

UNEDITED

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, MAY 13, 2022

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The Commission convened via Video
Teleconference at 12:00 p.m. EST, Norma Cantu,
Chair, presiding.

PRESENT:

NORMA V. CANTU, Chair

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

DAVID GANZ, GENERAL COUNSEL

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STAFF PRESENT:

ROBERT AMARTEY

DR. JONI BAKER, Vice-Chair, TX Advisory Committee

EVELYN BOHOR

STANLEY CARR

BARBARA Delaviez

PAMELA DUNSTON, Chief, ASCD

SARA FRANKENSTEIN, Member, SD Advisory Committee

PATRICIA FLETCHER

LATRICE FOSHEE

ALFREDA GREENE

JULIE GRIECO

TRAVIS LETELLIER, CHAIR, SD Advisory Committee

DAVID MUSSATT, Dir, RPCU

JULIAN NELSON

MICHELE RAMEY

JOHN RATCLIFFE

ANGELIA RORISON

CORRINE SANDERS

MARIK XAVIER-BRIER

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COMMISSIONER ASSISTANTS:

SHERYL COZART

ALEC DUELL

CARISSA MULDER

IRENA VIDULOVIC

JOHN MASHBURN

JOSHUA DANSBY

JUANA SILVERIO

THOMAS SIMMUEL

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P R O C E E D I N G S

12:01 p.m.

1
2
3 OPERATOR: Good day and welcome to the
4 Commission Business Meeting. Today's conference is
5 being recorded. At this time, I would like to turn
6 the conference over to Chair Cantu. Please go ahead.

7 CHAIR CANTU: Welcome. My name is Norma
8 V. Cantu and welcome to the business meeting for the
9 U.S. Commission on Civil Rights. The meeting comes to
10 order at 12:01 Eastern Standard Time on Friday, May
11 13, 2022.

12 We thank the staff who completed the
13 public notice needed for this meeting and arranged for
14 this public telephonic meeting. We thank the general
15 public for their interest in attending.

16 Due to respect for health and safety and
17 due to a light agenda, the commissioners are on
18 conference call and are hosting the general public by
19 phone conference.

20 I would like to confirm the commissioners
21 present both in person and on the line and will take a
22 roll call vote. Please say present when I say your
23 name. Commissioner Adams?

24 COMMISSIONER ADAMS: Present.

25 CHAIR CANTU: Commissioner Adegbile?

1 COMMISSIONER ADEGBILE: Present.

2 CHAIR CANTU: Commissioner Gilchrist?

3 COMMISSIONER GILCHRIST: Present.

4 CHAIR CANTU: Commissioner Heriot?

5 COMMISSIONER HERIOT: I'm here.

6 CHAIR CANTU: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: Here.

8 CHAIR CANTU: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Here.

10 CHAIR CANTU: Commissioner Yaki?

11 COMMISSIONER YAKI: Present.

12 CHAIR CANTU: Based on the response of all
13 here and present, a quorum of the commissioners are
14 here. Is the court reporter present?

15 COURT REPORTER: Yes, I am.

16 CHAIR CANTU: Thank you. Is the Staff
17 Director present?

18 MR. MORALES: I am present.

19 CHAIR CANTU: Thank you. The meeting will
20 now come to order.

21 **I. APPROVAL OF AGENDA**

22 CHAIR CANTU: Do any commissioners have
23 any amendments to the proposed agenda? Not hearing
24 any proposed amendments, we proceed to voting on the
25 agenda. All those in favor of approving the agenda

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1 that was posted for today's meeting, say aye.

2 (Chorus of aye.)

3 CHAIR CANTU: Any opposed? Any
4 abstaining? The motion passes, well, no, the agenda
5 has been approved.

6 **II. BUSINESS MEETING**

7 **A. PRESENTATIONS BY STATE ADVISORY COMMITTEE CHAIRS**

8 **ON RELEASED REPORTS AND MEMORANDUMS**

9 CHAIR CANTU: For our first order of
10 business, we turn to presentations from advisory
11 committees to the Commission on Civil Rights on their
12 recent reports and their memos.

13 **TEXAS ADVISORY COMMITTEE**

14 Today's first presentation will be by the
15 Texas State Advisory Committee member, Dr. Joni Baker,
16 on the Committee's advisory memorandum on the
17 government response to hurricane disasters. Dr.
18 Baker, we've allocated ten minutes and are looking
19 forward to it.

20 DR. BAKER: Thank you, Madam Chairwoman
21 and distinguished commissioners. I'm Joni Baker, the
22 Vice Chair of the Texas Advisory Committee or TAC.

23 It is a pleasure to provide a summary of
24 our inquiry into the local, state, and federal
25 government responses to Hurricane Harvey, which made

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1 landfall on August 25, 2017 near Rockport, Texas. The
2 advisory memorandum to the U.S. Commission is dated
3 March 2021.

4 The TAC chose this topic because the U.S.
5 Commission itself had identified disaster response as
6 a priority in addressing inequities and disparities in
7 the wake of natural events.

8 It was, in a sense, a no-brainer for the
9 TAC to delve more deeply into efforts to meet the
10 needs of those who were impacted by Hurricane Harvey.

11 Due to limited time today, my remarks will mostly be
12 limited to problems and recommendations at the federal
13 level.

14 It comes as no surprise that communities
15 of color have the fewest resources, face the longest,
16 deepest path to recovery, and are more vulnerable to
17 the stress and shock caused by a natural disaster.
18 Black and Hispanic residents in Harris County, outside
19 the flood zone, were flooded at disproportionately
20 higher rates during Hurricane Harvey than white
21 residents.

