

## U.S. COMMISSION ON CIVIL RIGHTS

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## BUSINESS MEETING

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FRIDAY, AUGUST 19,

2022+ + + + +

## UNEDITED

The Commission convened at the National Press Club, 529 14th Street, NW, Washington, D.C., at 10:00 a.m., Norma V. Cantu, Chair, presiding.

## PRESENT:

NORMA V. CANTU, 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

DAVID GANZ, General Counsel, Parliamentarian\*

\* Present via telephone

**STAFF PRESENT:****ROBERT AMARTEY****LASHONDRA BRENSON****BARBARA DE LA VIEZ****PAMELA DUNSTON, Chief, ASCD****LATRICE FOSHEE****ALFREDA GREENE****JEFF KNISHKOWY****JOHN RADCLIFFE****MICHELE RAMEY****BRIAN WALCH****MARIK XAVIER-BRIER****COMMISSIONER ASSISTANTS PRESENT:****JOSHUA DANSBY****ALEC DUELL****JASON LAGRIA****CARISSA MULDER****AMY ROYCE****RUKKU SINGLA****ALISON SOMIN****IRENA VIDULOVIC**

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## P R O C E E D I N G S

(10:00 a.m.)

CHAIR CANTU: Good morning. Welcome to the business meeting for the U.S. Commission on Civil Rights. The meeting comes to order at 10:02 a.m. Eastern Standard Time on Friday, August 19th, 2022. I am Chair Norma V. Cantu.

We thank the staff who completed the public notice needed for this meeting and arranged for today's business meeting. We thank the general public for their interest in today's meeting and in attending. Due to respect for health and safety, the Commissioners are in attendance in person and via conference call. We're hosting the general public by phone conference.

I would like to confirm the Commissioners present both in person and on the line, and we'll take a roll call vote. Please say present or aye when I say your name.

Commissioner Adams.

COMMISSIONER ADAMS: Present.

CHAIR CANTU: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Present.

1 CHAIR CANTU: Commissioner Heriot.

2 COMMISSIONER HERIOT: I'm here.

3 CHAIR CANTU: Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: Here.

5 CHAIR CANTU: Commissioner Kladney.

6 COMMISSIONER KLADNEY: Here.

7 CHAIR CANTU: Commissioner Yaki.

8 COMMISSIONER YAKI: Aye.

9 CHAIR CANTU: Based on the response, a  
10 quorum of the Commission is present. Is the court  
11 reporter present?

12 COURT REPORTER: Yes.

13 CHAIR CANTU: Thank you. Is the Staff  
14 Director present?

15 MR. MORALES: I am present.

16 CHAIR CANTU: The meeting will come to  
17 order. Before we get started, I move to withdraw from  
18 our agenda -- we're going to be talking about our  
19 agenda.

20 We have an Item 2 that looks to appointing  
21 members to our advisory committees. That item I will  
22 move to withdraw from the agenda and expect a report  
23 from the advisory committees at our September business  
24 meeting.

25 Do I hear any objection, or do we need to

1 call a vote on that proposal?

2 (No audible response.)

3 CHAIR CANTU: Thank you. The next agenda  
4 to the meeting is, if you're looking at Item C, it  
5 calls for our taking a vote on subjects for fiscal  
6 year '23 and fiscal year '24. The change in that item  
7 will be in our agenda that we will only be discussing  
8 fiscal year 2023. Do I have a second to that change  
9 to the agenda?

10 COMMISSIONER GILCHRIST: Second, Madam  
11 Chair.

12 CHAIR CANTU: Thank you, Commissioner  
13 Gilchrist. We then open up for discussion on changing  
14 the item to only discuss today fiscal year 2023.

15 COMMISSIONER KLADNEY: Madam Chair,  
16 Kladney here. What are the items for 2023?

17 CHAIR CANTU: The items -- okay, you were  
18 going to ask me that. Let me look at my notes. There  
19 was a briefing report on -- help me out, folks. No,  
20 he asked for '24. Oh, for '23. Oh, that one is easy.  
21 For '23, we have an enforcement report on the civil  
22 rights implications of climate change, and we have a  
23 briefing report on data collected by the U.S.  
24 Department of Justice and civil rights implications on  
25 policy and practice with regards to victims of violent

1 crimes.

2 COMMISSIONER KLADNEY: That's for '23,  
3 environmental --

4 CHAIR CANTU: Yes, sir, enforcement and --  
5 (Simultaneous speaking.)

6 COMMISSIONER KLADNEY: Thank you.

7 CHAIR CANTU: Thank you. Any other  
8 questions before calling a vote on that change to the  
9 -- that amendment to the agenda?

10 (No audible response.)

11 CHAIR CANTU: Wonderful. I'm going to  
12 call for the roll call vote. Commissioner Adams, how  
13 do you vote?

14 COMMISSIONER ADAMS: Aye.

15 CHAIR CANTU: Commissioner Adegbile.

16 COMMISSIONER ADEGBILE: Aye.

17 CHAIR CANTU: Commissioner Gilchrist.

18 COMMISSIONER GILCHRIST: Aye.

19 CHAIR CANTU: Commissioner Heriot.

20 COMMISSIONER HERIOT: Yes.

21 CHAIR CANTU: Commissioner Kirsanow.

22 Commissioner Kirsanow. I'll come back to you, sir.

23 Commissioner Kladney.

24 COMMISSIONER KLADNEY: Yes.

25 CHAIR CANTU: Commissioner Yaki.

1 COMMISSIONER YAKI: Aye.

2 CHAIR CANTU: Commissioner Kirsanow.

3 (No audible response.)

4 CHAIR CANTU: All right. I vote aye. We  
5 have seven voting aye and one absent. He'll come  
6 back, maybe.

7 I. APPROVAL OF AGENDA

8 CHAIR CANTU: So, now based on that, we'll  
9 proceed to vote on the agenda itself. So do I have a  
10 second to my motion to approve the agenda as amended?

11 COMMISSIONER GILCHRIST: So moved, Madam  
12 Chair.

13 CHAIR CANTU: Thank you, Commissioner  
14 Gilchrist. Any discussion? We've had discussion  
15 already. Okay. I'm going to call for the roll call  
16 vote.

17 Commissioner Adams.

18 COMMISSIONER ADAMS: Aye.

19 CHAIR CANTU: Commissioner Adegbile.

20 COMMISSIONER ADEGBILE: Aye.

21 CHAIR CANTU: Commissioner Gilchrist.

22 COMMISSIONER GILCHRIST: Aye.

23 CHAIR CANTU: Commissioner Heriot.

24 COMMISSIONER HERIOT: Yes.

25 CHAIR CANTU: Commissioner Kirsanow.



1 COMMISSIONER KIRSANOW: Yes.

2 CHAIR CANTU: Thank you. Commissioner  
3 Kladney.

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR CANTU: Commissioner Yaki.

6 COMMISSIONER YAKI: Aye.

7 CHAIR CANTU: The vote is unanimous. The  
8 agenda is approved for today's meeting.

9 II. BUSINESS MEETING

10 PRESENTATIONS BY STATE ADVISORY CHAIRS ON RELEASED

11 REPORTS AND MEMORANDUMS

12 CHAIR CANTU: So we have time for our  
13 first item, which is going to be, our first order of  
14 business is going to be a presentation by the Kentucky  
15 State Advisory Committee. The Committee Chair, Ms.  
16 Enid Trucios-Haynes, will present the Committee's  
17 Advisory Report on Bail Reform. The report is called,  
18 "Locked Up for Being Poor: The Need for Bail Reform in  
19 Kentucky."

