U.S. COMMISSION ON CIVIL RIGHTS

TELEPHONIC BUSINESS MEETING

FRIDAY, SEPTEMBER 11, 2020

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

COMMISSIONER Kladney: Kladney seconds.

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

(Chorus of aye.)

CHAIR LHAMON: Any opposed? Any abstentions?

COMMISSIONER ADAMS: Adams.

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

COMMISSIONER ADAMS: I'm sorry.

CHAIR LHAMON: Commissioner Adams, were you abstaining?
COMMISSIONER ADAMS: Well, only because I didn't say aye in time. But I'm happy to say aye.

CHAIR LHAMON: I'll accept your aye.

Thank you.

COMMISSIONER ADAMS: Okay.

CHAIR LHAMON: The motion passes unanimously.

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

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

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

The report examined the extent to which such individuals were afforded equal access to medical services such as adequate mental health and
psychiatric care and reasonable protections from injury and the risk of injury while incarcerated. The report produced 11 significant findings and 6 recommendations. And we were very happy of the work that we were able to accomplish.

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

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

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

Ironically, at the end of August, the entire Nebraska State Penitentiary in Lincoln had been placed under quarantine due to significant outbreaks for which there has been little transparency and really clarity as to how they may begin to treat this. And so, we wanted to bring this to the attention of the Commission because I think it really does elevate the importance of our statements that came from the initial report. And we wanted to ensure that by adding this addendum that we would really kind of double down, as it were, on why this is important and critical at this particular moment. And we have concerns as we move forward.

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

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

COMMISSIONER KLANDNEY: Madam Chair, Dave Kladney here.

CHAIR LHAMON: Go ahead, Commissioner Kladney.
COMMISSIONER KLADNEY: I would like to thank the committee for the work they've done here. I think it's an excellent report. I did notice in finding 7 in the executive summary that the amount of people with mental health problems in the prison system is quite a few.

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

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

And just to highlight that, the Douglas County Correctional Facility, which is the local county jail here in Omaha, it's estimated by its former director that perhaps 65 percent of all the people presently incarcerated also have a mental health issue that either is undiagnosed or untreated.
And so I would imagine that it would really, you know, significantly elevate the cost for treatment because, heretofore, they've not received any treatment or that they've not been able to, really kind of, correctly identify what treatment protocol would be appropriate to meeting the needs of those individuals.

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

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

DR. BENJAMIN ALVARADO: That goes without saying.

COMMISSIONER KLADENEY: -- to a great extent.

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

COMMISSIONER KLADENEY: So, I remember that Omaha is your population center. I would assume out in the rural counties at the county jail level services are even more bleak. More bleak, is that a
DR. BENJAMIN ALVARADO: No, yeah, I would agree with you on that one as well, that, you know, it really is kind of a condemnation of the Department of Health and Human Services in the state of Nebraska, which has been traditionally grossly underfunded. It's not been a priority of the state.

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

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

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

But our hope was that they would take this up as an issue in the last legislative session. They did not. There's lots of reason why that happened.
But this is why we wanted to call additional attention to this, because this is not an issue that's going to go away anytime soon. And there has been talk inside of the state of Nebraska of building additional prisons. So, I mean, I find that to be very troubling, on top of the fact that, under the conditions in the present system that we have, there's inadequate treatment. And this is only being exacerbated by the COVID pandemic.

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

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

COMMISSIONER YAKI: Commissioner Lhamon?

CHAIR LHAMON: Go ahead, Commissioner Yaki.

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

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

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

And we've actually reached a level of overcrowding that may force the federal government to come in and perhaps even do what was done in California, maybe take over some of these facilities in order to be able to better regulate the prison population. That's why I said that the idea of
building an additional prison was on the table in the state of Nebraska. But they're not dealing with any of the core issues. And that, for us, was troubling.

COMMISSIONER YAKI: Thank you.

CHAIR LHAMON: Other questions from other commissioners?

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

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

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

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

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

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

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

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

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

CHAIR LHAMON: Thank you. You, too.

III. Discussion and Vote on Commission 2021 Business Meeting Schedule

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

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

COMMISSIONER YAKI: Second.

CHAIR LHAMON: That was Commissioner Yaki
seconding. Thank you. Is there any discussion of this motion? Hearing none, I'll call the question and take a roll call vote. Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR LHAMON: Thank you. Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLASDNEY: Yes.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

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

IV. Discussion and Vote on a Letter to U.S. Citizenship and Immigration Services Regarding Significant Backlog of Naturalization Applications

CHAIR LHAMON: Next we will move to consideration of a letter to U.S. Citizenship and
Immigration Services about the significant backlog of naturalization applications. So we know what we are considering, I will read the text of the letter, omitting the footnotes.

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

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

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

We commend USCIS for prioritizing the completion of these oaths after reopening on June 4, particularly in the face of inevitable furloughs and
budgetary constraints. But we are concerned that 700,885 naturalization applications are still pending and hope that something can be done to move things along.

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

Another bipartisan letter from several congressional representatives also reflected these sentiments. We ask that to the extent it can USCIS prioritize the processing of naturalization applications and the administration of naturalization ceremonies. Additionally, we ask that USCIS continue to take necessary measures to address the backlog of those applications. Lastly, USCIS should expand partnerships with federal courts to administer oath
To open the floor for discussion, I move that the Commission approve the letter as circulated by my special assistant on Wednesday, September 9. Do I have a second?

COMMISSIONER Kladney: Kladney seconds.

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

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

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

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

COMMISSIONER ADAMS: Abstain.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Abstain.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Yaki.

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

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

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.)