22 This was particularly true in the city of
23 Houston where these groups, as well as immigrants,
24 traditionally live on low-lying land because of
25 historic segregation and discriminatory housing

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1 policies, with neighborhoods that experience decades
2 of disinvestment such as poor storm water
3 infrastructure.

4 The locally administered buyouts offered
5 to these homeowners in the wake of previous hurricanes
6 were not enough to help them afford new homes away
7 from flood zones.

8 Our findings include the following, one,
9 experiencing a natural disaster like Hurricane Harvey
10 exacerbates preexisting systemic inequalities. For
11 example, lack of access to information, low technology
12 literacy, and/or limited English proficiency is common
13 in immigrant communities and/or communities with low
14 rates of education.

15 Two, inconsistent and inadequate policies,
16 programs, and eligibility criteria create unnecessary
17 compounding challenges for already marginalized
18 populations.

19 For example, after Hurricane Harvey made
20 landfall, FEMA deployed one person to serve as the
21 liaison for the 410,000 people with disabilities in
22 Harris County.

23 Further, although there are 145 languages
24 spoken in Houston alone, real-time information was
25 rarely available except in English and Spanish. Even

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1 so, three in ten residents in the 24 counties surveyed
2 reported that it was either very or somewhat difficult
3 to find information about recovery assistance in
4 Spanish.

5 Three, applications for recovery
6 assistance are overly complicated and further separate
7 marginalized populations from fairly and adequately
8 receiving aid.

9 Applying for aid was the top item people
10 said they needed help with after a disaster, but only
11 one in four applicants complete the housing aid
12 application process, which is disproportionately
13 burdensome on disabled individuals, the elderly, those
14 with little or no access to technology, and people
15 with limited English proficiency.

16 Four, aid distribution policies and
17 decisions had a disparate impact on marginalized
18 populations and contributed to widening wealth
19 inequality.

20 For example, the three cities in the
21 southeast Texas region with the highest percent of
22 Black, non-Hispanic people were allocated the lowest
23 per capita funding for buyouts of flood devastated
24 homes. Nearby cities with an average non-Hispanic
25 white population of 88 percent received the highest

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1 per capita funding.

2 Before Hurricane Harvey, a federal court
3 found a disqualifying factor to receiving aid known as
4 deferred maintenance, a standard of a resident not
5 meeting a certain home standard pre-disaster, to be
6 illegal. However, during Hurricane Harvey recovery,
7 FEMA continued to apply the same standard using a
8 different term, quote, preexisting conditions.

9 Five, recovery construction workers, many
10 of whom are immigrants, experienced high rates of wage
11 theft following Hurricane Harvey, with little
12 accountability from government agencies. There were
13 also unsafe working conditions caused by a lack of
14 both safety equipment and training.

15 The contracting and subcontracting chain
16 set up during and after disasters often limited
17 workers legal claims to the smallest and less
18 established contractors, while the larger wealthier
19 companies that have the ability and means to ensure
20 proper pay and safety measures are not held liable.

21 Six, Texas' large immigrant population
22 face distinct challenges in recovering from hurricanes
23 and navigating disaster recovery programs. FEMA
24 requires aid applicants to provide information on
25 every member of a household, not just a U.S. citizen

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1 or an eligible immigrant.

2 Many mixed status homes with eligible
3 residents do not apply for aid for fear of identifying
4 undocumented household members, including the 250,000
5 U.S. citizen children in the Houston area, as well as
6 refugees.

7 FEMA applications clearly state that
8 information may be shared with other U.S. agencies,
9 including U.S. Immigration and Customs Enforcement.
10 Thirty-eight percent of immigrants who were possibly
11 undocumented avoided seeking help in recovery because
12 they are afraid of calling attention to their own or a
13 family member's immigration status.

14 Further, FEMA used trucks with the
15 Department of Homeland Security logo, labeled Police
16 Rescue, to provide security with at least 200 ICE
17 officers at mass shelters and other locations of
18 assistance, deterring qualified residents from
19 accessing assistance there.

20 Seven, HUD's policies, like FEMA's, for
21 disaster housing assistance are inefficient and
22 negatively impact mostly low income people of color
23 and/or people with disabilities.

24 For example, HUD does not directly aid
25 renters, but rather developers, reinforcing

1 discrimination of low income, largely minority
2 populated areas and families.

3 Regarding recommendations, TAC recommended
4 that the USCCR should send TAC's advisory memorandum
5 and issue a formal request to Congress and the
6 President to pass legislation to one, modify policies
7 and/or procedures that enable discriminatory
8 practices.

9 For example, disaster assistance programs
10 should allow proof of eligibility in other government
11 aid programs such as Medicaid, Supplemental Security
12 Income, or Temporary Assistance for Needy Families, to
13 automatically qualify individuals and families for aid
14 following a disaster for all federal emergency
15 management programs. During a hurricane and flood,
16 documents required for aid applications are frequently
17 destroyed.

18 Two, implement new or modified current
19 operating procedures and policies to improve disaster
20 recovery response from federal agencies such as
21 establishing or connecting agency database tools to
22 share relevant information needed in applying for
23 disaster recovery to improve application processing
24 timelines.

25 Three, strive to improve communication and

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1 access to resources for survivors in all disaster
2 recovery agencies and programs. For example, require
3 consistent public criteria that clearly define aid
4 eligibility, the application process, resources, and
5 options.

6 Four, allocate funding for, for example,
7 interagency collaboration between government agencies
8 and nonprofits.

9 Five, allocate funding and direct federal
10 disaster recovery agencies to implement staff
11 management and operations improvements such as
12 employing full-time employees who are subject matter
13 experts in each of the protected classes throughout
14 the year, regardless of disaster occurrences, to
15 enhance programs and processes with the goal of
16 minimizing future discrimination.

17 And six, establish deployable civil rights
18 outreach task forces and immediately activate them
19 following a disaster. These should be culturally
20 competent and specially trained in all the protected
21 classes.