20 Chair Trucios-Haynes, you've got ten  
21 minutes. And then, afterwards, we'll have time for  
22 questions from our Commissioners.

23 You've got the floor.

24 MS. TRUCIOS-HAYNES: Thank you, Chair  
25 Cantu and other members of the Commission, for the

1 opportunity to share our key findings and  
2 recommendations. The Kentucky Committee held hearings  
3 about bail reform to understand the variations in  
4 pretrial release in different courts, judicial  
5 districts, and before different judges throughout the  
6 state. The committee requested information about  
7 whether the 2013 risk assessment formula adopted by  
8 the legislature achieved the goal of reducing the use  
9 of cash bail in favor of pretrial release. This  
10 culminated in our report, "Locked Up for Being Poor:  
11 The Need for Bail Reform in Kentucky," which was  
12 released in November 2021.

13 The testimony established that the failure  
14 of the 2013 risk assessment formula called the Public  
15 Safety Assessment -- that it failed to enhance public  
16 safety. As well, we heard about the extraordinary  
17 consequences of unnecessary pretrial detention on the  
18 people who are detained, their family, and their  
19 communities, our communities in Kentucky.

20 The committee made ten findings and fixed  
21 recommendations, concluding that the Kentucky  
22 legislature should eliminate cash bail, except when  
23 there is clear and convincing evidence that an  
24 individual poses a risk to public safety or a risk of  
25 nonappearance at future court hearings.

1                   The most significant findings of the  
2                   committee include, first, that Kentucky has a high  
3                   number of incarcerated people. Between 2008 and 2018,  
4                   Kentucky ranked tenth in the United States for the  
5                   rate of people incarcerated per capita. By the end of  
6                   2018, at a time when prison populations were declining  
7                   across most of the U.S., the number of people  
8                   imprisoned in Kentucky had increased three years in a  
9                   row. And at that time, the growing prison population  
10                  led to nearly 73 percent of Kentucky jails being at or  
11                  overcapacity.

12                  A significant percentage of innocent  
13                  Kentuckians remain in jail simply because they cannot  
14                  afford to pay cash bail, even when it is under \$250.  
15                  In addition, poverty and the inability to pay bail  
16                  disproportionately harms people of color, economically  
17                  disadvantaged communities, and people in our state  
18                  with substance use and mental health challenges.  
19                  These communities experience higher rates of pretrial  
20                  detention because of increased contacts with the  
21                  criminal legal system due to racial inequities,  
22                  poverty, and other challenges.

23                  Second, pretrial release varies  
24                  significantly for similarly-situated defendants across  
25                  Kentucky. A 2019 Lexington Herald-Leader news report

1 on bail data found that the likelihood of a defendant  
2 being ordered to pay cash bail varies widely from  
3 county to county. For example, in 2019, the  
4 percentage of cases in which defendants were released  
5 before trial without monetary conditions ranged from  
6 5 percent in one county to 68 percent in another  
7 county. So the likelihood that a lower-risk is  
8 unnecessarily detained due to their inability to pay  
9 cash bail varies significantly based on their location  
10 in the state.

11 The Kentucky Supreme Court Chief Justice  
12 confirmed this in his 2020 testimony before our  
13 committee and has mentioned this in speeches, other  
14 speeches in the state. He noted that the current bail  
15 system disproportionately affects low-income  
16 defendants who aren't able to pay for release after  
17 being charged with low-level nonviolent offenses.

18 Third, the Kentucky legislature's 2013  
19 pretrial assessment formula called the Public Safety  
20 Assessment was adopted to reduce the use of cash bail  
21 and release more people while they were awaiting their  
22 trials. The PSA has not achieved the intended goal of  
23 reduced pretrial detention, according to a  
24 comprehensive empirical study published in 2018. The  
25 study found only a trivial increase in pretrial

1 release. According to the study, the low number of  
2 releases was due in part to discretionary judgments by  
3 judges who ignored the presumptive default of non-  
4 monetary release in more than two-thirds of the cases.  
5 This lack of trust in the pretrial assessment leads to  
6 unnecessary detention, and this was confirmed by  
7 several witnesses before our committee.

8 As a result, prosecutors, jailers, and  
9 judges do not trust the low-risk scores in individual  
10 cases. Cash bail then is unnecessarily imposed in  
11 cases in which there is a low to moderate risk of  
12 nonappearance at future court dates or threat to  
13 public safety. Further, the pretrial risk assessment  
14 does not include a person's ability to pay bail,  
15 although legislative proposals to include this have  
16 been considered.

17 Fourth, in addition, jailers, judges, and  
18 prosecutors have a high level of discretion in  
19 individual cases having a low risk or a moderate risk  
20 score. Release and the decision to follow the low-  
21 risk course varies widely by county. This variation  
22 allows greater potential of discriminatory decision-  
23 making and a meaningful appeals process is needed to  
24 ensure fair decision-making throughout Kentucky.

25 Fifth, pretrial detention can have

1           lifelong negative impacts on a person. People are  
2           more likely to plead guilty to get released from  
3           detention quickly and often do not have a lawyer to  
4           advise them about the consequences of a guilty plea.  
5           And, obviously, a guilty plea limits a person's access  
6           to jobs, housing, banking, and other community  
7           resources. Pretrial detention also causes significant  
8           harm and trauma to families. Detention causes  
9           poverty, creating it or exacerbating it. People in  
10          pretrial detention lose their jobs and housing.  
11          Detention harms children. We learned that 15 percent  
12          of Kentucky's children experience this harm, which was  
13          four times the national average, and that 70 percent  
14          of women and 55 percent of men incarcerated in  
15          Kentucky have children. Finally, pretrial detention  
16          reduces a person's ability to work with their lawyer  
17          on their own legal defense.

18                       Seven, alternative pretrial release  
19          measures, such as electronic monitoring, drug testing,  
20          and supervision also varies widely across Kentucky  
21          counties. These measures can be as harmful as cash  
22          bail to people, their families, and our community.  
23          Electronic monitoring, for example, effectively  
24          imposes cash bail because the cost of the monitoring  
25          system is shifted to the individual. Further, the

1 lack of clear standards about when to impose these  
2 alternatives and about the factors determining when  
3 violations occur can result in disparate treatment.

4 And, eighth, increased pretrial releases  
5 are not a threat to public safety. The experience  
6 from Kentucky's COVID-19 emergency automatic release  
7 policy, which limited discretion in pretrial detention  
8 decisions, demonstrates that releasing more people  
9 before trial does not compromise public safety. In  
10 April 2020, the Kentucky Supreme Court issued an order  
11 to expand the group's eligible for release without  
12 bail and to require the automatic release of people  
13 arrested for specific low-level crimes, including some  
14 Class D felonies. Although more than double the  
15 amount of people were released in 2020 compared to  
16 2019, the data shows that the percentage of people who  
17 were re-arrested in 2020 did not meaningfully  
18 increase.

19 Our recommendations for action included  
20 that the Kentucky legislature should eliminate cash  
21 bail, except when there's clear and convincing  
22 evidence that there's a threat to public safety or a  
23 risk of nonappearance.

24 Second, that specific efforts must be made  
25 to ensure that those charged with crimes have pretrial

1 legal representation at all court appearances to  
2 protect their rights.

