

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, SEPTEMBER 11, 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:

PAMELA DUNSTON, Chief, ASCD

SHANTRI LIRA, ACS CART Service Provider

DAVID MUSSAT, Director, RPCU

TINALOUISE MARTIN, Director, OM

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

THOMAS SIMUEL

IRENA VIDULOVIC

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P R O C E E D I N G S

12:01 p.m.

OPERATOR: Good day. And welcome to the Commission Telephonic Business Meeting. As a reminder, this call is being recorded. At this time, I would like to turn the conference over to Chair Catherine Lhamon. Please go ahead.

CHAIR LHAMON: Thank you, Operator. This meeting of the U.S. Commission on Civil Rights comes to order at 12:01 p.m. Eastern Time on September 11, 2020.

This meeting takes place over the phone. And I remind my fellow commissioners, because we meet over the phone, to please state your name when speaking so the court reporter can accurately report who speaks.

I'm Chair Catherine Lhamon. I'd like to confirm each of the commissioners that's on the line. And I'll take a roll call here at the outset. Please confirm your presence when I say your name.
Commissioner Adams.

COMMISSIONER ADAMS: Present.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Gilchrist.

1 COMMISSIONER GILCHRIST: Present.

2 CHAIR LHAMON: Commissioner Heriot.

3 COMMISSIONER HERIOT: I'm here.

4 CHAIR LHAMON: Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: Here.

6 CHAIR LHAMON: Commissioner Kladney.

7 COMMISSIONER KLADNEY: Here.

8 CHAIR LHAMON: Commissioner Yaki.

9 COMMISSIONER YAKI: Here.

10 CHAIR LHAMON: Thank you. Based on that
11 roll call, a quorum of the commissioners is present.
12 Is the court reporter present?

13 COURT REPORTER: Yes, I'm present.

14 CHAIR LHAMON: Thank you. Is the staff
15 director present?

16 MR. MORALES: Yes, I'm present.

17 CHAIR LHAMON: Thank you. The meeting
18 shall now come to order.

19 Before beginning our business today, I
20 take this moment to remember the nearly 3,000 people
21 who died on September 11, 2001 in the attacks on the
22 World Trade Center and at the Pentagon. Please join
23 me in a moment of silence.

24 (Moment of silence.)

25 I. Approval of Agenda

1 CHAIR LHAMON: Thank you. Turning to our
2 agenda for today, I move to approve the agenda as
3 posted in the Federal Register with the following
4 changes, to remove the discussion and vote on the
5 amendment to Administrative Instruction 59, and the
6 discussion and vote on a commission statement on HUD's
7 proposed rule, and to add a presentation by our
8 Nebraska State Advisory Committee Chair on their
9 recent report, and the discussion and vote on a letter
10 to USCIS about the backlog in naturalization
11 applications. Is there a second for my motion
12 including the changes?

13 COMMISSIONER KLADNEY: Kladney seconds.

14 CHAIR LHAMON: Thank you. There are no
15 further amendments. Let's vote to approve the agenda
16 as amended. All those in favor say aye.

17 (Chorus of aye.)

18 CHAIR LHAMON: Any opposed? Any
19 abstentions?

20 COMMISSIONER ADAMS: Adams.

21 CHAIR LHAMON: The motion passes
22 unanimously. I'm sorry.

23 COMMISSIONER ADAMS: I'm sorry.

24 CHAIR LHAMON: Commissioner Adams, were
25 you abstaining?

1 COMMISSIONER ADAMS: Well, only because I
2 didn't say aye in time. But I'm happy to say aye.

3 CHAIR LHAMON: I'll accept your aye.
4 Thank you.

5 COMMISSIONER ADAMS: Okay.

6 CHAIR LHAMON: The motion passes
7 unanimously.

8 II. Presentation of Nebraska Advisory Committee
9 Report entitled Civil Rights, Prisons, and Mental

10 CHAIR LHAMON: All right. Now we'll hear
11 from our Nebraska Advisory Committee Chair, Jonathan
12 Benjamin Alvarado, on the committee's recently
13 released report titled, Civil Rights, Prisons, and
14 Mental Health. Chair Benjamin Alvarado, please go
15 ahead.

