:16
national 21:7,11 23:21
 24:15,17 28:6,17 46:8
 64:18,21 78:17 86:4
 91:19
nationally 24:24 25:2,7
 25:8
native 48:14 51:1,5,15
naturalization 3:9
 10:12 12:19 22:12,19
 22:25 23:3,11,13,15
 23:24 24:15,21 25:1
 25:13,18,23 26:11
 27:1,10,12 28:7,11
 88:19,25 89:6,9,13,22
naturalize 26:12 30:22
naturalized 25:6 26:2

27:7 28:14 89:4,12
nature 34:5 35:2
Navigating 3:16 44:6
 44:11 45:6
nearly 18:14 24:18 26:9
 48:24 80:3
necessarily 66:10
necessary 65:4 88:24
 90:4
need 9:4 18:2,16,25
 36:25 37:3 51:13
 57:23 72:10,13 86:10
 93:1 94:13
needed 18:17 20:2 90:5
needs 18:5,15 20:2
 60:7
negatively 25:14
Nevada 76:8
never 68:4 70:5 75:13
 80:21 81:4
new 4:21 5:23 7:3 25:6
 36:19 67:7
newest 7:1 8:6
Nick 56:11
nine 26:19
no- 92:2
Nolan 42:15
non- 79:9
non-violent 81:7
normal 67:8
North 73:17
notable 89:7
notarization 49:17
notary 55:5
notational 94:7,10
note 4:17 28:15 33:3
 46:10,16 47:25 51:9
 63:10
noted 17:20 77:21
notice 52:3 57:14 83:18
noting 23:19
notion 45:22
November 26:21 47:23
number 25:19 27:16
 30:19 31:24 47:19,19
 54:9,15 55:10 59:12
 60:16
numbers 32:13

O

o 4:1 32:9
oath 26:10,14,17,18
 27:3,3,10,15,17 30:15
 30:23 32:2,18 89:11
 90:13 91:3
oaths 89:9 90:2,8 91:4
Obama 8:9 80:17
object 94:9

objective 18:5
obligation 16:16 70:16
obtain 27:19 49:17
obvious 12:8,10 25:16
obviously 35:21
occur 72:8 91:12
occurred 26:5 68:4
offer 6:25 56:10
offered 78:23
offers 18:18 28:19
office 7:24 24:19,25
 25:3,9 26:17 27:6
 31:11,20 51:7,11 59:9
office's 26:18
officers 51:5
offices 26:9 31:13
 32:12
officially 78:12
officials 52:18
Ohio 2:7 3:5,6 15:24
 16:2,6,8,11,12,21,21
 16:23 17:2,14 18:4,7
 18:9,18 19:1,6,15,25
 20:15 22:4
Ohio's 16:15,18 17:9,10
older 54:6
OM 2:10
once 78:19 80:11,23
one's 46:18 86:15
one-sided 66:4,11 69:5
one-tenth 26:15
ongoing 84:22
open 4:3 20:21 30:1
 36:7 39:5 43:3 44:17
 56:15 64:1 68:6,11
 81:10,22 84:24 85:5
 90:16,23 95:8
opening 69:7
operate 29:15 83:19
operating 54:5
operations 28:25 91:11
Operator 4:4,10
opinion 34:14
opportunities 18:19
 32:19 56:2
opportunity 29:19 32:2
 33:19 52:3 64:15
 67:16 76:17 91:3
opposed 13:23 38:7
 40:11 42:4 43:24
 61:25 63:19 77:10
 88:15 95:3
opposition 83:13
option 31:17 74:16 86:1
options 27:16 31:13,14
 35:22 48:19 60:23
order 4:12 5:21 9:14,21
 9:22 11:14,24 27:14

57:5 64:17 90:9,13
ordinarily 47:16
organizations 51:4
organizer 80:14
orientation 84:12,23
origin 23:21 28:6
original 12:2 26:15
 71:16
ought 12:10
outcome 63:23
outcomes 17:13,15
 19:3 47:9
outdoors 27:4 31:17
outlined 26:6 29:5 32:8
 61:2
outset 4:17
outside 32:12
overburdened 52:20
overcome 76:4
overly 18:17
owe 75:20

