The Commission convened via teleconference at 11:00 a.m., Catherine Lhamon, Chair, presiding.

**PRESENT:**

CATHERINE E. LHAMON, Chair*

PATRICIA TIMMONS-GOODSON, Vice Chair*

DEBO P. ADEGBILE, Commissioner*

GAIL HERIOT, Commissioner*

PETER N. KIRSANOW, Commissioner*

DAVID Kladney, Commissioner*

KAREN K. NARASAKI, Commissioner*

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director*

MAUREEN RUDOLPH, General Counsel*

* Present via telephone
STAFF PRESENT:
PAMELA DUNSTON, Chief ASCD
ALFREDA GREENE
PAUL MORGAN
DAVID MUSSATT
LENORE OSTROWSKY
MICHELE RAMEY
JOHN RATCLIFFE
BRIAN WALCH
MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC

* Present via telephone
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CHAIR LHAMON: Thank you. This meeting of the U.S. Commission on Civil Rights comes to order at 11:00 a.m. Eastern time on April 20, 2018.

The meeting takes place over the phone. I'm Chair Catherine Lhamon. To confirm that each of the Commissioners is on the line, I'll take a roll call at the outset.

Please say present when I say your name.

Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Present.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Present.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: I'm here.

CHAIR LHAMON: Thank you. Based on that,
a quorum of the Commissioners is present. Is the Court Reporter present?

COURT REPORTER: Yes.

CHAIR LHAMON: Is the Staff Director present?

STAFF DIRECTOR MORALES: Yes.

CHAIR LHAMON: Thank you. The meeting now comes to order.

I. APPROVAL OF AGENDA

CHAIR LHAMON: Is there a motion to approve the Agenda for this business meeting?

COMMISSIONER NARASAKI: I so move. This is Commissioner Narasaki.

CHAIR LHAMON: Okay. Is there a second?

VICE CHAIR TIMMONS-GOODSON: Vice chair Timmons-Goodson second.

CHAIR LHAMON: Thank you. Can I check and see if we have any amendments? I'll start with one. I move to amend the Agenda to add a letter regarding the Census 2020 questionnaire.

Do I have a second?

COMMISSIONER YAKI: Second.

CHAIR LHAMON: Thank you. Are there any further amendments?

COMMISSIONER NARASAKI: Madam Chair, this
is Commissioner Narasaki. I would like to move that we add a statement regarding the immigration judges.

CHAIR LHAMON: Okay. I second. Are there any other amendments?

(No response.)

CHAIR LHAMON: Hearing none, let's vote to approve the Agenda as amended. All those in favor say aye.

(Chorus of ayes.)

CHAIR LHAMON: Any opposed?

(No response.)

CHAIR LHAMON: Any abstentions?

COMMISSIONER YAKI: Commissioner Yaki abstains.

CHAIR LHAMON: Okay. The motion passes. No Commissioner opposed, one Commissioner abstained, all others were in favor.

We'll turn now to a discussion and vote on the chair for our Vermont Advisory Committee.

II. PROGRAM PLANNING

A. DISCUSSION AND VOTE CHAIR VERMONT ADVISORY COMMITTEE

CHAIR LHAMON: Before we begin the discussion, I'm going to offer a brief reminder that objections to this nomination have already been shared
with all the Commissioners.

To the extent anyone would like to discuss continuing objections, I remind my fellow Commissioners that the Commission has a policy not to defame, degrade, or incriminate any person. Each of these individuals has agreed to volunteer time and energy in the pursuit of the protection of civil rights, which we appreciate.

So with that, I'll begin with the Vermont Advisory Committee. The Staff Director has recommended for appointment Curtiss Reed, as Chair of the Vermont Advisory Committee.

We'll open the floor for discussion. I move that we approve this appointment. Do I have a second?

COMMISSIONER NARASAKI: This is Commissioner Narasaki, I second.

CHAIR LHAMON: Thank you. Any discussion on this appointment?

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Yes?

CHAIR LHAMON: Is someone wanting to speak?

COMMISSIONER HERIOT: I did.