22 TAC also recommended that the USCCR share
23 its advisory memorandum with the Department of Labor,
24 Homeland Security, and HUD, with specific directives.

25 As far as the TAC is concerned, we distributed the

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1 memorandum to numerous local, regional, state, and
2 federal officials, and the media for their review and
3 consideration.

4 TAC faced significant gaps in its
5 investigation because of regional, state, and federal
6 agencies' non-responsiveness to the Committee's
7 invitation to participate in the inquiry.

8 FEMA and HUD, for example, are key
9 stakeholders in disaster response, but they declined
10 to testify, provide written statements, or respond to
11 written questions. Frankly, this is disheartening
12 because now is the time to implement improvements, not
13 after the next disaster.

14 On behalf of the TAC, thank you for your
15 time and attention to this very important civil rights
16 concern. Thank you.

17 CHAIR CANTU: Thank you. I have no
18 questions of you at this point because I would like to
19 reserve time for the other commissioners.
20 Commissioners, please identify yourself before asking
21 the question so the court reporter can catch your
22 name.

23 COMMISSIONER YAKI: Commissioner Yaki.

24 CHAIR CANTU: Yes, please proceed.

25 COMMISSIONER YAKI: Thank you very much

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1 for the report by your committee. It certainly tracks
2 with what the Commission was doing as well, and we
3 thank you for all the great work that you did helping
4 us on that.

5 There was one sort of, one question that I
6 had that just came to my mind when you were talking
7 about some of the language issues and it goes to the
8 diversity, especially in the Houston community.

9 Did you do any outreach or have any work
10 with the Southeast Asian, particularly the Vietnamese
11 community that's very robust in Houston, and what
12 their experiences were with the recovery from
13 Hurricane Harvey?

14 DR. BAKER: We did, Mr. Commissioner. The
15 Asian community, as you know, is very large in that
16 area, and as I said before, we had to, we, I say we,
17 as Texas, relied on, a lot of times on school
18 officials or church officials to provide translation
19 services for those in the Asian, who spoke Asian
20 languages or other languages because the federal
21 government, and even state government in most
22 situations, did not have translators to be able to
23 help these individuals.

24 COMMISSIONER YAKI: Thank you, and to
25 follow up, were there any announcements by FEMA

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1 officials during the recovery that they would not
2 forward information or names to ICE as a result of any
3 information gathered by the application forms for aid?

4 DR. BAKER: No, to my knowledge, they did
5 not, and one of our specific recommendations is that
6 they eliminate that question on the application for
7 aid, and instead clearly state that that information
8 will not be provided to ICE, for example, or any other
9 federal agency who does not have a need to know.

10 COMMISSIONER YAKI: Thank you. I may have
11 some more, Madam Chair, but I'll defer to my
12 colleagues for now.

13 CHAIR CANTU: Excellent questions. Thank
14 you, Commissioner Yaki. Do we have other questions?

15 COMMISSIONER ADEGBILE: Madam Chair,
16 Commissioner Adegbile.

17 CHAIR CANTU: Yes, please proceed.

18 COMMISSIONER ADEGBILE: Thank you for much
19 for your report and your hard work on this important
20 topic, which will help us as we finish our own
21 examination of the FEMA response to disasters that is
22 currently underway. It really makes a contribution
23 and we appreciate it.

24 With respect to a particular issue that
25 you raised, I just wanted to dig in a little bit and

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1 understand it a little better. I thought I heard you
2 say that one of the issues with people qualifying for
3 FEMA aid was that FEMA was using a standard that could
4 disqualify people for access to funds based on
5 preexisting conditions in their properties, and as I
6 understand it, I think that there had been a federal
7 court case that addressed the issue of whether or not
8 deferred maintenance was an appropriate basis to use
9 to deny people access to aid.

10 And so, deferred maintenance, preexisting
11 conditions, those two things sound quite logically
12 similar to me, and I'm wondering whether or not, in
13 light of this court ruling, people were ever notified,
14 had they been improperly denied based on the concept
15 of preexisting conditions, that they may well be
16 eligible in light of the interpretation?

17 DR. BAKER: Thank you for that excellent
18 question. Again, to my knowledge, they did not. In
19 fact, we heard testimony over and over again that the
20 processing of applications was extensively delayed, so
21 that in many instances, individuals didn't get a
22 response at all to their application for a year or
23 maybe two years later, and then sometimes their
24 notification was simply that it was denied without an
25 explanation of the reason for denial.

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1 Again, this is one of our specific
2 recommendations as far as streamlining the process so
3 that individuals, their applications are processed
4 quickly, and if they're denied, the reason for denial
5 is given, and if it's missing some type of information
6 or documentation, that that's specifically listed on
7 their notification.

8 COMMISSIONER ADEGBILE: Thank you. Thank
9 you for that clarification. I have one more question
10 that I'd like to put to you.

11 One of the things that I think I was
12 taking away from the testimony that we heard about the
13 hurricane response in Texas was that there was a bit
14 of a runaround or sort of pass the buck dynamic going
15 on, and as I heard the testimony, it was sort of
16 happening on two levels.

17 On the one hand, the state was sort of
18 claiming that they didn't have the resources and money
19 to do what was necessary for the impacted persons in
20 Texas, and so there was sort of a state/federal
21 dynamic where the state was saying they didn't have
22 the money and FEMA was saying that it had disbursed
23 funds.

24 So, it was happening on that level, but
25 then there was another piece of it that seemed to be

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1 happening within the state and between various arms of
2 the state government, and so, for example, the Texas
3 General Land Office or GLO and then the Southeast
4 Texas Regional Planning Commission.