P

P 1:14 4:1
p.m 1:9 4:2,12 96:14,17
Page 38:15
paid 64:21
painful 69:15
Palo 89:20
PAMELA 2:8
pandemic 3:17 6:5
 19:17 26:6 44:7,12
 45:6 46:9,15 48:2,15
 48:22,22 49:1,19,25
 52:18 58:16 60:7 70:5
 74:13 86:5 89:10 90:5
Panelists 25:25
paperwork 38:24 41:4
 42:22
parenthetically 51:9
parking 27:7 31:4
part 45:20,22 47:16
participate 25:21 27:20
 32:19 54:7 89:18 91:3
participating 86:23
participation 16:16
 47:1,7
particular 18:6 20:14
particularly 16:21,25
 20:3 23:14 52:21
 56:11 71:21 86:5
partisan 92:16
partner 27:13
partnering 90:12
parts 51:11
party 51:3
pass 12:24 14:1,1 33:17
 39:20,25 55:25
passed 14:6,22 92:7
passes 13:22 15:23
 25:18 38:22 41:2
 42:20 43:23 83:12
passing 3:21 77:13,15
path 47:4,5,5
paths 46:21 47:10
Patricia 40:18
paved 79:21
Paya 38:16
pays 81:6
peaceful 78:21
pending 9:3,14,22 12:3
 12:16 25:2 37:3 89:7
 93:20
people 30:10 31:24
 48:4,8,12,13 53:5
 58:14,15 59:16 60:24
 65:6 67:17 68:2 69:9
 69:22 70:1,10 71:10
 71:15 72:3 73:13,24
 75:1,14,20 76:7 80:18
 82:6 86:6,9 89:9
people's 58:2 84:1
percent 24:24,25 25:8,8
 48:16,22,24 53:11
 74:12,18 76:9
percentage 74:17
percentages 30:18
perfect 7:14 19:18
 94:11
perfectly 66:2
perform 30:22
period 62:14 74:21 86:5
permanent 25:23 26:20
 89:23
permit 27:9
perpetuate 84:22
persist 17:12
persisted 17:16
person 26:14 48:21
 53:3 73:18 84:17 90:6
personal 35:2,3 53:16
 63:10 82:10,18
personnel 34:25
persons 28:11
perspective 16:19
Perucca 42:15
PETER 1:17
Pettus 79:24
phantom 73:22
phenomenal 8:10
phone 4:14 58:19 93:25
Photo 52:24
Phyllis 42:15
physical 85:22
pick 33:4
pieces 65:11

pitched 56:13
place 4:13 54:3 59:8
 71:6 72:2,4,5,5,7,10
 83:20
placed 92:18
places 54:4,13 59:11,14
plan 58:25
planes 51:13
planning 8:20 10:3
play 92:6
played 92:24
please 4:9,22 9:24
 34:13 40:2
pleased 21:9
pleasure 82:3 96:9
point 9:14,21,22 11:14
 31:19 36:14 59:7,8
 60:1,19 68:23 69:7
 70:20 82:17 90:25
pointed 18:7 65:9
points 45:14 57:23
 65:12 83:16 85:6
 88:21 90:24
policies 28:21 47:1
 51:25 59:14 83:20
policy 69:22
political 8:4 25:21 65:3
 89:19
poll 54:6,8
polling 53:15 54:3,4,13
 59:8,11
polls 50:10 54:24 75:16
poor 18:12
populations 28:1 50:4
 54:15
pose 48:2 52:25
poses 49:23 52:23
position 92:4
positive 69:24
possibility 62:4
possible 29:4
post 51:7,10
postal 51:7 52:21 55:17
 55:18 56:1 57:2,17
 76:9
postmarked 52:13
postponed 26:11
potentially 23:25 29:6
poverty 17:3,25 85:13
powers 56:4
practice 21:15 36:16
 69:14
practiced 31:15
practices 28:21 34:25
Pratt 42:15
pre- 49:11
preacher 80:11
precautions 26:16