3 Third, other no-cost options to pretrial  
4 detention are needed. However, in addition, there  
5 need to be clear standards to impose these no-cost  
6 options in order to ensure equal and consistent  
7 treatment across Kentucky and more emphasis and  
8 resources are needed for alternatives, such as  
9 treatment for substance use and mental health  
10 challenges.

11 Four, reforms are needed to ensure that  
12 pretrial detention does not influence a person's  
13 decision to enter a guilty plea.

14 Five, to ensure equal treatment, clear  
15 standards are needed for any determination that a  
16 person has violated pretrial release conditions.

17 And, finally, six, more research is needed  
18 on discrimination disparities and outcomes because of  
19 the Committee's concerns about the overall impact of  
20 Kentucky's risk assessment tool, the administration of  
21 pretrial services, charging decisions, and case  
22 processing. Research is needed on pretrial release  
23 rates across counties and judicial districts across  
24 the state and research about the cash bail amounts and  
25 the extent to which higher bail is set for people of



1 color and other disadvantaged communities, as well as  
2 research on the use of alternative pretrial orders and  
3 conditions, particularly electronic monitoring.

4 And, finally, we recommend that there's  
5 research on the long-term physical-psychological  
6 relationship and economic impacts on individuals,  
7 their families, and our communities.

8 We recommended further that all of this  
9 research should include in-depth peer-reviewed studies  
10 and should be conducted in cooperation with the Office  
11 of Pretrial Services of the Administrative Office of  
12 the Courts of Kentucky.

13 This is the end of my presentation, and  
14 I'm happy to answer any questions that anyone might  
15 have.

16 CHAIR CANTU: Thank you, Chair. That was  
17 an excellent presentation. The Commission has  
18 undertaken a thoughtful and a sensitive process, and  
19 we have been listening and reading your reports. So  
20 I'm going to use this period now to allow our  
21 Commissioners to ask questions and interact with you,  
22 Madam Chair.

23 Do any of the Commissioners have any  
24 questions to ask?

25 COMMISSIONER KLADNEY: Chair Cantu, this

1 is Commissioner Kladney. I'd like to ask a question  
2 or two.

3 CHAIR CANTU: Yes. Please proceed.

4 COMMISSIONER KLADNEY: Chair Haynes, thank  
5 you very much for the complete report. I find it  
6 fascinating. Especially -- I think I heard you say  
7 one jurisdiction uses the pretrial assessment tool and  
8 releases -- or releases -- they may not use it; they  
9 release 68 percent of their defendants to pretrial  
10 supervision, and another county releases 2 percent.  
11 Is that correct? Did you say that?

12 MS. TRUCIOS-HAYNES: Yes. The range was  
13 between 5 percent in one county and 68 percent in  
14 another county. And that could be using the PSA, the  
15 Public Safety Assessment, or it might not be, because  
16 many judges reject the scores that are provided by the  
17 PSA.

18 COMMISSIONER KLADNEY: Right. So have  
19 there been any studies regarding re-arrest rates  
20 comparing the 68-percent county with the 5-percent  
21 county or some lower released amount, significantly  
22 released amount counting?

23 MS. TRUCIOS-HAYNES: I don't have that  
24 information, but I can tell you the re-arrest data  
25 comparing 2020 when the Kentucky Supreme Court order

1 was in place, which required automatic release, the  
2 re-arrest rate in 2020 was 89 percent -- oh, wait, let  
3 me say that in reverse. Eighty-nine percent of the  
4 people were not re-arrested. In 2019, in comparison,  
5 the year before when the system was in place, 92  
6 percent were not re-arrested. So there was a 3-  
7 percent difference in terms of re-arrests during the  
8 time period when there was the required automatic  
9 release.

10 COMMISSIONER KLADNEY: Was your committee  
11 able to find the sweet spot on the judges' discretion  
12 on setting bail, balancing public safety interest;  
13 that is, people who are dangerous to the community or  
14 serial FTAs with their liberty interest? Were you  
15 able to figure that out or, you know, where the judge  
16 should override the PSA, what would constitute a  
17 serial FTA person or a dangerous person to the  
18 community?

19 MS. TRUCIOS-HAYNES: Thank you for that  
20 question. Well, what we heard from several witnesses  
21 related to that is about the system. So judges are  
22 elected in Kentucky, and many judges feel pressure  
23 from their elected representatives in their voting  
24 districts and worry about, of course, releasing  
25 someone where there might be a re-arrest for a serious

1 crime, and that the effect of the great discretion  
2 that judges have, that that can result in a greater  
3 likelihood of imposing cash bail. Judges often assert  
4 that they need the discretion because they are most  
5 familiar with their communities and may have the  
6 ability, therefore, to really assess the situation on  
7 the ground.

8 We did hear from one representative of the  
9 legislature who had proposed several bills in the  
10 Kentucky legislature that, in smaller rural  
11 communities, what can happen is that those who have  
12 connections to the criminal legal system either  
13 through their family members or otherwise might get  
14 released, where someone who can't afford to pay their  
15 cash bail as low as an amount of \$250 are not. And  
16 one thing to think about when you ask about re-arrest  
17 rates and failure to appear, that we're comparing  
18 those who cannot pay their cash bail to those who  
19 might be higher risk and likely are higher risk but  
20 are able to pay their cash bail, so there's a higher  
21 risk of not appearing at their future court dates or  
22 maybe a higher risk to public safety according to the  
23 PSA, but they are able to leave detention because they  
24 can afford to pay the cash bail. I hope that --

25 COMMISSIONER KLADNEY: Just a couple more

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questions. What's the cost difference between keeping someone incarcerated and pretrial supervision in Kentucky?

MS. TRUCIOS-HAYNES: We did have -- there was a news report about that, because there's a significant overcrowding in the jails, and I'm trying to remember the exact number. But it was costly, and I'm sorry I don't have that at my fingertips right now to share with you, but I can get that information back to you.

COMMISSIONER KLADNEY: And, finally --

MS. TRUCIOS-HAYNES: Okay. I have that to answer that question. So, Kentuckians -- this was from 2016, so it's a little bit outdated. So, people who were assessed as likely to come back to court and unlikely to be arrested who were held pretrial in 2016 were held for an average of 109 days at a cost of over \$100 million. And that is from the Director Spalding of the Kentucky Research Director for the Kentucky Center for Economic Policy.

COMMISSIONER KLADNEY: And I take it that pretrial supervision would be significantly less. I think you said 2 to 10 percent of that cost?

MS. TRUCIOS-HAYNES: I'm not sure, but it is a lot.

1                   COMMISSIONER KLADNEY: Okay. And,  
2                   finally, you seem to think -- or the committee seems  
3                   to have thought -- not you, the committee seemed to  
4                   have thought that pretrial supervision with electronic  
5                   bracelets was a degrading thing for people who were  
6                   released with them. So is your proposal to keep those  
7                   people incarcerated at that point or how -- because  
8                   they must come in higher on a PSA, must be rated as  
9                   more likely to leave or do something untoward.

10                   MS. TRUCIOS-HAYNES: What the committee  
11                   found is that people who have low-to-moderate risk on  
12                   the PSA are still being given high cash bail amounts,  
13                   right? So they are remaining in jail despite the low  
14                   or moderate risk assessment on the score. And the way  
15                   the law is written, it prefers release on their own  
16                   recognizance so that people should be released on  
17                   their own recognizance and not necessarily involving  
18                   electronic monitoring or supervision.