16 DR. BENJAMIN ALVARADO: Thank you very
17 much for this opportunity. On March 20, 2020, the
18 Nebraska Advisory Committee of the U.S. Commission on
19 Civil Rights released a report following a series of
20 panel discussions on prison conditions facing
21 individuals with mental health concerns in the state.

22 The report examined the extent to which
23 such individuals were afforded equal access to medical
24 services such as adequate mental health and
25 psychiatric care and reasonable protections from

1 injury and the risk of injury while incarcerated. The
2 report produced 11 significant findings and 6
3 recommendations. And we were very happy of the work
4 that we were able to accomplish.

5 But in light of the recent developments
6 under the pandemic, on July 27, 2020, the committee
7 released an addendum to this report addressing the
8 impact of the present COVID-19 pandemic on various
9 areas of concerns that were raised in our initial
10 report. In this addendum, the committee addressed the
11 implications of the COVID pandemic on mental health
12 and well-being of incarcerated individuals,
13 particularly given the previous concerns regarding the
14 resource limitations in the state of Nebraska.

15 The addendum concluded with a necessity of
16 resources for the COVID-19 response that cannot be
17 generated by siphoning off any additional resources
18 away from the already challenged effort to shore up
19 the mental health care in the Nebraska system.

20 We are very concerned because the
21 devastation of the pandemic has served to highlight
22 the importance of our previous considerations given
23 the disproportionate impact on the incarcerated in
24 Nebraska. And it deepens our call for needed
25 attention to and care and well-being of this

1 vulnerable population.

2 Ironically, at the end of August, the
3 entire Nebraska State Penitentiary in Lincoln had been
4 placed under quarantine due to significant outbreaks
5 for which there has been little transparency and
6 really clarity as to how they may begin to treat this.

7 And so we wanted to bring this to the
8 attention of the Commission because I think it really
9 does elevate the importance of our statements that
10 came from the initial report. And we wanted to ensure
11 that by adding this addendum that we would really kind
12 of double down, as it were, on why this is important
13 and critical at this particular moment. And we have
14 concerns as we move forward.

15 So that's the end of my formal comments.
16 And I'm more than happy to entertain questions from
17 any of the commissioners.

18 CHAIR LHAMON: Thanks so much, Chair
19 Benjamin Alvarado. Are there questions from my fellow
20 commissioners?

21 COMMISSIONER KLADNEY: Madam Chair, Dave
22 Kladney here.

23 CHAIR LHAMON: Go ahead, Commissioner
24 Kladney.

25 COMMISSIONER KLADNEY: I would like to

1 thank the committee for the work they've done here.
2 I think it's an excellent report. I did notice in
3 finding 7 in the executive summary that the amount of
4 people with mental health problems in the prison
5 system is quite a few.

6 And I was wondering if during the course
7 of your investigation there was ever an estimate made
8 as to what it would cost to be able to, obviously,
9 from your report, the services are delivered properly,
10 what it would cost to relieve the overcrowding in the
11 mental health facility within the prisons.

12 DR. BENJAMIN ALVARADO: You know, that's
13 a really interesting question. And one of the things
14 that we dealt with in the process of collecting our
15 data and our information was that it's actually, the
16 prison system itself is the final receiving station
17 for a process that begins long before in the
18 communities themselves.

19 And just to highlight that, the Douglas
20 County Correctional Facility, which is the local
21 county jail here in Omaha, it's estimated by its
22 former director that perhaps 65 percent of all the
23 people presently incarcerated also have a mental
24 health issue that either is undiagnosed or untreated.

25 And so I would imagine that it would

1 really, you know, significantly elevate the cost for
2 treatment because, heretofore, they've not received
3 any treatment or that they've not been able to really
4 kind of correctly identify what treatment protocol
5 would be appropriate to meeting the needs of those
6 individuals.

7 And then we do know that the fear and
8 anxiety that's raised by COVID only exacerbates that
9 problem. And so this is why we wanted to bring
10 additional attention to this.