31:22
preceded 45:11
precincts 54:16
predominantly 17:23
preparation 50:23
prepared 37:1 50:20
 81:15
presence 4:23 82:8,11
present 1:11 2:6,13
 4:25 5:2,4,14,15,18
 5:19 25:25 29:18
 33:20
presentation 3:4,7 16:5
 22:14 29:23 33:14
presently 67:20
President 6:2,8,10 7:16
 8:9 80:16
presidential 5:23 6:11
 25:12 32:20 75:12
 80:15
presiding 1:10 92:10
pressing 23:14
prevalent 51:23
previously 6:10 7:22
primaries 49:5 50:15
 52:15
primary 50:19 52:17
 53:14 57:19
principle 80:19,20
prior 6:15 48:22 50:22
 60:20,25 61:2 89:14
priorities 18:14
prioritize 89:24 90:1
prioritizing 89:8
privacy 35:3
private 18:21 20:9 55:4
 55:7
privilege 16:11 82:18
 92:14
privileges 91:16 92:12
probably 67:15 75:11
problem 59:18,19 71:25
problems 79:17
procedures 29:11 71:6
 72:1,7,10,11 73:22
proceed 11:18
process 24:3 25:18,21
 26:11,25 27:12 28:10
 52:22 89:10,14 91:8
processes 24:20 29:10
processing 23:11 25:10
 26:1 89:25
produced 67:15
production 30:20
proficiency 52:6
proficient 54:22
program's 42:10
programs 18:23 29:15

progress 87:18
progressive 71:13,17
progressives 71:22
project 8:20 10:3 45:1
 45:14 56:10,14 64:12
 67:9
promise 78:14 80:24
promises 80:6
promulgating 86:8
proper 53:16
properly 50:24
property 18:17 19:8
 20:4

propose 33:4 78:8
proposed 10:10 12:17
 14:24 47:19,22 77:19
 83:14,18,24 84:3,6,14
 85:23,23
protect 58:2
protected 17:4,8 23:22
 28:5
protecting 84:4
Protection 23:22
protective 53:16
protects 83:25 84:11
proudest 82:11
proven 47:4 79:16
provide 16:16,25 29:12
 31:13 34:13 49:3
 55:25 68:3
provided 24:10 34:19
providing 19:4
provision 49:12
proximity 48:4
public 6:9 8:4 10:9
 12:16 18:21 20:5,8
 24:13 27:23 35:25
 38:8 41:10 62:7 66:8
 67:23 83:13 85:1
 90:10,17 91:6
publish 63:24
published 22:23
punched 78:24
purpose 64:17
pursuant 34:18
pursue 29:7
pursuit 81:7
put 59:21 69:19 72:1
 86:17
putting 59:8

Q

quarter 50:18
quest 19:2
question 21:8 30:3,13
 35:10,13 36:2,2,3
 37:14 39:8 41:11 43:6
 76:14,16 82:15 91:24

94:12
questions 16:19 20:18
 20:22 21:23 30:1,7
 32:25 56:16 61:8
 62:20
queuing 20:23
quite 12:12 93:6,11
quorum 4:19 5:14
 95:15
quote 79:13,15 84:16
 84:19,21,24

R

R 4:1
race 28:5
racial 23:21 80:4
racism 78:16
raised 60:19
ranged 24:17,22
rare 53:10 73:21
rate 26:19 48:11 51:19
 51:22 57:7 76:9 89:21
rates 76:7
read 77:17,19 78:5 82:1
 83:15 88:20 95:20
realize 80:5
reasonable 69:25
reasons 34:15
rebuttal 62:13
recall 78:11
Recalling 79:12
receipts 28:24
receive 19:20
received 52:14 62:6,9
receives 24:19
receiving 52:22 60:6
recently-released 16:1
recipients 83:19
recognition 84:15
recognize 81:4
recognizes 28:16
recognizing 78:4
recommend 83:23
recommendation 40:17
 59:7
recommendations
 19:23 21:9,12,16,18
 21:20 32:7,10 38:13
 42:9 44:16 47:20
 54:10 55:10,21 59:5
 59:21 61:5 63:22,25
 64:3,16 65:8,19 66:1
 66:13
recommended 24:6
recommends 59:10
reconsider 68:9
record 35:25 41:11
 58:24 59:22 63:15

67:23 68:11,12 83:16
88:21 96:17
recorded 4:6
records 67:22
recount 69:16
recounted 79:13
recruiting 44:2
recused 95:23
redo 73:20
reduce 20:4 25:5 48:7
55:13
reduced 19:7 23:10
26:19 29:6 89:21
referenced 30:19
reforms 19:7,10 20:25
21:2
regard 31:4 47:9 53:13
75:2 83:22 87:13
regarded 46:12
regarding 10:10,11
12:17,18 57:1 60:6
Regardless 18:13
regards 31:21
regional 42:10
register 51:16
registration 73:10
78:22 89:14
regrettably 64:25
regroup 68:21
regular 54:15
regulations 34:13,20
35:5 36:14,19
reiterates 84:20
rejected 51:19 52:1,15
76:8
rejection 51:22
related 28:9 34:24
48:17
relating 55:2
relations 8:4,12
relative 84:5
release 62:8 65:1
released 19:16 26:7
67:22 78:3
releasing 65:19 67:9
reliable 51:6
reliance 20:4,4
reliant 18:17
religion 23:22 28:6
religious 18:21
remain 91:7
remaining 89:11
remains 19:3 23:18
78:17 95:22
remarks 28:15 69:7
remedied 23:9
remedies 29:8 57:23
remedy 17:10 85:23