5 There seemed to be a dynamic in which
6 people were getting caught between these various
7 agencies that had a role, and everybody was sort of
8 pointing at somebody else, but meanwhile, the people
9 weren't necessarily getting what they needed.

10 Is that a fair characterization of what
11 was happening, or could you explain whether I'm
12 misunderstanding what we heard and what you heard from
13 people on the ground?

14 DR. BAKER: I'd say that that's a very
15 fair summary of what was going on. My remarks were
16 somewhat limited to the federal response, but some of
17 these issues were also common within the state
18 response.

19 Federal monies were often passed through.
20 They went through the GLO or other Texas state
21 agencies, who in turn passed it down to, in most
22 cases, regional councils of government to decide how
23 to divide up and disburse them.

24 And there were a lot of inequalities
25 related to that because the more wealthy cogs, as we

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1 called them, had more clout, I would say, in accessing
2 those funds than in the more rural and lower income
3 counties and those cogs who had very little voice in
4 stepping up and making their claims for their share of
5 the money.

6 So, yes, there was a lot of finger
7 pointing going around, and similar to the federal
8 agencies, the Texas Division of Emergency Management,
9 the Texas Department of Insurance, the Texas Windstorm
10 Association, and several other of these government
11 groups at the state and local level also declined to
12 participate in our inquiry.

13 COMMISSIONER ADEGBILE: Thank you again
14 for this important look. These are important issues.

15 People are in dire circumstances when these natural
16 disasters are visited upon them, and obviously they
17 come without a lot of warning and people don't have a
18 lot of capacity on their own to respond, so doing
19 better in the future is important for all of us.

20 And really, any of us could need the
21 federal government's assistance in these
22 circumstances, and so we very much value the
23 examination that you did and the contribution it will
24 make to the broader look that the national commission
25 is doing on these issues. Thanks very much.

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1 DR. BAKER: Thank you, Mr. Commissioner.
2 I should also add that the Southeast Texas Regional
3 Planning Commission also declined to participate in
4 our inquiry.

5 CHAIR CANTU: That's important for you to
6 notice that. Thank you, and thank you for your
7 questions, Commissioner Adegbile. We did gain great
8 insight thanks to your intervention. Do the other
9 commissioners have any questions? And please identify
10 yourself before speaking.

11 COMMISSIONER KLADNEY: Madam Chair,
12 Kladney here.

13 CHAIR CANTU: Yes, Commissioner Kladney,
14 please proceed.

15 COMMISSIONER KLADNEY: I think you said at
16 the top of your presentation FEMA only assigned one
17 person regarding giving advice on disabled people and
18 how to handle them during the hurricane. Did I get
19 that right?

20 DR. BAKER: Yes, sir, FEMA deployed one
21 person to serve as the liaison for the 410,000 people
22 with disabilities just in Harris County. As you know,
23 the hurricane affected far more than Harris County,
24 and so, yes, individuals with disabilities faced
25 tremendous, tremendous hardship in, first of all,

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1 being rescued, and then second of all, in accessing
2 other types of federal aid.

3 COMMISSIONER KLADNEY: During our
4 investigation, we found, or we asked a question of
5 when FEMA became involved with Texas regarding the
6 response to the hurricane, and we were told that they
7 don't become involved until they are invited in by the
8 state and local people for assistance. Do you know if
9 that occurred before the hurricane struck, did
10 landfall, or did it occur afterwards?

11 DR. BAKER: Sir, I do not know the answer
12 to that, but at the time, I was living in College
13 Station, which is about 75 miles northwest of Houston,
14 and FEMA -- there, of course, we were getting a lot of
15 displaced people who were looking for assistance.

16 I don't recall seeing any FEMA-related
17 officials or any kind of representation from them for,
18 I would say, at least a good month after the
19 hurricane.

20 When it started raining, you know, Texans,
21 we like to be very independent, and a lot of times, in
22 my area, anybody who had a boat hooked it up and went
23 right down there to start rescuing people, because
24 even with the Texas National Guard, it took time for
25 them to deploy forces down there.

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1 So, as a matter of fact, there's a town
2 north of College Station where about 2,000 FEMA mobile
3 homes or trailers were parked for well over two years.

4 They were never deployed down to the affected area.
5 And, of course, it took time and money to get them
6 there, but then they were never used.

7 COMMISSIONER KLADNEY: Do you know if the
8 emergency services had a list or if there was a list
9 anywhere regarding the handicapped people in the
10 affected area and how they were able to contact them
11 and provide them services, whether it be -- I
12 understand electricity went out -- say, medications,
13 or electricity for their equipment, or things like
14 that? Did you do any investigation in that regard and
15 what did you find if you did?

16 DR. BAKER: Yes, sir. For Harris County
17 itself, it has a program. The acronym is STEAR, S-T-
18 E-A-R. I can't tell you at this moment what that
19 stands for, but it's a process where individuals with
20 disabilities can register, so to speak, so that local
21 officials have, you know, immediate access to who they
22 are, where they are, and what their needs are.

23 To my knowledge, the federal government
24 never requested access to this list, and in fact, we
25 found some problems in the list itself because once

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1 you register, you have to re-register once a year, and
2 individuals don't always know that, and so they may be
3 registering and fall off the list after a year and
4 then that particular information is no longer
5 available.

6 COMMISSIONER KLADNEY: I'd like to thank
7 you very much for an excellent report and a very well-
8 organization presentation.

9 (Simultaneous speaking.)

10 CHAIR CANTU: Someone needs to mute their
11 phone.

12 COMMISSIONER KLADNEY: And if you could
13 take our thanks back to the committee, I would really
14 appreciate it. Thank you very much.