11 COMMISSIONER KLADNEY: So that really
12 shows that if many people are undiagnosed in the
13 county jail, then obviously services are lacking in
14 the community as well --

15 DR. BENJAMIN ALVARADO: That goes without
16 saying.

17 COMMISSIONER KLADNEY: -- to a great
18 extent.

19 DR. BENJAMIN ALVARADO: But, yes, I
20 completely concur with you there, sir.

21 COMMISSIONER KLADNEY: So I remember that
22 Omaha is your population center. I would assume out
23 in the rural counties at the county jail level
24 services are even more bleak. More bleak, is that a
25 phrase?

1 DR. BENJAMIN ALVARADO: No, yeah, I would
2 agree with you on that one as well, that, you know, it
3 really is kind of a condemnation of the Department of
4 Health and Human Services in the state of Nebraska,
5 which has been traditionally grossly underfunded.
6 It's not been a priority of the state.

7 And so, unfortunately, it's the law
8 enforcement and prison system that ends up having to
9 deal with the majority of the instances where this
10 becomes problematic. And we really haven't put any
11 mechanisms in place to address that.

12 COMMISSIONER KLADNEY: Would it be
13 possible or has the legislature looked at asking
14 mental health to work with the county sheriffs and the
15 state prisons to deliver services? And I take it from
16 what you're saying funding is not on the way as well.

17 DR. BENJAMIN ALVARADO: No, no. Well,
18 initially when we released the report, we did reach
19 out to members of the state legislature. And we
20 actually did have members of the state legislature
21 provide us with some testimony during the hearings.

22 But our hope was that they would take this
23 up as an issue in the last legislative session. They
24 did not. There's lots of reason why that happened.

25 But this is why we wanted to call

1 additional attention to this, because this is not an
2 issue that's going to go away anytime soon. And there
3 has been talk inside of the state of Nebraska of
4 building additional prisons. So, I mean, I find that
5 to be very troubling, on top of the fact that, under
6 the conditions in the present system that we have,
7 there's inadequate treatment. And this is only being
8 exacerbated by the COVID pandemic.

9 COMMISSIONER KLADNEY: Well, I thank you
10 very much for your work, and please take my thanks
11 back to the committee as well. I thought it was
12 excellently done and very, always a timely topic and
13 I think will be a major topic in the future as well.
14 But thank you very much.

15 DR. BENJAMIN ALVARADO: I appreciate that,
16 sir. Thank you very much.

17 COMMISSIONER YAKI: Commissioner Lhamon?

18 CHAIR LHAMON: Go ahead, Commissioner
19 Yaki.

20 COMMISSIONER YAKI: Yeah, also I wanted to
21 thank the Nebraska SAC for their report, and having
22 spent a fair amount of time, probably more than people
23 here in this room, or personally in this room, in
24 Nebraska having traveled through the entire state,
25 spending a lot of time in Omaha and Lincoln.

1 I have a question, just sort of a follow-
2 up to some of the things that you were alluding to.
3 How is Nebraska, how is their prison and mental health
4 incarceration facilities, how do they deal with COVID?
5 Have there been any attempts to, as in some states,
6 early release non-violent offenders, reduce
7 populations? How is it going? I mean, I know that
8 you've had some major outbreaks in some of the meat
9 packing plants in Nebraska. But how is it going in
10 terms of the prison facilities?

11 DR. BENJAMIN ALVARADO: Well, I can only
12 offer an anecdote to your question. And I would say
13 that they've really dealt with it horrendously,
14 because there really has been no attempt to de-
15 densify, as it were, any of the prisons across the
16 state with early release processes. As a matter of
17 fact, Nebraska has been under court order to do that
18 for quite some time.

19 And we've actually reached a level of
20 overcrowding that may force the federal government to
21 come in and perhaps even do what was done in
22 California, maybe take over some of these facilities
23 in order to be able to better regulate the prison
24 population. That's why I said that the idea of
25 building an additional prison was on the table in the

1 state of Nebraska. But they're not dealing with any
2 of the core issues. And that, for us, was troubling.

3 COMMISSIONER YAKI: Thank you.

4 CHAIR LHAMON: Other questions from other
5 commissioners?

6 While folks are thinking, Chair Benjamin
7 Alvarado, I was so struck by your first line, that
8 there's no designed system of care within the state
9 prison system. I imagine without that it's very
10 challenging to identify what should be happening and
11 to measure against it. So that was frankly shocking
12 to me. And I appreciate your shining a light on that
13 critical issue among others in support.