remember 78:6,9 81:3
reminder 4:6
remote 27:5 51:11 91:4
remotely 27:4 90:8
remove 8:19 10:1
reopening 26:13
repeat 30:12
repeated 84:21
report 3:5,8,16 16:1,7
16:12,13 19:16 20:16
20:25 21:24 22:9,16
22:23 24:5,14,23 26:7
28:19 29:5,18 30:7
32:8 33:6 44:6,10,15
45:5,7,15,18,23 46:1
46:6,6,10 47:13,19,23
54:1 57:24 58:9 59:1
59:4,20 60:2,15,16,17
60:20 61:2,4,6 62:3,8
63:22,25 64:3 65:20
67:16 68:1 69:4 74:6
74:23 76:4,11 96:1,6
96:8
reporter 5:15,16
reports 63:11
represent 17:7
Republican 73:19
92:17
request 19:24
require 18:8 36:10 49:2
49:16 52:2
required 23:15 36:10
49:13
requirement 32:15 49:5
49:18,22,23
requirements 27:18
28:13 31:8,9 32:16
49:6 50:6 52:9,11
55:5 90:5
requires 69:12 70:15
requiring 85:24
research 19:9 24:10
56:13
reservations 51:16
residents 25:23 26:21
85:22 89:3,23 91:7,10
91:21
resort 79:25
resources 17:19,21
29:1
respect 31:22 48:18
68:20 84:23 85:11
respond 57:13,14
response 10:23 13:17
15:15 21:25 28:23
31:3,7 33:2 39:6 43:4
restored 23:11
restraint 7:2

restrictions 50:2 51:2
restrictive 50:7
result 26:9 46:9 53:7
69:11
resulted 25:7
resulting 24:14 91:8
resuming 26:17
retain 83:24
return 94:14
returned 45:24
Reverend 77:21 78:23
80:8,12
review 19:22 33:7
rider 80:13
rights 1:1 3:6,8,8 4:12
16:2,8,12,13,19 19:24
21:7,11 22:10,10,17
22:18 23:2,7,14,18,20
23:23 25:14,15,16,22
26:4 27:22,23 28:4,10
45:19,20,21 46:2,3
49:12 52:9 66:6 70:10
72:23 78:13 80:7 81:5
82:5 84:4 87:20 89:2
91:20
rigorous 92:7
rise 28:7
risk 49:23 50:5 53:6,8
54:7 78:7 82:10 86:17
91:10
risks 26:8 48:2,3,9,21
49:19 75:1 86:24,25
89:16
road 47:2,3,3,9
Robert's 11:25 12:10
70:12
robust 87:9
Rojas 24:9
roll 4:17 5:14 35:10
37:13,14 39:8 41:11
43:6 56:17 61:9 62:20
82:16
Ronald 40:20
room 26:18
roots 47:11
roughly 48:11
ROYCE 2:17
RPCU 2:11
RUDOLPH 1:22 34:16
35:20 36:5,13
Rukku 2:19 8:10
rule 10:10 12:17 83:14
83:24,25 84:3,6,14
95:20
rule's 85:23
rulemaking 83:19
rules 12:1,11 34:25
35:18 70:12 86:8 92:6

92:19,24 95:20
rural 18:12 51:5 52:21
Ryu 40:20

S

S 4:1
SAC 2:7,9 25:4 26:7,23
28:16,19 29:5,20
sacrifice 77:20
sacrifices 79:21
safe 53:13 86:1
safeguard 91:20
safeguards 84:6
safety 86:10
salient 16:20
Sally 42:14
salvageable 68:20
Sanders 40:18,23
satisfy 52:11
saying 75:6
says 92:22
schedules 50:10
school 6:19 7:21 17:4,6
21:3 24:10
schooling 19:17
schools 16:17 18:21,21
18:22,22,22,23 19:5
19:10 20:9,9 54:5
scrutiny 28:22
second 8:21 9:1,12
10:5,13,17,19,20
28:23 34:8,9 39:1,2
41:6,7 42:25 43:1
44:15,22,23 62:15,16
64:8 67:12 81:16,21
81:21 85:3 90:20,21
seconded 12:20 45:12
seconds 34:11 62:19
64:9 85:4
Secretary 6:17
section 6:14 52:9,11
security 56:1
seek 20:4 49:13
seeking 79:8
seen 73:1
segregation 79:5 85:17
selected 23:4
selflessness 79:6
Selma 78:20,25 81:1
Senators 91:1
send 21:19 52:19
sending 33:12
sense 35:22 46:20
47:13,15
separate 73:13
September 22:22 23:1
24:16 62:13,13
series 16:22 19:9