15 DR. BAKER: Certainly and thank you for
16 the time.

17 CHAIR CANTU: Outstanding questions and
18 responses. Commissioners, are you encouraged to ask
19 other questions?

20 COMMISSIONER YAKI: Commissioner Yaki has
21 a follow-up if no one else has a question.

22 CHAIR CANTU: Commissioner Yaki, I think
23 you can do your follow up.

24 COMMISSIONER YAKI: Thank you. So, Madam
25 Chair of the committee, I almost said advisory

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1 committee, one thing that sort of struck in my mind is
2 just the ability to ensure that people receive
3 financial assistance as soon as possible.

4 And one of the things that we, the nation,
5 sort of decided to do when the pandemic hit and the
6 economy shut down, which is not dissimilar to what
7 happens when a national disaster strikes and
8 completely, you know, pretty much obliterate an area's
9 economic activity for quite some time, was, rather
10 than go through an application process, we decided as
11 a nation, through Congress and the President, to
12 simply, and I don't mean simply, it was not a simple
13 thing, but to allocate funds immediately to everyone
14 essentially in the country who they deemed eligible
15 without having to go through an application process.

16 Those were the pandemic assistance grants
17 that basically went out to hundreds of millions of
18 Americans in this country to deal with the dislocation
19 caused by the disaster, the pandemic disaster.

20 I am wondering, and I've just been
21 thinking about this lately, but -- and you may not be
22 able to answer it now, but, and maybe you might want
23 to bring it up with your committee, but do you think
24 that perhaps that kind of an approach to disaster
25 relief localized perhaps via zip codes and, you know,

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1 surveys in what areas were hit, an assessment of the
2 economic damage done, would be a better way to
3 allocate aid rather than the application process that
4 FEMA currently uses right now?

5 DR. BAKER: Is that a question for the
6 chairwoman or for me?

7 COMMISSIONER YAKI: It's for you.

8 DR. BAKER: Okay, yeah, personally, I
9 think that would be extremely equitable, certainly
10 much more equitable than what happened in the case of
11 Hurricane Harvey, where the wealthier neighborhoods
12 would, for example, get up to \$6,000 per capita, and
13 in the lower income areas, it may have been as low as
14 \$84.

15 And another issue that we heard a lot
16 about was that if a family had been previously
17 affected by a hurricane and had received monetary aid
18 for housing repairs, for example, if they instead used
19 that money for food, or for medical care, or for
20 anything else other than repairing their house, then
21 they would not be eligible for assistance in any other
22 future disaster.

23 COMMISSIONER YAKI: And we never asked
24 those questions during the pandemic. We didn't ask
25 you what you were going to spend your money on or how

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1 you were going to spend it, and, in fact, the two, I
2 think there were two disbursements of grants to
3 families in this country, those questions weren't
4 asked, and I think that's why I'm thinking this might
5 be a better way to get aid out than the current system
6 that we have right now.

7 DR. BAKER: As long as, I would say, the
8 infrastructure is there -- because again, you know,
9 the electricity was out and stores were closed. In
10 some cases, material assistance is going to be
11 necessary to be brought in because it can't be
12 purchased locally.

13 But as far as recovery from the hurricane,
14 yes, it's not just limited to housing, but, you know,
15 there's a whole host of other expenses that the
16 current system is sort of restricting individuals from
17 making the decision of what they need at the immediate
18 moment compared to the long term.

19 COMMISSIONER YAKI: Well, thank you, and
20 if you have any more thoughts, if you can give any
21 more thought to that or want to give more thought to
22 that and relay that back to us, that would be much
23 appreciated. Thank you for letting me kind of spring
24 that on you.

25 DR. BAKER: Thank you, sir.

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1 CHAIR CANTU: Thank you, and your answers
2 were very clear, Dr. Baker. I'm going to check one
3 last time if there is one last commissioner who would
4 like to ask a question? Hearing no further questions,
5 Dr. Baker, I really do appreciate what you've done in
6 terms of your service.

7 There are people who claim that they are
8 serving the general public when, in fact, it's part of
9 their job description to do that and they're paid for
10 it. What you, and the Texas Advisory, and all our
11 other advisory committees do is provide service as
12 volunteers for no pay.

13 You are included in my -- I'm grateful for
14 that and included with those heroes. You should be
15 included with those heroes who do what I call extreme
16 service. It actually costs you all time and effort to
17 provide the type of service and leadership that you
18 provide.

19 So, thank you for taking the time to speak
20 with us today. You're welcome to stay on the line if
21 you'd like to hear the next presentation, or, of
22 course, if you need to spend the time with your
23 family, I'd urge you to do that. So, thank you, Dr.
24 Baker.

25 DR. BAKER: Thank you, Madam Chairwoman.

1 Committee's most recently released report.

2 The report today centers on maternal
3 mortality and health disparities of American Indian
4 women in South Dakota. This project was unanimously
5 adopted by committee members in October 2019, and then
6 throughout 2020, the advisory committee held four
7 public meetings at which testimony was collected.

8 The final report and the included
9 recommendations were unanimously approved in May 2021,
10 with the report's publication occurring a few months
11 later in July.

12 Joining me today on the call is Sarah
13 Frankenstein, who has served for the past three years
14 as the advisory committee's vice chair, and she
15 actually led the committee meetings and took the lead
16 role in developing this report last year.

17 So, Madam Chairwoman, with your
18 permission, I'd like to ask Ms. Frankenstein to
19 introduce herself and then lead us through the
20 important findings and the recommendations we'd like
21 to highlight for you, and also to help address any of
22 the commissioners' questions.

23 CHAIR CANTU: Ms. Frankenstein?

24 MS. FRANKENSTEIN: Thank you. Yes, this
25 is Sarah Frankenstein, and I thank Chairman Letellier

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1 for the introduction. Again, I'm Sara Frankenstein.
2 I'm a private practice attorney at Gunderson Palmer
3 Law Firm in Rapid City, South Dakota.