19                   What we did hear from a number of  
20                   witnesses is part of the challenge, especially in  
21                   rural Kentucky, is that many people who wind up, who  
22                   cannot pay their bail are also in poverty and also  
23                   often have mental health and substance abuse  
24                   challenges, and judges are hesitant to release  
25                   individuals if there is not a slot for them to get

1 into some kind of treatment.

2 So that is one of the challenges that  
3 judges are facing in their own communities. However,  
4 our general recommendation is that people should be  
5 released on their own recognizance and our concern  
6 about electronic monitoring is that it is the  
7 defendant, while awaiting trial, who is required to  
8 pay for the cost of electronic monitoring, which can  
9 be quite high, and effectively results in imposing a  
10 form of cash bail.

11 COMMISSIONER KLADNEY: Right. So  
12 shouldn't the government pick that up in light of the  
13 money that they're saving by not having the person in  
14 jail?

15 MS. TRUCIOS-HAYNES: Ideally, that would  
16 be the case. And there are different opinions. We  
17 heard testimony at the committee from a member of the  
18 legislature who believes there was sufficient  
19 treatment facilities that are available throughout the  
20 state. But we are a state that has rural counties,  
21 and it's a little bit more difficult for  
22 transportation and other challenges that exist in  
23 providing treatment services.

24 COMMISSIONER KLADNEY: Thank you very  
25 much, Chair Haynes, and please thank the committee for

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the excellent report. And, hopefully, I didn't take up too much time. Thank you.

MS. TRUCIOS-HAYNES: Thank you.

CHAIR CANTU: Thank you, Commissioner Kladney and that was valuable additional information through that Q&A. Do we have other Commissioners who would like to pose a question to our Chair, to Chair Haynes? Yes, Commissioner Adams.

COMMISSIONER ADAMS: Thank you, Madam Chair. Chair Haynes, my question focuses on your suggestion that the standard be changed to clear and convincing evidence of risk to public safety or risk of flight. My question relates to the clear and convincing part of that. What is the status quo standard?

MS. TRUCIOS-HAYNES: The status quo standard is preponderance of the evidence generally. And because of the discretion that judges have, there's tremendous, there's a wide variety of decision-making, which is what was established through the report.

One of the challenges and concerns that we've heard in testimony before the committee was about the lack of an effective appeals process for the decisions that are made for bail decisions and whether



1 or not there's reliance on the Public Safety  
2 Assessment.

3 COMMISSIONER ADAMS: So is preponderance  
4 of the evidence, is that the same as more likely than  
5 not?

6 MS. TRUCIOS-HAYNES: Yes, yes, generally.

7 COMMISSIONER ADAMS: All right. Thanks.

8 CHAIR CANTU: Thank you. Would any other  
9 Commissioner would like to ask a question of Chair  
10 Haynes?

11 COMMISSIONER YAKI: Yes, this is  
12 Commissioner Yaki.

13 CHAIR CANTU: Yes. Please proceed.

14 COMMISSIONER YAKI: Chair Haynes, thank  
15 you very much for the report. Just a quick question.  
16 When a judge decides to essentially overrule or ignore  
17 the PSA, do they have to give reasons on the record  
18 for doing so?

19 MS. TRUCIOS-HAYNES: No, no. The  
20 discretion of the judge is broad, and I will say it's  
21 judges' decisions on bail and sometimes prosecutors  
22 are involved in discussing, of course, whether a  
23 person is truly low risk or moderate risk. And,  
24 often, judges will rely, especially in some of the  
25 smaller districts, on their knowledge of the community

1 and perhaps of the individual in smaller communities.

2 COMMISSIONER YAKI: But they have no, but  
3 there's no requirement that they state on the record  
4 why they are rejecting the PSA? I say that simply  
5 because moving the standard may not be sufficient. I  
6 think part of any standard and whether or not you can  
7 actually have an appealable right for that standard  
8 would depend on the record; and, if the record has  
9 absolutely zero in it, other than the judge simply  
10 saying I'm going to ignore this and impose blah, blah,  
11 blah, blah, blah, I think it creates issues.

12 MS. TRUCIOS-HAYNES: Absolutely. And  
13 there is no requirement, and the risk assessment is  
14 conducted by a pretrial services officer after someone  
15 is arrested and booked into the jail and based on the  
16 interview of the individual, and then that PSA score  
17 is presented to the judge during the bail hearing.  
18 But there is no requirement, to your question, of  
19 stating this on the record why the PSA has been  
20 rejected.

21 COMMISSIONER YAKI: Okay. Thank you very  
22 much, and thank you again for the work that the  
23 committee did.

24 CHAIR CANTU: Thank you for that,  
25 Commissioner Yaki. Any other Commissioners would like

1 to speak? May I just be clear? The state advisory  
2 committees use the same kind of jurisdiction, and you  
3 mentioned one of the constitutional issues dealing  
4 with people being held because of inability to pay.  
5 Can you, off the top of your head, think of the  
6 constitutional aspects of this area of law that you've  
7 reported on? Is it the Fourth, the Eighth, the Fifth,  
8 the Fourteenth, or all of them?

9 MS. TRUCIOS-HAYNES: Well, a bit of all of  
10 it, including the Sixth, because people are not  
11 represented at their bail hearings and arraignments  
12 and because, in part, the Department of Public  
13 Advocacy is not fully staffed, so people are pleading  
14 guilty in order to get out of jail quickly, rather  
15 than wait until a public defender is appointed to  
16 them. So that's one of the concerns.

17 We're also concerned about the disparate  
18 impacts on different communities in Kentucky, as well,  
19 and the violation of the right to bail, which is in  
20 the Kentucky Constitution, as well as the Federal  
21 Constitution.

22 CHAIR CANTU: Thank you.

23 MS. TRUCIOS-HAYNES: There's a presumption  
24 that liberty should exist for those pretrial.

25 CHAIR CANTU: Thank you for making that

1 clear for me. Any other questions from the  
2 Commissioners?

3 (No audible response.)

4 CHAIR CANTU: Well, thank you, Chair  
5 Haynes. We're going to move, now that there are no  
6 further questions, we're going to move to the next  
7 item of the agenda. And I really do appreciate and we  
8 all appreciate your service and leadership as Chair of  
9 the Kentucky State Advisory Committee, and we  
10 appreciate you taking the time to speak with us today.  
11 If you'd like to stay on the line, you can hear the  
12 rest of the meeting, or, otherwise, please have a  
13 wonderful day and go with our thanks. Thank you,  
14 Chair.

15 MS. TRUCIOS-HAYNES: Well, thank you very  
16 much. Thank you very much, and I appreciate all of  
17 your time.

18 C. DISCUSSION AND VOTE ON 2023 TOPICS FOR USCCR

19 REPORTS

20 CHAIR CANTU: Thank you. The next item,  
21 the second item on today's admitted agenda, is a  
22 discussion and vote on fiscal year '23. In line with  
23 our role as the USCCR, we have a statutory obligation  
24 to Congress and to the President to collect data, to  
25 report on it, and to send recommendations and findings

1 to the President and to the White House and to share  
2 out that information we gather to the American public.

3 The purpose of our reports is to ensure  
4 civil rights across our federal government, that these  
5 rights are being enforced with equity. And so, today,  
6 we're going to be voting on fiscal year '23. I move  
7 to take up first the Statutory Enforcement Report.  
8 This is a report that we are mandated by Congress to  
9 file, and we have one report for consideration and  
10 that is the report being the Civil Rights Implications  
11 of Climate Change in Minority Communities and Persons  
12 with Disabilities.