serious 70:8,9 71:25
 75:1,4,18,21
serve 6:2 38:20 40:25
 42:18
served 6:16 62:3 80:8
service 22:3,24 29:24
 51:7 52:21 55:17,18
 56:1 57:2,17
services 88:18
serving 6:7 17:23
session 3:3 4:3 34:6
 35:6,18,19 36:4,7,8
 36:12,15,20,21 37:4
 37:15
set 16:18 23:12 66:13
seven 95:16,17
sex 83:22 84:8,11,12,19
 84:23 85:16,18
sexual 84:23 85:22
Shakirra 40:18,23
shameful 57:22
share 21:14 33:10
 64:15 78:21
shared 45:8 95:18
Shelby 46:4
shelter 83:14 85:24,25
sheltered 85:20
shelters 10:10 12:17
 83:20 84:1 85:16,17
 86:10 87:14,14
Sheriff 78:24 79:7,22
Sheriff's 59:9
Sherwood 38:16
Shin 40:19
shine 21:4
short 64:17
shortage 54:8
shortly 19:17 95:19
show 19:14 21:2 57:6
showing 7:2
shows 48:11 73:14
shrinking 70:16
sides 67:18 70:13
signature 49:17 51:25
signatures 52:4 57:7
signed 65:15
significant 17:12 19:11
 23:25 52:25 74:8 84:3
 85:16 88:19
similar 8:11 19:14
simply 68:4
Simuel 2:18 7:25
Simultaneous 37:9
 60:11 62:17 65:23
 66:20 67:2,5
Singla 2:19 8:10
single-sex 83:20
situation 57:16 61:1

74:19
situations 87:21
six 38:6 57:21
six- 23:11
sloppy 12:7
small 26:14 59:13 90:6
 91:5
Smith 38:16
social 26:16 49:21
 79:17 85:9
society 87:19
solve 79:17
somebody 82:8
sorry 7:8 13:9 15:17
 35:12 45:9 56:18
 63:18 72:15 76:2 92:1
sort 35:22,24 69:8
 87:18
sought 23:6
sounded 66:16
sounds 58:18 81:13,15
South 6:17,18
Southern 80:13
space 19:9
spaced 31:5
speak 36:14 56:3
speaker 18:7
speakers 18:1,3,14
speaking 37:9 60:11
 62:17 65:23 66:20
 67:2,5
special 7:17,19,25 8:6
 8:10 18:23 45:8 48:5
 64:20 85:1 90:18 95:6
specific 18:2,13 28:1
 30:18 55:21 96:8
specifically 23:10 49:2
 60:22 65:12
specified 34:15
speed 53:24
speedy 90:1
spirit 58:5 68:6 94:3
spoke 79:18,19
sponsor 45:1 64:12
stable 72:10
staff 1:21 2:6 5:18 6:4
 20:13 23:1,4 24:8,10
 38:13,23 40:17 41:3
 42:11,21 43:14 44:1
 56:10,13,22 58:8 60:4
 61:4 64:16 85:22
 95:11 96:1,11
stage 82:4
stages 91:8
stand 59:12
stands 70:14,15
start 20:23 48:25
started 33:4