4 My practice specializes in civil rights,
5 including election law and governmental aspects of the
6 law, and I will be presenting a summary of our report
7 regarding maternal mortality and health disparities of
8 American Indian women in South Dakota.

9 Our committee found this topic compelling
10 as the statistics initially provided to us were
11 staggering. American Indian women make up eight
12 percent of our state population, yet suffer 36.9
13 percent of our state's pregnancy-related deaths.

14 The national maternal mortality and
15 maternal morbidity rates of American Indian women are
16 double that of white women. American Indian women in
17 South Dakota experience nearly seven times the 2018
18 national maternal mortality rate.

19 These statistics led our committee to
20 choose this topic for study. We found that any number
21 of civil rights issues are important, of course, but
22 studying this particular topic may allow our state to
23 save lives.

24 The cause of these disparities was not
25 immediately apparent to us as there is a lack of data

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1 compiled in a consistent, comprehensive manner
2 regarding maternal health of American Indian
3 populations in our state of South Dakota. Without
4 such data, it is difficult to determine explanations
5 for these disparities in our state.

6 The causes appear, however, to be
7 manifold, and revealed the complex nature of overall
8 health and well-being for American Indian women, and
9 particularly those living on reservations in South
10 Dakota.

11 The CDC's pregnancy risk assessment
12 monitoring system provided data, shedding some light
13 on the topic. That data indicated that 27 percent of
14 American Indian mothers reported not having access to
15 transportation needed for prenatal appointments.

16 27.5 percent of American Indian mothers
17 were unable to access prenatal care due to lack of
18 access to childcare. 19.1 percent of American Indian
19 mothers reported being unable to get an appointment
20 with their healthcare provider.

21 The disparities are starker for those
22 American Indian mothers between the ages of 15 to 19.

23 In this group, 55.4 percent of American Indian
24 mothers received late or no prenatal care compared to
25 21.8 percent of white teen mothers.

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1 Looking at other contributing factors,
2 substance abuse could not be ignored. Substance abuse
3 is certainly a contributing factor to American Indian
4 maternal health and the causes of that are also
5 complex.

6 American Indian mothers that experience
7 more trauma and adverse childhood experiences are more
8 likely to develop substance use disorders, and those
9 numbers are disparate among American Indian women
10 versus white women in our state.

11 There is both a disproportionate use of
12 substances by American Indian women than white women,
13 and also preconceptions that surround substance use as
14 well.

15 American Indian illicit drug use before
16 pregnancy is three times that of white women in our
17 state. In 2014, South Dakota tribes anecdotally
18 reported that 50 to 70 percent of prenatal American
19 Indian mothers were using a non-prescribed drug.

20 A follow-up inquiry by the CDC with local
21 tribes in 2016 confirmed tribal leaders' perspectives
22 that 60 percent of the delivering mothers were using a
23 non-prescribed drug.

24 We have two important statutes informing
25 this discussion in South Dakota, the first being our

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1 statute SDCL 26-8A-2, sub 9, which defines the term
2 abused or neglected child as including a child who is
3 subject to prenatal exposure to abusive use of
4 alcohol, marijuana, or any controlled drug or
5 substance not lawfully prescribed.

6 Couple that with the second statute I
7 referenced, our mandatory reporting statute, which is
8 SDCL 26-8A-3. That statute requires any health
9 professional, as well as a host of others, who has
10 reasonable cause to suspect that a child has been
11 abused or neglected as defined in the statute I just
12 read shall report that information. If that health
13 professional does not do so, it is a Class 1
14 misdemeanor to fail to report.

15 Pregnant women using substances want to
16 avoid the criminal justice system and they want to
17 avoid having their babies taken away, and therefore,
18 these mandatory reporting laws disincentivize them to
19 obtain prenatal care.

20 American Indian mothers can be drug tested
21 for, quote, noncompliance, end quote, if they sign up
22 for Medicaid later in their pregnancy. While this
23 delay may be caused by avoiding the detection of
24 substance abuse, it is also often simply caused by a
25 woman's inability to apply for Medicaid due to a lack

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1 of computer and phone access, as well as travel
2 barriers.

3 This problem is coupled with inadequate
4 substance abuse services. Without access and support
5 for substance abuse, American Indian mothers are more
6 likely to find themselves in the criminal justice
7 system.

8 For those with health insurance, there are
9 few wraparound services for women experiencing
10 addiction, and I'll touch more on that in a bit.

11 IHS or Indian Health Services is often
12 regarded as underfunded, difficult to access, and
13 providing substandard healthcare to our American
14 Indian women on and off the reservations.

15 We heard testimony that American Indian
16 mothers are anxious about attending those appointments
17 due to not only a few of inadequate healthcare, but
18 also cultural insensitivity there are those clinics
19 and hospitals.

20 American Indian mothers experience a
21 disproportionate amount of trauma and these affect
22 pregnancies, causing premature death, as well as
23 morbidity and mortality.

24 You'll see that we determined a number of
25 recommendations that consist of many pages, and I'll

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1 touch upon a few to highlight here.

2 We recommend that IHS, Indian Health
3 Services, is increased in funding, particularly to
4 fund a data research program to investigate and
5 address barriers to maternal health and help us
6 develop preventative measures.

7 With evaluative tools to track maternal
8 care services, IHS hospitals specifically, and when
9 compared to healthcare given in regular state and
10 private hospitals and clinics, can be compared so that
11 we can have insight as to whether maternal mortality
12 issues are universal regardless of the healthcare
13 provider.

14 That data would also indicate whether
15 private insurance billing measures, cultural training
16 or insensitivity, and medical services affect maternal
17 mortality.