13 Would you like to say something,  
14 Commissioner Heriot?

15 COMMISSIONER HERIOT: I'd like to make a  
16 motion.

17 CHAIR CANTU: Yes, please.

18 COMMISSIONER HERIOT: I move that we adopt  
19 both the climate change proposal and the crime  
20 increase proposal with these two provisos that we drop  
21 the language that says most of the witnesses will come  
22 from the Department of Justice for the crime increase  
23 report and we replace it with the prior language which  
24 said that some of the witnesses will come from the  
25 Department of Justice, and that, number two, the

1 second proviso, that the number of field briefings and  
2 hearings be equal between the two proposals.

3 So, under this motion, we would adopt both  
4 proposals at the same time and they would get through,  
5 I think, easily. More easily, I hope so.

6 CHAIR CANTU: Thank you. Is there a  
7 second to her motion, to Commissioner Heriot's motion?

8 COMMISSIONER GILCHRIST: Second, Madam  
9 Chair.

10 CHAIR CANTU: Commissioner Gilchrist  
11 seconds. We open for discussion.

12 COMMISSIONER YAKI: Commissioner Yaki  
13 here.

14 CHAIR CANTU: Yes, Commissioner, please  
15 proceed.

16 COMMISSIONER YAKI: I'm a little confused  
17 because I changed the title of the climate change  
18 report that I submitted, and I'm not sure which one it  
19 is that you're looking at right now since I am not  
20 there, number one.

21 (Simultaneous speaking.)

22 COMMISSIONER YAKI: Number two, number two  
23 -- I have not yet finished. Number two, regardless of  
24 that, I move to amend the motion to defer this item  
25 until next month.

1 COMMISSIONER HERIOT: Commissioner Yaki,  
2 we would be willing to accept your latest version.

3 CHAIR CANTU: That is my error. I have a  
4 typo in my -- this is Chair Cantu. The typo should  
5 reflect the August draft of Commissioner Yaki's  
6 proposal.

7 COMMISSIONER HERIOT: Would you like to  
8 withdraw your amendment? We are talking about  
9 accepting the one that you want.

10 COMMISSIONER YAKI: Actually, I still move  
11 to push this until the next meeting.

12 CHAIR CANTU: Is this a friendly amendment  
13 to defer --

14 COMMISSIONER HERIOT: No, I don't --

15 COMMISSIONER YAKI: It's definitely not a  
16 friendly amendment.

17 CHAIR CANTU: To defer to the next month,  
18 you would need a second.

19 COMMISSIONER ADEGBILE: Adegbile seconds.

20 CHAIR CANTU: We will vote first on the  
21 motion to amend to the next month before proceeding  
22 back to your motion, Commissioner Heriot. Any  
23 discussion on deferring to the next month?

24 COMMISSIONER YAKI: Would you like me --

25 CHAIR CANTU: Yes, please.

1                   COMMISSIONER YAKI:  Yes, Chair,  
2                   Commissioner Yaki.  First of all, the addition made by  
3                   Commissioner Heriot, to me, is not acceptable at this  
4                   point.  I need to review it in its total context,  
5                   number one.  Number two, I would probably move to  
6                   sever and vote on these individually and not as a  
7                   package, which I think would be unacceptable to the  
8                   other side.  But it is a privileged motion and would  
9                   happen as a rule of parliamentary procedure that does  
10                  not require a second, nor does it require a vote.

11                  I think that there are a couple of item  
12                  that still require further discussion on this.  I  
13                  think that we've made a lot of progress in the past  
14                  few weeks, if not days, but I believe that a little  
15                  more time is going to be required to get this right.  
16                  Otherwise, I am not even voting to support, especially  
17                  in combination with the report.  Thank you.

18                  CHAIR CANTU:  Thank you.  Commissioner  
19                  Adams.

20                  COMMISSIONER ADAMS:  This is discussion on  
21                  the motion.  This commission has been working on  
22                  proposals month after month after month after month  
23                  after month, and I have not even counted all the  
24                  months.  We have an agreement, at least we thought we  
25                  did, to support the Commissioner's proposal on climate



1 change. Yet, somehow we aren't going to do that, it  
2 seems, or we might not do that.

3 The four members of the Commission have  
4 given absolutely everything that has been asked.  
5 Everything. And it's unreasonable and unfair to  
6 continue to string this out for more months. We need  
7 to get busy and do something, rather than squabble.  
8 That's all I have on discussion on the motion.

9 COMMISSIONER GILCHRIST: Madam Chair.

10 CHAIR CANTU: Commissioner Gilchrist.

11 COMMISSIONER GILCHRIST: I just want to  
12 echo Commissioner Adams' comments, as well. You know,  
13 it's a little disappointing to know that, for those of  
14 us who have worked, at your request, Madam Chair, as  
15 a committee to come up with what we think is not only  
16 a roadmap forward, but an opportunity to be able to do  
17 what this Commission has been required to do by law,  
18 all but to be here at the 11th hour to find out that  
19 now that there is some concern about the negotiations  
20 that have taken place in order to get us to a yes vote  
21 on these proposals.

22 So I just wanted to echo Commissioner  
23 Adams' comments, as well, that we worked on this for  
24 quite some time, and there is no reason why this  
25 commission cannot see our way forward with these two

1 proposals. So I just wanted to add my comment, Madam  
2 Chair.

3 CHAIR CANTU: Thank you. Commissioner  
4 Heriot.

5 COMMISSIONER YAKI: This is Commissioner  
6 Yaki.

7 COMMISSIONER HERIOT: I just would like to  
8 say that, again, echoing what Commissioner Adams and  
9 Commissioner Gilchrist have said, that these  
10 negotiations have gone on a very long time, and we are  
11 required to come up with a 2023 statutory enforcement  
12 report. We have given Commissioner Yaki everything he  
13 wanted. His proposal, even though he keeps changing  
14 it and substituting new version of it, and, even so,  
15 even though it goes beyond what we had agreed to,  
16 we're still willing to do it. And I cannot imagine  
17 what the motivation would be for preventing this from  
18 going through.

19 CHAIR CANTU: Commissioner Yaki, if I may,  
20 I'm going to call on you, but I just want to set the  
21 record straight. I was the one who told people that  
22 each report would stand on its own merits, that the  
23 way that this report would be done would not use prior  
24 practice of bundling, that I'll vote for yours because  
25 you're voting for mine, and then the downside of the

1 bundling is that people did not read the whole report,  
2 did not understand what was in it, and it caused  
3 problems.

4 So I just want to put on the record I take  
5 it, as Chair, the responsibility to be sure that each  
6 report stands on its own merits.

7 Commissioner Yaki, I call on you.

8 COMMISSIONER YAKI: Yes, thank you very  
9 much. I'm trying to find the lamentations of my  
10 colleagues to be a little interesting, given that we  
11 have been attempting to resolve this issue for months.  
12 I would note for the record that we have been  
13 proceeding along for quite some time with my proposal,  
14 which was actually my number one proposal, for a  
15 report on Asian hate crimes and the rise in anti-Asian  
16 animus and bias in this country over the past few  
17 years. That was something that had been, it was on  
18 the table, it was part of the discussion, and only  
19 last week was I told that, no, all of a sudden, that  
20 wasn't going to be in.