state 6:17 9:24 16:23
 18:11 19:6 21:1,16
 22:22 73:5
state's 16:14,23
stated 14:21 17:3
statement 3:21 26:6,23
 30:18 32:8 68:13
 77:13,15,17,19,19
 78:3,5,12 81:14 83:9
statements 55:3,6 62:6
 62:9,10,12
states 6:15 31:21 45:19
 45:21 48:6,23,24 49:2
 49:8,9,11,16 50:16,20
 50:22 52:2,2,12,15
 55:3,18,23 57:1,11,17
 70:10 74:12,13,15,19
 75:20 81:5 86:3 92:8
 92:20
status 49:7
statute 27:12 32:17
statutory 25:11 28:10
 28:11 84:10
stay 38:8
step 26:10 27:19 30:23
 32:17 84:3 89:10
 92:21
STEPHEN 1:15
steps 21:11 78:25
 80:25 91:14
Steven 42:14
stick 12:10
stood 92:25
stop 73:23 80:1
strategists 80:9
streets 78:19
strengthen 91:19
strict 52:16
strong 24:7 84:2
struck 70:6
struggle 80:23
struggles 80:22
student 18:6,8,15 19:3
 19:11
students 17:15,16,20
 17:23,24 18:4,19,19
 24:10
students' 20:2
studied 80:14
study 20:1,7 23:2 73:14
 73:14
stuff 67:23
Su 24:6
subgroup 28:5
subgroups 28:5
subject 28:12 60:5
subjects 67:18
submitted 50:22

substantial 25:13 74:20
 89:6
success 19:14
suffered 71:2
sufficient 57:13
suggest 11:18 47:23
suggested 63:13 78:11
suggestion 69:4
suggests 28:3 46:7
summarize 83:16 88:21
Supervisors 87:9
supervisory 42:9
supplement 32:8
support 19:19 24:9,11
 46:23,25 58:7,12 65:2
 66:9 82:5 87:22
supported 55:7
suppress 58:4
suppressed 25:22
Supreme 16:21 17:2,3
 46:3 84:15
surrebuttal 62:14
survival 86:10
suspect 93:15
swearing-in 30:25
swore 6:4
sworn 30:10
system 16:17,24 19:5
 89:19

T

Tabitha 38:15
table 11:6
tactic 75:15
taken 21:12 31:23
takes 4:13 36:11
talk 92:14
talking 72:9,12
talks 70:23
target 72:6
taxes 18:17 19:8 20:5
Teachers 17:20
technology 27:5 29:11
 32:4 90:9
Teleconference 1:9
telephonic 4:5 11:10
 36:18,19
television 79:1
tell 92:9
telling 67:21
tempting 87:17
ten 74:11
term 84:9
terms 35:23 67:13 85:9
terrible 57:22
Terrific 37:10
test 92:7
testified 18:1 25:25

46:11
testify 67:17
testimony 17:17 28:18
 62:5 63:14 64:25 67:9
 68:2
Texas 18:11 49:10
thank 4:10 5:13,17,20
 7:13,14 8:22 10:4,6
 10:21,24 13:13,20
 14:7,9 15:5,18,21
 16:9,10 20:13 21:21
 22:2,5,6,20 24:12
 29:17,21,23 30:6
 32:21,21,23,24 33:14
 33:16,16,18,21 34:10
 35:8,9 39:4 41:9 43:2
 44:1,21,24 45:3,10,17
 56:7,9,22 58:17 59:23
 60:8,9 61:7 62:18
 64:7,10 65:21 66:16
 66:21 69:2 76:15 81:9
 81:22 82:14,21 83:8
 85:5 87:2,4,6,23
 90:22 92:1 93:6,19
 95:9,10,25 96:3,10,11
 96:15
thanks 20:19 29:22
 56:10
things 12:9 47:19,22
 57:8 60:18 64:24
 67:13 71:5 75:21
 87:16 93:14
thinks 71:14
third 28:25 51:2 71:1,1
Thomas 2:18 7:25
 38:15
Thomson 38:16
thorough 16:17 19:5
thought 13:25 14:5
 20:24 57:3,4
thoughtful 19:23
thousands 52:14 76:8
 89:17 91:7
threat 71:14
three 5:23 48:11 49:4,9
 72:13 88:14 95:3
thrive 17:19
throughs 27:5
Thursday 85:2 90:18
timeframe 23:12 25:11
timeline 62:10
timely 52:19 55:20 58:9
times 23:11 24:17,22
 25:10 26:1 45:25
 48:11 51:21 54:18
timing 91:21
TINALOUISE 2:10
Tindell 78:20