18 We often heard requests to create
19 reservation-based birthing centers. Many of our
20 reservations don't have a place to give birth at all,
21 and many would like an accessible birth center on the
22 reservation where travel wasn't a barrier, and family
23 can attend and provide the cultural practices and
24 familial support that their culture would like to be
25 able to provide to young mothers.

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1 In addition, telemedicine services would
2 be particularly suited for our reservations to provide
3 maternal health and mental health appointments. We'd
4 like to see an expansion in that area.

5 We also recommend that IHS funds and
6 provides more mental health and substance abuse
7 services for American Indian mothers on reservations,
8 and that Medicaid reimbursement eligibility is changed
9 in order to include maternal health case managers,
10 which aren't provided in South Dakota for the most
11 part.

12 With that, Chairman Letellier and I would
13 be happy to take your questions.

14 CHAIR CANTU: An excellent presentation
15 and you still had 30 seconds to go. So, I'm going to
16 turn to our commissioners to see if they have
17 questions for either Chair Letellier or for Ms.
18 Frankenstein. Questions, Commissioners?

19 COMMISSIONER ADEGBILE: Madam Chair,
20 Commissioner Adegbile.

21 CHAIR CANTU: Yes, Commissioner, please
22 proceed.

23 COMMISSIONER ADEGBILE: My question is
24 directed to Ms. Frankenstein in the first instance. I
25 just wanted to hear from you a little bit about how

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1 the Medicaid coverage gap bears on all of this and
2 whether you think that there is an impact in your
3 state?

4 And the reason I say that is that in the
5 work that we have been doing on maternal healthcare, I
6 think we've come across some data that suggests that
7 Medicaid coverage, access to Medicaid coverage can
8 reduce the incidence of adverse maternal health
9 outcomes, and so I'm wondering if you have visibility
10 on how that's playing out in your state?

11 MS. FRANKENSTEIN: First, to what I just
12 spoke to just at the end of my presentation with
13 regard to health managers or case managers, I believe
14 there's only one in the state of South Dakota, and so
15 we heard health professionals request that Medicaid be
16 revisited in order to allow reimbursements for those
17 case managers, because apparently currently they are
18 not.

19 The case managers are important in that we
20 know maternal healthcare is not only limited to
21 helping a woman give birth, but of course it provides
22 prenatal care, particularly for those who have
23 substance abuse issues and need those addressed really
24 immediately, those that need postpartum care,
25 including substance abuse and mental health help and

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1 the like.

2 And with no case manager in order to help
3 a patient see all those areas of healthcare and obtain
4 that healthcare at various clinics, wherever it may be
5 accessible, those patients just aren't receiving that,
6 so Medicaid eligibility for that particular type of
7 position, and one per reservation would be ideal.

8 Also, with regard to late sign-ups, those
9 new mothers who are trying to get enrolled in Medicaid
10 but have not yet, that causes late care well into the
11 pregnancy where no care is obtained.

12 And like I said, for those that sign up
13 for Medicaid late, whether it's because they are using
14 substances and don't want that detected or simply they
15 have no phone, computer, or travel access, they're
16 deemed noncompliant and then a drug test can be
17 ordered. All of that acts as a barrier or a reason
18 for pregnant mothers to avoid healthcare.

19 We have such a paucity of mental health
20 and substance abuse centers, particularly on our
21 reservations, but those really are needed here in
22 South Dakota. Did that answer your question?

23 COMMISSIONER ADEGBILE: Yes, thank you for
24 those comments. One other question, what is the
25 approach that might improve the transportation issue

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1 that you described? Are there any innovative ideas
2 about how to address that?

3 MS. FRANKENSTEIN: That is a difficult
4 issue. We have transportation issues that range
5 everything from just the rural, the rurality of our
6 citizens who live in dirt roads, unmaintained roads,
7 we have American Indian mothers who just don't have
8 cars, can't afford gas or vehicles.

9 We do have a program in the state of South
10 Dakota that transports women to their prenatal or
11 postpartum medical appointments. That was very
12 problematic in the age of COVID. Those home health
13 pickups weren't happening during our lockdowns and our
14 COVID protocols.

15 But we do have a program that I think
16 needs to be expanded. I don't think it's widely used,
17 but there is a transportation program in South Dakota
18 for those young mothers.

19 COMMISSIONER ADEGBILE: And finally, I
20 would just say that the statistics that you shared are
21 very stark and you're quite right that interventions
22 in these areas will literally save lives, and that
23 it's important that we bring attention to it and bring
24 attention to the impact on our rural communities.

25 So, thank you very much for both of your

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1 presentations and the work that you're doing on this
2 area, which, as you know, is a focus of the statutory
3 report that the Commission has worked on.

4 CHAIR CANTU: Thank you for the questions
5 and for the comments and answers. I mean, if it is an
6 infrastructure issue of roads or lack of ability for
7 people to have transportation, these are old problems.

8 I was co-counsel in a case in the '80s and the court
9 did not provide any solutions back then, so I'm very
10 pleased that your advisory council has produced such a
11 report. These are common sense items that you are
12 asking for.

13 Commissioners, are there any other
14 questions, please? If there are no further questions,
15 I want to thank both of you, Dr. Frankenstein and Dr.
16 Letellier, for your presentations.

17 MS. FRANKENSTEIN: Thank you.

18 MR. LETELLIER: Thank you.

19 CHAIR CANTU: Thank you. So, let me thank
20 you both for your service and the leadership on the
21 advisory committee, and I will then turn to our next
22 item, agenda item.

23 If you would like to continue and listen
24 to the next presentations, you're quite welcome, but
25 since we're going to be voting on appointing advisory

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1 committee members, it's your move as to whether you
2 stay on board or not, so thank you all very much.