21 So the idea that a paper that I had  
22 written some months ago and where it was not a  
23 priority of mine at the time is the subject of a,  
24 quote, unquote, long negotiation is actually not true,  
25 number one.

1                   Number two, the revised paper was only  
2                   because the other, some of my colleagues made it clear  
3                   they decided that they were not going to support  
4                   anything on the Asian hate crime, Asian bias report,  
5                   because, even though I had made changes in  
6                   accommodation to some of their members, including one  
7                   change that one of their members has been pushing for  
8                   for quite some time, many years as a matter of fact,  
9                   that they decided they were not going to support that  
10                  and that they would support this other thing, in which  
11                  case I decided I would take a look at it and decide if  
12                  I were going to take a first draft and do something  
13                  more with it. That's what I put together in good  
14                  faith.

15                  However, what I do not know and what I do  
16                  not quite understand is the change that Commissioner  
17                  Heriot just made on the floor to the Department of  
18                  Justice report, and it's one where I believe, having  
19                  not had been privy to any discussion regarding the  
20                  addition of that and its impact on the structure of  
21                  that report, that I am going to need some time to do  
22                  it.

23                  So I think we are close. I think we are  
24                  close, but, at the same time, I think it's rather pot  
25                  calling the kettle something, that the idea that

1 there's last-minute change by me is a little  
2 ridiculous because it is not, in fact, what we had  
3 discussed as of a couple of weeks ago. It is not  
4 where I thought that report was going with regard to  
5 what the Chair represented to me at the time.

6 This amendment is out of the blue, as far  
7 as I'm concerned. And we could be able to reach an  
8 agreement, but it is not going to be today. And if it  
9 is going to be today, I'm going to move to sever these  
10 items, which is going to result in probably both of  
11 them going down because, as one of my colleagues knows  
12 by wanting to put them together as a vote together,  
13 it's to ensure that they both pass or they both --  
14 otherwise, they would probably both fail.

15 So I would just simply say, as a matter of  
16 practicality, you know, or we could call a special  
17 meeting in between now and then if we can reach some  
18 kind of agreement. But it is not going to be today.

19 CHAIR CANTU: Thank you, Commissioner  
20 Yaki. Commissioner Heriot.

21 COMMISSIONER HERIOT: I just want to say  
22 that the language change that I'm referring to for the  
23 crime increase report is simply going back to the  
24 language that was in there just a few days ago.  
25 Somehow, someone put in an edit that took the proposal

1 from saying some of the witnesses will come from the  
2 Department of Justice. It got altered to say most of  
3 the witnesses will come from the Department of  
4 Justice, and I'm simply going back to the language  
5 that Commissioner Yaki would have seen in the proposal  
6 before. This is not changing the proposal; it's  
7 changing it back from a recent edit where, for some  
8 reason, somebody changed it to most, but that's  
9 changing it back to some.

10 CHAIR CANTU: I think I can be helpful on  
11 that. I will remove the word most. I will, however,  
12 still ask -- I will speak in favor of asking for more  
13 time because we have not received any explanations and  
14 we've kind of put in a parking lot who the witnesses  
15 will be, what kind of topics we expect, what types of  
16 witnesses we expect to see in the report dealing with  
17 Department of Justice data and civil rights  
18 implications.

19 So the facts are that not knowing about  
20 the field briefings, we did not know who would  
21 testify. But it doesn't matter. I can withdraw the  
22 word most, substitute the word some, and will that get  
23 us back to the agenda of being able to vote for the  
24 first vote, which is the enforcement. We have to do  
25 an enforcement by statute. It's mandatory that we

1 have an enforcement report. So trying to be gracious  
2 here, I will withdraw that language and substitute it  
3 with some.

4 COMMISSIONER HERIOT: It's a motion. You  
5 can't, you know --

6 CHAIR CANTU: I'm asking for a reply from  
7 the filer of the motion. How do you feel -- oh, I'm  
8 sorry. Commissioner Yaki, would you entertain that  
9 since it is your motion to defer until next month, or  
10 do you maintain that we do need another month?

11 COMMISSIONER YAKI: I maintain we do need  
12 another month because, at this point, we have given a  
13 lot with regard to this topic, which I actually think  
14 is not something that is going to be at all very  
15 productive to this commission. And if we are going to  
16 proceed with that other topic, I actually would like  
17 to rethink whether or not, you know, what I'm going to  
18 do on this.

19 But, Madam Chair, look, my preference has  
20 been in light of what has happened in our country and  
21 in my own community and in my own, in the area in  
22 which I live, my number one topic has been and will  
23 continue to be the issue of the rise of anti-Asian  
24 violence, animus, bias, hate in this country. It is  
25 something that was on the table until a week ago. And

1 as much as I also believe in the climate change  
2 report, I think that, quite frankly, if I am going to  
3 accept the report that my colleagues wish us to with  
4 great fervor to accept, I believe that for me and for  
5 my colleagues that the report would be much more  
6 acceptable as one of import to the interest that we  
7 represent and the communities that we are working to  
8 assist, that I may reconsider whether or not we turn  
9 it down then, that we engage in further negotiation on  
10 the Asian report. If not, you know, we may come back  
11 to where we are next month, we can have the vote, and  
12 go from there.

13 But I really do believe that being told a  
14 week ago that I had to change everything and then now  
15 other changes are occurring now is not in keeping with  
16 what we have been discussing. I am still unsure  
17 exactly what this amendment change is going to mean,  
18 Madam Chair. I know that you want to support it, but  
19 I do not. And at this point, I believe that another  
20 month is going to be required to get this to a point  
21 where both reports could be voted on.

22 CHAIR CANTU: I thank you for that  
23 comment, Commissioner Yaki. Our Staff Director would  
24 like to provide us some information.

25 MR. MORALES: Thank you, Madam Chair and



1           Commissioners. I'd just like to say that, on behalf  
2           of our staff at the USCCR, we support the  
3           Commissioners' priorities here. Just to put it in  
4           context, the most important thing Commissioners can  
5           provide to us as a staff are the topics that staff be  
6           working on.

7                         Given the time constraints that the staff  
8           is facing, you know, just keep in mind that the longer  
9           we prolong this, the more tough and more difficult it  
10          gets. If we have a statutory enforcement report and  
11          we're voting on it in September, that means we have 12  
12          months. And if we do a second report in the calendar  
13          or fiscal year, then we're looking at least two field  
14          hearings, if not more, which puts an enormous stress  
15          on the staff to pull that together.

16                        So just keep that in mind. I would  
17          continue to urge you to work together and to find a  
18          means forward. But just to keep in mind that, you  
19          know, we're starting to get to a point where the  
20          ability to do hearings more than one per topic may be  
21          jeopardized. So thank you.

22                        COMMISSIONER KLADNEY: Madam Chair, this  
23          is Kladney here.

24                        CHAIR CANTU: Yes. Please proceed.

25                        COMMISSIONER KLADNEY: I would just note

1 that, I would just note that OCRE and the GC's office  
2 had time to review these proposals and give their  
3 input, which would, I think, tremendously help, as  
4 Director Morales said, getting these reports done  
5 within the fiscal year in a timely fashion. Thank  
6 you.

7 CHAIR CANTU: I shared the enforcement  
8 report with OCRE staff director. Are there further  
9 comments? They did provide any comments. Are there  
10 any further?

11 MR. MORALES: Not beyond what was  
12 presented to us. If there are amendments to it, that  
13 would change, potentially could change the outcome.