title 46:7
titled 16:1 22:9 44:11
today 8:14 33:5,15 67:8
 67:20,25 68:14 81:5
 92:3
today's 96:13
told 92:25
tomorrow 72:5
topic 23:4 24:5 33:12
 33:12 45:24,24 56:25
 62:8
topical 62:3
tracking 53:12
Tracy 38:14
tradition 12:12,13
traditional 18:20
traditions 74:14
transcript 35:7
transgender 83:25 84:4
 84:17 85:8,12,15,19
 85:21 86:1,9 87:13
translating 52:10
transmission 48:3
transparency 29:16
 68:5
treat 14:10
tremendous 75:3
tribal 51:14 59:11,17
tribute 81:6
tried 43:15
true 9:9 70:24
truly 8:9 87:20
Trump 6:2,10 7:16
 84:21
trust 92:19
try 12:10,14 30:12
 65:16 75:15 78:11
 82:20 94:5
trying 31:7 64:17 66:10
 66:17 69:9,24 74:25
turn 4:7 8:13 13:24
 44:25 55:9 56:5 64:11
 69:19 81:1 87:18,24
 95:11 96:1
Twelve 49:16
twin 65:5
two 13:22,23 44:14
 46:20,21 47:10 51:21
 55:2 69:8 70:13,21,24
 70:25 72:13
typically 54:4,6

U

U.S 1:1 4:11 17:3 18:9
 19:24 21:7,10 22:23
 76:9 88:18
unable 25:20 26:12,21
 50:24

unanimously 15:23
 62:11 83:12
uncertain 49:8
unchecked 75:5
uncompensated 38:21
 41:1 42:19
unconstitutional 16:24
underfunded 52:20
underperforming 20:3
understand 23:5,6
understanding 65:9
 87:19
undetectable 73:4
unfortunately 17:9
 31:11
uniform 31:12,25 32:11
union 74:13
unit 42:10
United 6:15 45:19,21
 57:1,17 70:10 75:20
 81:5 86:3 92:8,20
University 6:18 7:20,21
 8:2 24:9
unnecessary 52:23
 86:24
unprecedented 86:4
 90:10
unrelenting 79:9 80:1
unsheltered 85:20
 86:17
unsure 57:17
untrained 53:17
unusual 7:2
unwarranted 35:3
upcoming 26:3 27:20
 32:20 91:17
update 46:6 58:8
upended 19:17
urban 18:10 71:21,21
urge 19:22,25 20:6
 26:24
urged 78:14
urgent 20:12
USCIS 10:11 12:18 33:5
 33:12 88:24 89:8,24
 90:3,12 91:2,11
use 29:10 50:13 54:5
 56:4 75:15
utilizing 31:4
utterly 71:18

V

v 16:23 46:4
Valderrama-Echevar...
 40:21
valiantly 78:7
valid 50:11
validating 87:20

vantage 31:19
variation 52:1
varied 31:18
varies 31:10
variety 20:9
various 11:21
verified 56:2
Vermont 3:12 33:24
 34:4,7 38:12,18
version 21:8
viable 86:1
vibrant 87:10
videoconferencing
 90:8
Vidulovic 2:20 45:9
viewpoint 71:17
views 69:10,22 86:15
Viez 24:8
violates 84:6
violation 24:3
violations 28:9
violence 78:16 79:17
 79:25 85:22
violent 79:10
virtually 6:5
virus 48:3 50:5
vision 46:24
Vivian 3:22 77:13,15,21
 78:6,20,21,23,25 79:2
 79:8,9,13,18 80:3,12
 80:20,23 81:1,4 82:3
voice 66:24 67:4
volumes 48:1
voluminous 47:14
volunteering 8:23
voted 13:12 23:1 46:13
 68:9
voter 47:7,8 50:6 53:9
 57:14 71:3,14,20,24
 72:4 73:2,4,9,16
 78:22 89:14
voters 3:18 25:19 44:8
 44:13 45:7 46:23
 47:25 48:7,20 49:3,16
 49:23 50:1,8 51:1,15
 51:18,20,21,22,23
 52:3,24 53:2 54:12,18
 54:22 57:9,12 71:10
 76:12
votes 14:3 36:11 44:14
 58:5 71:9,9 80:19
 87:5
voting 3:8,16 6:14
 11:11 14:17,19 22:10
 22:18 23:15,17,20
 25:12,14,16,22 26:4
 44:6,11 45:6,20,21
 46:2,3,20 47:6 48:6,8

48:18,19,21,25,25
 49:10,12,14,15 52:9
 53:9,14,17 54:11,25
 55:11,12 57:25 58:1
 60:7 61:5 66:6 72:23
 73:13 74:16 75:9,10
 76:4 82:5 91:17 95:16
 95:20
VRA 55:2,7
vulnerable 85:9 86:6,24