3 **B. DISCUSSION AND VOTE ON ADVISORY COMMITTEE**

4 **APPOINTMENTS**

5 CHAIR CANTU: Our item on the agenda is
6 the discussion and vote on state and territory
7 advisory committee appointments. As you know, the
8 U.S. Commission on Civil Rights depends on advice from
9 highly qualified persons who serve in each of our 50
10 states, plus the District of Columbia, and most
11 recently, the U.S. Virgin Islands, Puerto Rico,
12 Northern Mariana Islands, Guam, and American Samoa.

13 Today, we're going to appoint one advisory
14 committee, and that's Colorado. I begin with a motion
15 to appoint the following persons to serve as advisory
16 committee members in Colorado based on the
17 recommendations of the Staff Director.

18 The persons are Alvina Earnhardt,
19 nominated for chair and returning appointee; Christina
20 Alonzo, returning appointee; William Banta, returning
21 appointee; Pamela Benigno, new appointee; Darrell
22 Jackson, new appointee; Charles King, new appointee;
23 David Kopel, returning appointee; Joseph Peters, new
24 appointee; and William Trachman, returning appointee.

25 All of these individuals will serve as

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1 uncompensated government employees. If the motion
2 passes, the Commission will authorize the Staff
3 Director to execute the appropriate paperwork. Do I
4 have a second for this motion? Someone's on mute.

5 COMMISSIONER ADAMS: Second.

6 CHAIR CANTU: Who was that, please?

7 COMMISSIONER ADAMS: Adams, second.

8 CHAIR CANTU: Thank you, Commissioner
9 Adams. Unless there's further discussion, I'll call
10 the question and take a roll call vote. Commissioner
11 Adams, how do you vote?

12 COMMISSIONER ADAMS: Yes.

13 CHAIR CANTU: Commissioner Gilchrist?

14 COMMISSIONER GILCHRIST: Aye.

15 CHAIR CANTU: Commissioner Heriot?

16 COMMISSIONER HERIOT: I vote yes.

17 CHAIR CANTU: Commissioner Kirsanow?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIR CANTU: Commissioner Kladney?

20 COMMISSIONER KLADNEY: Yes.

21 CHAIR CANTU: Commissioner Yaki?

22 COMMISSIONER YAKI: Aye.

23 CHAIR CANTU: And I vote yes. The motion
24 passes.

25 COMMISSIONER ADEGBILE: Madam Chair, I

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1 think you forgot Commissioner Adegbile.

2 CHAIR CANTU: I apologize, excuse me.
3 Commissioner Adegbile?

4 COMMISSIONER ADEGBILE: Aye.

5 CHAIR CANTU: Thank you. Thank you for
6 catching that, Commissioner. The motion passes.

7 So, we will now turn to our final item on
8 our agenda and that's appointment of a Nebraska -- is
9 that still on? No, then that was the final item. We
10 have no further --

11 **C. MANAGEMENT AND OPERATIONS**

12 **STAFF DIRECTOR REPORT**

13 CHAIR CANTU: Oh, I do get to ask, as we
14 do at every business meeting, to see if the Staff
15 Director would like to have the floor to present a
16 monthly report?

17 MR. MORALES: Thank you, Madam Chair. You
18 know, in the interests of time, I have nothing further
19 to add than what's already contained in the Staff
20 Director's report. Of course, I'm always available to
21 discuss any item, or issue, or matter with the
22 commissioner in the report, so, Madam Chair, thank
23 you.

24 CHAIR CANTU: Thank you, Staff Director,
25 and those are interesting reports. I find myself

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1 highly enlightened when I read them, so I do remind
2 the commissioners that they are available in our
3 inbox.

4 **D. VOTE ON ADVISORY COMMITTEE CHAIR FOR THE**
5 **NEBRASKA STATE ADVISORY COMMITTEE**

6 CHAIR CANTU: All right, we do have a
7 final business item and that is the appointment of an
8 Advisory Committee Chair for Nebraska, for the
9 Nebraska State Advisory Committee.

10 So, due to the resignation of the previous
11 chair, and I will make the motion to appoint Nikitah
12 Imani as Chair. Mr. Imani has been recommended by the
13 Staff Director. Is there a second to the appointment
14 of the committee chair?

15 COMMISSIONER GILCHRIST: Gilchrist
16 seconds, Madam Chair.

17 CHAIR CANTU: Thank you, Commissioner
18 Gilchrist. And unless there's further discussion,
19 I'll call the question and take a roll call vote.
20 Commissioner Adegbile, I'll start with you. I'm
21 trying to make amends here.

22 COMMISSIONER ADEGBILE: Aye.

23 CHAIR CANTU: Thank you. Commissioner
24 Adams?

25 COMMISSIONER ADAMS: Aye.

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1 CHAIR CANTU: Commissioner Gilchrist?

2 COMMISSIONER GILCHRIST: Aye.

3 CHAIR CANTU: Commissioner Heriot?

4 COMMISSIONER HERIOT: I vote yes.

5 CHAIR CANTU: Thank you. Commissioner
6 Kirsanow?

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIR CANTU: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIR CANTU: Commissioner Yaki?

11 COMMISSIONER YAKI: Aye.

12 CHAIR CANTU: And I vote yes, and the
13 motion passes unanimously to confirm the new
14 Commission Chair. Congratulations to Mr. Imani. And
15 we've already had the Staff Director's report, so that
16 concludes the business on the agenda for today's
17 business meeting.

18 **III. ADJOURN MEETING**

19 CHAIR CANTU: There not being any further
20 business before us, I hereby adjourn the meeting at
21 exactly 1:00 Eastern Standard Time. Thank you all. I
22 think you've set a record for conducting the business
23 meetings. Appreciate you very much.

24 (Whereupon the above-entitled matter went
25 off the record at 1:00 p.m.)

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