14 CHAIR CANTU: Okay. So I need to make it  
15 clear I incorporated the OCRE comments into what was  
16 uploaded into the file, and I did not get anymore  
17 comments from OCRE after I uploaded.

18 MR. MORALES: Right. That's correct. So  
19 the comments that were provided stand.

20 CHAIR CANTU: Okay. So what I am trying  
21 to explain to people who are listening is that we have  
22 an enforcement report that's been uploaded, shared  
23 across all of the Commissioners, that the OCRE has  
24 been consulted, that people made an objection to a  
25 different report other than the one that I've made a

1 motion for, and now I'm being asked to defer for  
2 another month. Is that where I am?

3 COMMISSIONER YAKI: Commissioner Cantu,  
4 this is Commissioner Yaki. You have my personal word  
5 that we'll have a vote, up or down, next month.

6 COMMISSIONER HERIOT: Call the question.

7 CHAIR CANTU: It looks like we are at a  
8 gridlock, so I am going to call a five-minute break.  
9 This is unusual. We have never done this before.  
10 We've never been at a gridlock like this before. I'm  
11 going to call a five-minute break because the Chair  
12 needs to consider where we are right now.

13 So we will take a pause. If you would  
14 like to play elevator music, this is the time to do  
15 it.

16 (Whereupon, the above-entitled matter went  
17 off the record at 10:54 a.m. and resumed at 11:04  
18 a.m.)

19 CHAIR CANTU: Thank you. We took a five-  
20 minute recess. We are resuming the discussion. What  
21 is pending before us is a vote on the statutory  
22 enforcement report, which is on climate change, an  
23 important topic. And we've got some motions that deal  
24 with possibly a delay.

25 So, Commissioner Yaki, I'm going to call

1 back on you to finish your thought on the idea of the  
2 one-month delay. And I understand you have your  
3 personal voucher that something will happen in that  
4 month, but I want to hear some more from you.

5 COMMISSIONER YAKI: I'm sorry. My audio  
6 broke up. I couldn't understand a word you said.

7 CHAIR CANTU: All right. Where we took a  
8 break was with --

9 COMMISSIONER YAKI: It's still broken up.

10 CHAIR CANTU: Testing.

11 COMMISSIONER YAKI: Still broken.

12 CHAIR CANTU: Yes, we're having audio  
13 issues on both sides. Let me call on another  
14 Commissioner. Is there another Commissioner on line  
15 to see if your audio works?

16 COMMISSIONER YAKI: Well, can you hear me?

17 COMMISSIONER ADEGBILE: Commissioner  
18 Adegbile here.

19 CHAIR CANTU: Thank you.

20 COMMISSIONER YAKI: I can hear  
21 Commissioner Adegbile.

22 COMMISSIONER KIRSANOW: Kirsanow here.

23 CHAIR CANTU: Thank you, Commissioner  
24 Kirsanow.

25 COMMISSIONER KLADNEY: Kladney.

1 CHAIR CANTU: Thank you, Commissioner  
2 Kladney. Let's try you again, Commissioner Yaki.

3 COMMISSIONER YAKI: No, it wasn't me. I  
4 couldn't hear you. Now the audio seems to be  
5 restored.

6 CHAIR CANTU: Terrific. Did you have  
7 anything further to add?

8 COMMISSIONER YAKI: What you said seemed  
9 to take a lot longer than that, so I wanted to hear  
10 what it was that you actually did say.

11 CHAIR CANTU: What I did say is that,  
12 before we took the break, we had been discussing the  
13 statutory enforcement report on climate change and  
14 that we were engaged in a conversation of whether we  
15 had a meeting of the minds today and were prepared to  
16 vote on that or whether we did not. And you offered  
17 an amendment to the motion, and it was not accepted as  
18 a friendly amendment, but you are asking to change the  
19 motion. The motion was, as I understand it, that we  
20 would vote on two reports at the same time.

21 COMMISSIONER HERIOT: We have a pending  
22 motion --

23 COMMISSIONER YAKI: Well, I mean --  
24 (Simultaneous speaking.)

25 COMMISSIONER HERIOT: That's got to be

1 voted on.

2 CHAIR CANTU: I understand that. So,  
3 Commissioner Yaki, I'm calling on you because you've  
4 intervened with a motion to put this off for our next  
5 business meeting or earlier if we can do it.

6 COMMISSIONER YAKI: I haven't intervened.  
7 I am making a motion to delay this until the next  
8 meeting or possibly sooner, if the Commission so  
9 decides, for the consideration of the FY 23 statutory  
10 and briefing report.

11 CHAIR CANTU: And it is the most important  
12 thing that we do today, so does that motion have a  
13 second? A motion to not vote today but to move that  
14 for a further date.

15 COMMISSIONER HERIOT: It was already  
16 seconded --

17 COMMISSIONER KLADNEY: Kladney will  
18 second.

19 COMMISSIONER ADEGBILE: I seconded it  
20 previously, I believe.

21 COMMISSIONER HERIOT: That's the motion --

22 CHAIR CANTU: Is that -- please don't  
23 interrupt. Is that Commissioner Adegbile?

24 COMMISSIONER ADEGBILE: Yes, I understood  
25 that earlier before the break Commissioner Yaki made

1 a motion to put off the vote for a month, and I  
2 believe I seconded it. If I didn't, then I have now.

3 CHAIR CANTU: Thank you. And then, after  
4 that, I believe we had conversation about the effect  
5 that that would have on the Office of Civil Rights  
6 evaluation, which has a deadline to get this mandatory  
7 report finished June 23; is that correct, Staff  
8 Director?

9 MR. MORALES: A draft to Commissioners by  
10 June 23.

11 CHAIR CANTU: Thank you. Okay. Is there  
12 any further information that people need to vote on  
13 the motion to delay the vote on climate change for no  
14 longer than a month?

15 COMMISSIONER YAKI: I'm sorry. My motion  
16 was not on climate change. My motion was for both the  
17 statutory and the briefing report for FY 23 to be  
18 delayed until next month.

19 CHAIR CANTU: Thank you for the  
20 clarification. Both actions delayed. Thank you. Is  
21 that what the second went to, Commissioner Adegbile?

22 COMMISSIONER ADEGBILE: Yes.

23 CHAIR CANTU: Thank you. Is everyone  
24 clear what I'm going to call a vote on? Very good.

25 Commissioner Adams, how do you vote?

1 COMMISSIONER ADAMS: No.

2 CHAIR CANTU: Commissioner Adegbile.

3 COMMISSIONER ADEGBILE: Aye.

4 CHAIR CANTU: Commissioner Gilchrist.

5 COMMISSIONER GILCHRIST: No.

6 CHAIR CANTU: Commissioner Heriot.

7 COMMISSIONER HERIOT: No.

8 CHAIR CANTU: Commissioner Kirsanow?

9 COMMISSIONER KIRSANOW: No.

10 CHAIR CANTU: Commissioner Kladney.

11 COMMISSIONER KLADNEY: Yes.

12 CHAIR CANTU: Commissioner Yaki.

13 COMMISSIONER YAKI: Aye.

14 CHAIR CANTU: We have three yeses, four

15 noes, and I've not voted.

16 COMMISSIONER YAKI: You didn't vote, Madam

17 Chair.

18 CHAIR CANTU: I know. We have a yes from

19 me.

20 COMMISSIONER YAKI: Typically, we do the

21 votes --

22 CHAIR CANTU: Yes. And I am saying I am

23 voting in favor of the one-month delay. So we have

24 four noes and the motion fails because we did not get

25 a majority. So we are back to the original motion.