14 I also that the finding in the executive
15 summary at 6 about Medicaid was crucial. And I
16 wouldn't ordinarily point out what I think might be a
17 typo. But I just wanted to make sure I understand
18 this point because I think it matters so much.

19 In that finding, the commission note said
20 Nebraska uses suspect Medicaid eligibility for
21 inmates, as opposed to terminating Medicaid coverage
22 when they're incarcerated. And I wondered if that was
23 not the word and just uses Medicaid eligibility for
24 inmates or something else. Could you --

25 (Simultaneous speaking.)

1 CHAIR LHAMON: Thank you. While you're
2 finding it, you're noting that Nebraska uses Medicaid
3 to provide cost-effective mental health services to
4 individuals after they have been released and also
5 doesn't terminate Medicaid coverage when they are
6 incarcerated. And I think that is an important
7 innovation and something that other states might want
8 to consider as well. And I just wanted to make sure
9 I understood.

10 DR. BENJAMIN ALVARADO: That is correct.
11 But it's just that when they get into the system,
12 they're not given access to any of those services.
13 That's a problem.

14 CHAIR LHAMON: Right, right. So that also
15 I thought was just a really crucial point that you all
16 included. It was such a detail, that important
17 investigation that you all did. I thank you, and I
18 thank your fellow committee members for shining a
19 light on this issue. I live it often in California in
20 its own iteration in that state. And I appreciated
21 seeing your concerns and also the detailed review in
22 Nebraska. So please take my thanks back to your
23 fellow committee members as well.

24 DR. BENJAMIN ALVARADO: Thank you. I
25 appreciate that.

1 CHAIR LHAMON: All right. Let me see if
2 there are any other questions from my fellow
3 commissioners. I'm hearing none. Thank you, Chair
4 Benjamin Alvarado, again for your service and your
5 leadership on the Nebraska Advisory Committee and for
6 taking the time to speak with us today.

7 DR. BENJAMIN ALVARADO: Great. I
8 appreciate it. Thank you. Have a great rest of the
9 day.

10 CHAIR LHAMON: Thank you. You, too.

11 III. Discussion and Vote on Commission 2021 Business

12 Meeting Schedule

13 CHAIR LHAMON: We now turn to our next
14 agenda item, which is a discussion and vote on the
15 Commission 2021 business meeting schedule.

16 To open the floor for discussion, I move
17 that we approve the schedule as circulated, setting
18 the following dates for us to meet next year. Each of
19 these dates is on a Friday, January 29, February 26,
20 March 19, April 16, May 14, June 25, July 23, August
21 20, September 10, October 22, November 19, and
22 December 10. Do I have a second for this motion?

23 COMMISSIONER YAKI: Second.

24 CHAIR LHAMON: That was Commissioner Yaki
25 seconding. Thank you. Is there any discussion of

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

4 COMMISSIONER ADAMS: Yes.

5 CHAIR LHAMON: Thank you. Commissioner
6 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 COMMISSIONER KLADNEY: Yes.

16 CHAIR LHAMON: Commissioner Yaki.

17 COMMISSIONER YAKI: Aye.

18 CHAIR LHAMON: And I vote yes. The motion
19 passes unanimously.

20 IV. Discussion and Vote on a Letter To U.S.

21 Citizenship and Immigration Services Regarding
22 Significant Backlog of Naturalization Applications

23 CHAIR LHAMON: Next we will move to
24 consideration of a letter to U.S. Citizenship and
25 Immigration Services about the significant backlog of

1 naturalization applications. So we know what we are
2 considering, I will read the text of the letter,
3 omitting the footnotes.

4 The letter is, Dear Acting Director
5 Cuccinelli, the U.S. Commission on Civil Rights would
6 like to urge the U.S. Citizenship and Immigration
7 Services, USCIS, to take all appropriate steps to
8 address the significant backlog of naturalization
9 applications from lawful residents and to adjust the
10 requirements of the Oath of Allegiance to allow for
11 the remote administration of both naturalization
12 ceremonies as well as interviews for citizenship
13 applications amid the COVID-19 pandemic.

14 The backlog of citizenship applications
15 slows down the naturalization process, which is likely
16 to be disappointing to those applicants looking
17 forward to voting in the upcoming election.