CHAIR LHAMON: Go ahead, Commissioner
COMMISSIONER HERIOT: Commissioner Heriot.

I'm going to vote against Curtiss Reed. I think that I should say why on the record.

I don't think he has the temperament necessary to function as a SAC Chair. A few years ago he wrote about a Republican Lieutenant Governor who had adopted Pure Vermont as his campaign slogan.

And you know, I would have thought, and I think most people thought this was an allusion to Vermont's reputation for pure maple syrup. But Reed declared this slogan to be a coded message about making the state racially pure.

He said, and I'm quoting him here, these words denote racial, religious, and cultural oppression. They imply that Vermont is a place reserved for white Christians. Close quote on that.

He also said, and again, I'm quoting here, that these words resurrected the horror of the Eugenics Survey and the 1931 passage of an Act for Human Betterment by Voluntary Sterilization. This measure codified the practice of racism, harassment, and the sterilization of the Abenaki people.

Pure Vermont raises the specter of Hitler's Aryan Nation, and the Khmer Rouge where the
purifying agent was genocide. And the slogan is a --
I'm still in quote here, the slogan is a bitter reminder of the bigotry and racial segregation experiences by blacks under slavery and Jim Crow.

The precipitous drop in Vermont's black population in the early 20th Century was no doubt partially due to the Klan's efforts to keep Vermont pure. You know, that's the end of the quote here.

To me this is just utterly over the top. I can't imagine why -- how this can be the best we can do for a SAC Chair in Vermont.

I know that some of Reed's fellow SAC members objected to him being kept off the SAC back in 2010 when this first came up. But that just makes me wonder whether they should be on the SAC either.

COMMISSIONER NARASAKI: This is Commissioner Narasaki. I support his nomination.

I think by all reports he has served well and with dignity and comported himself accordingly. And note that this statement was made many years ago.

CHAIR LHAMON: Thank you. It sounded like someone was also beginning to speak?

COMMISSIONER YAKI: Madam Chair, this is Commissioner Yaki.

CHAIR LHAMON: Go ahead.
COMMISSIONER YAKI: I was present when --
during the first so called hullabaloo about the
nominee. I expressed my skepticism then.

And I double down on it again that this is
not a fair characterization of this individual. He
was supported strongly by Senator Leahy's office at
that time. Senator Leahy's office -- expressed
confidence in this person.

I also did my own due diligence with
members of the SAC, including the current Vice -- the
then current Vice Chair and other members and felt
satisfied then, as I do now, that this person has the
temperament, the ability, and most importantly, the
commitment to civil rights that we want in our SAC
Chairs.

And so I support this nomination.

CHAIR LHAMON: Thank you. Is there any
further discussion on this nomination?

(No response.)

CHAIR LHAMON: Hearing none, I'll call the
question and take a roll call vote. Commissioner
Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.
CHAIR LHAMON: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?
COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?
COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?
VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes. Two Commissioners opposed, no Commissioner abstained, all others were in favor.

We'll now move to the North Carolina Advisory Committee.

**B. DISCUSSION AND VOTE ON CHAIR FOR NORTH CAROLINA ADVISORY COMMITTEE**

CHAIR LHAMON: The Staff director has recommended for appointment Thealeta Monet as Chair of the North Carolina Advisory Committee. To open the floor for discussion, I move that we approve this appointment. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: Madam Chair, this is the Vice Chair, I will second the motion.

CHAIR LHAMON: Thank you. Is there any
discussion on this appointment?

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Yes, Commissioner Heriot?

COMMISSIONER HERIOT: I'm going to be voting against Ms. Monet although I believe it's a closer case than the Vermont case.

I believe she's exercised poor judgement in putting together witnesses for the North Carolina report on coal ash. I have been told that she had a great deal to do with the selection of the witnesses.

If that's not true, then I'd have a different view. But I'm told it is true.

Like the Commission, SACs should be trying to bring in people with knowledge and expertise to testify at their briefings. You know, we need our reports to contain rigorous analysis.

But when North Carolina brings in a graduate student who bills herself as a dancer/storyteller, and that witness makes rash and defamatory accusations against new people, backed up by nothing that I can see other than a desire for attention-getting drama, you know, that looks very bad.