1                   COMMISSIONER ADAMS: Motion to reconsider,  
2                   Madam Chair.

3                   CHAIR CANTU: Explain what you are doing  
4                   with a motion to reconsider.

5                   COMMISSIONER ADAMS: Well, I was voting  
6                   with the prevailing vote, and I want to reconsider my  
7                   vote to a yes.

8                   CHAIR CANTU: Commissioner Adams changes  
9                   his vote from no to yes, leading us to five yeses,  
10                  which means that the motion to delay for a month, with  
11                  full knowledge of the impact that it's having on our  
12                  Office of Civil Rights evaluation, the motion carries.

13                  Both matters before us today having been  
14                  completed, we now turn to the Staff Director's Report.  
15                  Staff Director Morales, would you like to speak,  
16                  please?

17                  D. MANAGEMENT AND OPERATIONS

18                  STAFF DIRECTOR'S REPORT

19                  MR. MORALES: Thank you, Madam Chair. In  
20                  the interest of time, I don't have anything further to  
21                  add than what's already contained in the report.  
22                  Commissioners are always welcome to contact me about  
23                  a specific item in the Staff Director's Report, and  
24                  I'm happy to talk to them about anything that they  
25                  would like to discuss.

1 I would like to take a moment to welcome  
2 Mr. Mark Spencer as the new staff director of the  
3 Commission on Social Status of Black Men and Boys. He  
4 has a distinguished, he's had a distinguished career  
5 in public service. He's a native of Washington, D.C.  
6 and resides in Maryland, and we're really looking  
7 forward to his leadership and his expertise to help  
8 lead the Commission on Social Status of Black Men and  
9 Boys, which is a commission that was placed within  
10 USCCR under the auspices of the staff director by  
11 Congress. And so we've been working with that over  
12 the last couple of years, and they provided a separate  
13 earmarked budget for that commission.

14 So with that, Madam Chair, I have nothing  
15 further to add. I'd ask all Commissioners, as you  
16 encounter Mr. Spencer, to welcome him both to USCCR  
17 and as the new Director of the Commission on Social  
18 Status of Black Men and Boys. Thank you, Madam Chair.

19 CHAIR CANTU: Thank you. Thank you, Staff  
20 Director.

21 COMMISSIONER ADAMS: Madam Chair.

22 CHAIR CANTU: Yes, Commissioner Adams.

23 COMMISSIONER ADAMS: A question for the  
24 Staff Director, and I apologize. I couldn't find this  
25 in the report, so I'm going to ask you now if that's

1                   okay.

2                                 MR. MORALES:   Sure.  If I can answer it,  
3                   I will.

4                                 COMMISSIONER ADAMS:  We're meeting in the  
5                   National Press Club now, and I've never been to a  
6                   meeting at the Civil Rights Commission itself.  I  
7                   checked the report for this, and I couldn't find it.  
8                   Is there a cost associated with meeting here at the  
9                   National Press Club?

10                                MR. MORALES:  There is, and it runs  
11                   anywhere from \$6,000 to \$8,000.  Our general meetings  
12                   in the headquarters runs from \$5,000 to \$7,000,  
13                   depending on travel.  So there is an increased cost to  
14                   have them here at the National Press Club.

15                                As I had mentioned and I stated in an  
16                   email to all Commissioners, your special assistants,  
17                   and the executive team of the IT challenges and the  
18                   supply chain challenges in getting the meetings back  
19                   to the hearing room at the Commission, I'm sorry, at  
20                   the USCCR.  One of the primary problems has been the  
21                   internet bandwidth and requirements that have been  
22                   placed subsequent to the pandemic on cybersecurity by  
23                   DHS.  And so Homeland Security has upped the security  
24                   requirements of producing and having internet  
25                   bandwidth that complies with their requirements.

1 I will say, if we want -- and the other  
2 thing is we're doing that we didn't do when we were in  
3 the pandemic is these are being livestreamed. So  
4 these are being produced as we speak live to the  
5 public. We could tape them and get that to the  
6 Commission's hearing rooms or we can do them  
7 telephonically in the Commission's hearing rooms.  
8 Given the level of fluctuation over the last few  
9 months of the pandemic, we didn't believe it was safe  
10 yet to have the public return. We're hoping that that  
11 could occur here in the near future, and we're hopeful  
12 that we can get back to these, and I know the staff is  
13 working hard to try to get us back into our hearing  
14 rooms in headquarters in the next couple of months.  
15 But I don't have a firm deadline, a time for you at  
16 this moment. I know they're working with them, and  
17 our team is looking at that. So thank you for that  
18 question.

19 COMMISSIONER ADAMS: Real quick follow-up.  
20 Do they have the same klieg lights as they do here?

21 MR. MORALES: No, they do not.

22 COMMISSIONER ADAMS: All right. Thank  
23 you.

24 MR. MORALES: It's a different setup. The  
25 room is differently lit up. This is a studio, and so

1 it has these bright lights of Broadway for us.

2 COMMISSIONER ADAMS: Thank you.

3 CHAIR CANTU: Any other questions?

4 MR. MORALES: There's a question on the  
5 line.

6 CHAIR CANTU: Yes, please.

7 COMMISSIONER KLADNEY: Dave Kladney here.

8 CHAIR CANTU: Yes, Commissioner.

9 COMMISSIONER KLADNEY: Wouldn't it be  
10 possible, well, then, from what you said, it's  
11 possible to do it live, provide the public with a live  
12 presentation, and then run a tape and put it up on  
13 YouTube.

14 MR. MORALES: That is a potential that  
15 I've been informed is a possibility. We could tape it  
16 at our headquarters' hearing room and then put it up  
17 as a tape. It wouldn't be livestreamed, which has  
18 been the preference of many Commissioners over the  
19 years, but it could be put up either later that  
20 afternoon or the next day.

21 COMMISSIONER KLADNEY: And have we asked  
22 DHS perhaps for a waiver, an interim waiver?

23 MR. MORALES: They won't give us a waiver.  
24 They don't give waivers on cybersecurity and the  
25 potential to crash. So thank you.

1                   COMMISSIONER KLADNEY: I mean, I just  
2                   didn't know what kind of security we had, so I  
3                   apologize.

4                   MR. MORALES: No, no, it's, as you can  
5                   imagine, complicated. And it keeps changing because  
6                   of, you know, hackers developing technology that we  
7                   had seen. In fact, as you well know, you all received  
8                   a notice today to up your Apple phones because of a  
9                   new hack that developed over the last couple of days.  
10                  And so we encounter this all the time, and the  
11                  unfortunate aftermath of all this is that it only  
12                  increases our costs. Our costs for cybersecurity go  
13                  up, they never go down. And so, you know, but that's  
14                  the world we all live in, unfortunately.

15                  COMMISSIONER KLADNEY: Thank you, Mr.  
16                  Director.

17                  MR. MORALES: Thank you, Commissioner.  
18                  Thank you, Madam Chair.

19                  CHAIR CANTU: Thank you. Hearing no  
20                  further questions, thank you, Staff Director. That  
21                  concludes the business on the agenda for today's  
22                  business meeting. And hearing nothing further, I  
23                  hereby adjourn the meeting at 11:17 a.m. Eastern Time.

24                  (Whereupon, the above-entitled matter went  
25                  off the record at 11:17 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

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Date: 08-09-22

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