18 After USCIS suspended face-to-face
19 services on March 18, the backlog of naturalization
20 ceremonies and interviews grew, with roughly 110,000
21 people awaiting the Allegiance and Oath Ceremony.

22 We commend USCIS for prioritizing the
23 completion of these oaths after reopening on June 4,
24 particularly in the face of inevitable furloughs and
25 budgetary constraints. But we are concerned that

1 700,885 naturalization applications are still pending
2 and hope that something can be done to move things
3 along.

4 We agree with the bipartisan letter from
5 Senators Marco Rubio and Martin Heinrich, which
6 describes immigrant communities as enriching America's
7 remarkable spirit, as well as its diversity, history,
8 and culture. The letter highlight the extraordinary
9 contributions immigrants make to our economy and
10 communities. And it urged USCIS to ensure eligible
11 applicants have an opportunity to participate in Oath
12 and Allegiance Ceremonies by either remotely
13 administering oaths or expanding small in-person
14 ceremonies in accordance with CDC public health
15 guidelines.

16 Another bipartisan letter from several
17 congressional representatives also reflected these
18 sentiments. We ask that to the extent it can USCIS
19 prioritize the processing of naturalization
20 applications and the administration of naturalization
21 ceremonies. Additionally, we ask that USCIS continue
22 to take necessary measures to address the backlog of
23 those applications. Lastly, USCIS should expand
24 partnerships with federal courts to administer oath
25 ceremonies judicially.

1 To open the floor for discussion, I move
2 that the Commission approve the letter as circulated
3 by my special assistant on Wednesday, September 9. Do
4 I have a second?

5 COMMISSIONER KLADNEY: Kladney seconds.

6 CHAIR LHAMON: Thank you, Commissioner
7 Kladney. And I open the floor for discussion,
8 beginning with a couple points of my own.

9 First, I thank Commissioner Heriot and her
10 special assistant for working me and my special
11 assistant on revising this letter from a text we
12 considered last month. I appreciated Commissioner
13 Heriot's suggestion at our last business meeting that
14 we might be able to work on text we could agree on.
15 And I have very appreciated since then the bipartisan
16 spirit of her effort to work together with our special
17 assistants on text we could both agree to move forward
18 for consideration.

19 Taking the steps that we call for in this
20 letter would ensure that eligible applicants have
21 access to the full benefits and privileges of
22 citizenship, including voting in upcoming elections.
23 It would strengthen our national fabric and
24 importantly stakes our civil rights allowing these
25 residents to contribute fully to the economy, our

1 communities, and our diverse nation.

2 And it is also with pleasure that we are
3 able to incorporate information from our Colorado
4 Advisory Committee in this letter. And I appreciate
5 their work as well. Is there any other discussion?
6 Hearing none, I'll call the question and take a roll
7 call vote. Commissioner Adams, how do you vote?

8 COMMISSIONER ADAMS: Abstain.

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.

15 CHAIR LHAMON: Commissioner Kirsanow.

16 COMMISSIONER KIRSANOW: Abstain.

17 CHAIR LHAMON: Commissioner Kladney.

18 COMMISSIONER KLADNEY: Yes.

19 CHAIR LHAMON: Commissioner Yaki.

20 COMMISSIONER YAKI: Aye. Although I would
21 want that paragraph saying that they couldn't be used
22 as props in conventions. But that's okay.

23 CHAIR LHAMON: And I vote yes. The motion
24 passes. No commissioner opposed. No two
25 commissioners abstained. All others were in favor.

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V. Staff Director's Report

CHAIR LHAMON: Staff Director Morales, we'll now hear from you for the monthly staff director's report.

MR. MORALES: Thank you, Madam Chair. In the interest of time, I have nothing further to add than what's already contained in the staff director's report. However, if any commissioner has a specific question, I'm always available to discuss the items. So thank you, Madam Chair.

CHAIR LHAMON: Thank you, Mr. Staff Director.

VI. Adjourn Meeting

CHAIR LHAMON: That concludes the business on the agenda for today's business meeting. If there's nothing further, I hereby adjourn our meeting at 12:22 p.m. Eastern Time. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:22 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Business Meeting

Before: USCCR

Date: 09-11-20

Place: teleconference

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



Court Reporter

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