W

wait 24:17,22 30:9,13
 54:18 57:4 93:2
waited 92:23
waive 27:10 32:15
waived 49:4
waiving 27:17 90:4
walk 79:14
wanted 45:14 47:17
 56:21,24 59:21 60:14
 60:18 65:25 86:15
War 46:13
wasn't 15:4
way 11:18 32:4,11,18
 51:10 57:11 66:9
 69:19 71:1,1 74:14
 86:23 93:17 94:5
ways 11:21 48:7 55:12
 60:23 69:8,14,25
 70:21,24,25 72:13
Wednesday 45:9
welcome 4:5 6:20 7:12
 8:6 95:5
wellbeing 84:4
went 68:3 96:16
whatsoever 76:12
White 17:15,16 48:12
 51:20,21 54:14
wholeheartedly 58:7
wholly 73:13
wide 52:1
widespread 73:9,15
willing 78:18
willingness 92:19
win 47:4 72:13
wind 75:11
window 47:17
winning 46:21
Winthrop 8:1
wish 8:11
withheld 34:18
withholding 24:1
witness 49:17,22 55:4
 67:17
witnessed 6:3
witnesses 46:11
words 78:9,23 79:16

80:10 82:1
work 6:22 8:7 24:5 44:2
 46:24 50:9 60:3 61:4
 66:14 82:4 92:19
 93:15,23 94:5 95:8,10
worked 7:23 20:15
 64:16
workers 50:8 53:18
 54:6,8
working 8:12 25:4 87:8
 92:10 93:5
world 57:21 58:10
 65:17
worth 23:19
written 35:6,7 47:12
 62:8,10 93:18
wrong 12:12
Wyoming 19:14 24:20

X

Xavier 56:12

Y

Yaki 1:19 5:11,12 10:19
 13:16,18,19 15:19,20
 30:2,2,5,6,16,24
 32:21 35:12,13,16,17
 36:1,6,9 38:3,4 39:2,3
 40:1,7,8 41:7,8,25
 42:1 43:20,21 44:19
 44:20 45:12 56:18,20
 56:21 57:7 58:18
 61:22,23 62:16 63:8,9
 64:5,6 66:23,23 67:3
 67:6 72:18,20,21 77:7
 77:8 81:15,17 83:7,8
 87:6 88:11,12 90:21
 91:25 93:12 94:2,25
 95:1,12,14,15,24
year 24:23 25:5,12 70:7
year's 46:8
years 8:3 24:18 29:20
 45:25 53:12 66:6
 69:14 80:3 82:13 87:8
 92:24
yesterday 45:9 72:5
yield 72:17 74:1
young 51:23 78:20

Z

ZOOM 31:5

0

0.0006 75:8
00006 53:10

1

1:56 96:14,17

10 24:17,22 48:22 59:13
100 80:3
100,000 89:9
11 62:13
12 25:8 61:25 62:1
12:00 1:9 70:6
12:02 4:2,12
126,000 26:12 30:21
13th 6:6
16 3:6 52:12
17 24:25 49:2
175,000 70:3
189,000 26:20 89:22
19 52:2,18 57:11
19.5 24:22
1965 78:22
1982 53:12
1991 16:22
19th 45:9 71:17

2

2 26:9 34:23
20 8:3 45:24 48:15
2003 16:22
2005 6:14
2009 19:7 21:1
2010 6:14
2011 19:7 21:1
2013 80:17
2016 83:25
2017 6:12
2018 23:1 46:1 50:17
2019 22:22 23:4 24:16
 25:5,6 26:3 70:6
2020 1:5 4:13 6:3,6
 19:16 26:3,21 27:8
 47:23 48:20 50:14
 52:16 53:12,14 62:13
 62:14 89:15
203 52:9
20th 71:17 85:2 90:19
21 1:5 4:13
22 3:9 23:4
25 62:14

3

3 24:18
300 69:14
31 70:6
33 3:12
36 25:8

4

40 3:12
42 3:13
44 3:18
45 34:20

5

5-9 8:19 10:2
500 27:7
57 45:23
59 45:23

6

6 6:3 25:11 28:14 35:1

7

7 24:24
7,000 25:3
70 48:24 74:18
700,885 25:1 89:7
702.53 34:20
738,000 24:16
77 3:22

8

8 3:2
833,000 25:6

9

9,325 24:21
96 3:24

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In the matter of: Business Meeting

Before: USCCR

Date: 08-21-20

Place: teleconference

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Court Reporter

NEAL R. GROSS

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