

## 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

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## STAFF PRESENT:

KATHERINE CULLIITON- GONZALEZ

PAMELA DUNSTON, Chief, ASCD

SHANTRI LIRA, ACS CART Service Provider

DAVID MUSSATT, Director, RPCU

TINALOUISE MARTIN, Director, OM

MALLORY TRACHTENBERG

## 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.

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COMMISSIONER GILCHRIST: Present.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I'm here.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Here.

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

COURT REPORTER: Yes, I'm present.

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

MR. MORALES: Yes, I'm present.

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

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

(Moment of silence.)

### **I. Approval of Agenda**

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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?

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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 unanimately.

8 **II. Presentation of Nebraska Advisory Committee**  
9 **Report Entitled Civil Rights, Prisons, and Mental**  
10 **Health**

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

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

23 The report examined the extent to which  
24 such individuals were afforded equal access to medical  
25 services such as adequate mental health and

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

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

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

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

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1 attention to the care and well-being of this  
2 vulnerable population.

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

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

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

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

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

24           CHAIR LHAMON: Go ahead, Commissioner  
25 Kladney.

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

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

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

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

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

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

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

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

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

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

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

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1 phrase?

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

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

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

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

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

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

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

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

18                   COMMISSIONER YAKI: Commissioner Lhamon?

19                   CHAIR LHAMON: Go ahead, Commissioner  
20 Yaki.

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

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1 spending a lot of time in Omaha and Lincoln.

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

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

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

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1 building an additional prison was on the table in the  
2 state of Nebraska. But they're not dealing with any  
3 of the core issues. And that, for us, was troubling.

4 COMMISSIONER YAKI: Thank you.

5 CHAIR LHAMON: Other questions from other  
6 commissioners?

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

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

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

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1 (Simultaneous speaking.)

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

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

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

25 DR. BENJAMIN ALVARADO: Thank you. I

1 appreciate that.

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

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

11 CHAIR LHAMON: Thank you. You, too.

12 **III. Discussion and Vote on Commission 2021**

13 **Business Meeting Schedule**

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

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

24 COMMISSIONER YAKI: Second.

25 CHAIR LHAMON: That was Commissioner Yaki

1 seconding. Thank you. Is there any discussion of  
2 this motion? Hearing none, I'll call the question and  
3 take a roll call vote. Commissioner Adams, how do you  
4 vote?

5 COMMISSIONER ADAMS: Yes.

6 CHAIR LHAMON: Thank you. Commissioner  
7 Adegbile.

8 COMMISSIONER ADEGBILE: Aye.

9 CHAIR LHAMON: Commissioner Gilchrist.

10 COMMISSIONER GILCHRIST: Aye.

11 CHAIR LHAMON: Commissioner Heriot.

12 COMMISSIONER HERIOT: Yes.

13 CHAIR LHAMON: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIR LHAMON: Commissioner Kladney.

16 COMMISSIONER KLADNEY: Yes.

17 CHAIR LHAMON: Commissioner Yaki.

18 COMMISSIONER YAKI: Aye.

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

21 **IV. Discussion and Vote on a Letter to U.S.**

22 **Citizenship and Immigration Services Regarding**

23 **Significant Backlog of Naturalization Applications**

24 CHAIR LHAMON: Next we will move to  
25 consideration of a letter to U.S. Citizenship and

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1 Immigration Services about the significant backlog of  
2 naturalization applications. So we know what we are  
3 considering, I will read the text of the letter,  
4 omitting the footnotes.

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

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

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

23 We commend USCIS for prioritizing the  
24 completion of these oaths after reopening on June 4,  
25 particularly in the face of inevitable furloughs and

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1 budgetary constraints. But we are concerned that  
2 700,885 naturalization applications are still pending  
3 and hope that something can be done to move things  
4 along.

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

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

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1 ceremonies judicially.

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

6 COMMISSIONER KLADNEY: Kladney seconds.

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

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

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

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1 residents to contribute fully to the economy, our  
2 communities, and our diverse nation.

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

9 COMMISSIONER ADAMS: Abstain.

10 CHAIR LHAMON: Commissioner Adegbile.

11 COMMISSIONER ADEGBILE: Aye.

12 CHAIR LHAMON: Commissioner Gilchrist.

13 COMMISSIONER GILCHRIST: Aye.

14 CHAIR LHAMON: Commissioner Heriot.

15 COMMISSIONER HERIOT: Yes.

16 CHAIR LHAMON: Commissioner Kirsanow.

17 COMMISSIONER KIRSANOW: Abstain.

18 CHAIR LHAMON: Commissioner Kladney.

19 COMMISSIONER KLADNEY: Yes.

20 CHAIR LHAMON: Commissioner Yaki.

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

24 CHAIR LHAMON: And I vote yes. The motion  
25 passes. No commissioner opposed. No two

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1 commissioners abstained. All others were in favor.

2 **V. Staff Director's Report**

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

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

12 CHAIR LHAMON: Thank you, Mr. Staff  
13 Director.

14 **VI. Adjourn Meeting**

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

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

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