I'm told her testimony was supposed to be poetry. But it was embarrassing. And so, unless I
hear, you know, pretty firm evidence that Ms. Monet
didn't have anything to do with that, I'm inclined to
vote no.

COMMISSIONER NARASAKI: This is
Commissioner Narasaki. I strongly support Ms. Monet.
I was at the hearing that Commissioner Heriot is
discussing.

It was one of the most powerful hearings I
have ever heard in the years that I have served on the
Commissioner. It was extremely well put together.

People were in tears most of the time.
The testimony was quite compelling. And the person in
question who gave oral testimony, which was in part a
performance piece, also submitted a 70-page public
comment with interviews and other documentary evidence
that discussed the particular environmental justice
and civil rights concerns of members of the county
community.

And she's also a -- works with a breast
cancer action group that is devoted to health justice.
And one of the issues that was very present was the
degree to which the violations that were actual
violations that had been found by court to be
violations, was causing a high level of cancer in the
community.
In addition, Ms. Monet was fabulous. She came to the hearing in a wheelchair, even though she had just very recently had surgery because she felt that the hearing was so important. That is her commitment to the Commission.

And she acquitted herself articulately. And I think she will be a great chair.

VICE CHAIR TIMMONS-GOODSON: Madam Chair, this is the Vice Chair. I also strongly support Ms. Monet.

I know her. Not well. Mainly by reputation. But I do know her. And she's committed.

Commissioner Narasaki took the -- my thought was the fact that I would want to bring to your attention that she was there in a wheelchair. And that speaks to her commitment to this very important work.

I've only heard good things about her. And I was -- I also attended the North Carolina SAC. And I was not embarrassed one bit by the presentations.

And I thought it was thorough, well done, and so I will be supporting her for Vice Chair. Thank you.

CHAIR LHAMON: Thank you. Any further
discussions?

(No response.)

CHAIR LHAMON: I will say that for myself, I would not want attributed to me all of the views expressed in any of our briefings. And so I think that that is not a basis not to seek someone as a chair.

Hearing no further discussion, I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: A very enthusiastic yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes. With two exclamation marks.
CHAIR LHAMON: And I vote yes. The motion passes. One Commissioner opposed, one Commissioner abstained, all others were in favor.

The next item on our amended agenda is a discussion and vote on a proposed letter regarding the 2020 Census Questionnaire.

C. DISCUSSION AND VOTE ON PROPOSED LETTER REGARDING 2020 CENSUS QUESTIONNAIRE

CHAIR LHAMON: Which is slightly revised.

The slightly revised text was circulated by my special assistant yesterday.

I'll begin by reading the text of the letter into the record so we know what we're voting on. And as is our convention, I will not read the footnotes.

The letter is to the Honorable Wilbur Ross. Dear Secretary Ross, the undersigned members of the United States Commission on Civil Rights write to express our deep civil rights concern with your recent decision to add a citizenship question to the 2020 Census Questionnaire in response to a request from the Department of Justice, and urge you to reconsider this decision.

As an independent, bipartisan federal agency charged with advising the President and
Congress on civil rights matters, the Commission has long evaluated the U.S. Census and its accuracy. Critical enforcement of our nation's civil rights laws depends in part on a true and fair count of all Americans, not a process that is jeopardized by a hasty decision to include a question that could have far-reaching ramifications for the health of our country.

Our country relies on the Census in determining essential questions of our democracy such as how many seats a state has in the U.S. House of Representatives. Even in years past without the introduction of an untested question, the Census has undercounted communities of color.

For these reasons, the Commission is particularly disturbed by your decision to include a citizenship question in the upcoming decennial Questionnaire. In other questionnaires, the Census Bureau has inquired about citizenship status, including the long form questionnaire and the American Community Survey in more recent years, but it has been decades, since 1950, that it was included in the decennial questionnaire as you now propose. The decennial Census questionnaire is the one survey that is sent to all American households, and the one survey
that specifically fulfills the constitutional
directive to conduct an actual enumeration of all
persons in the United States.

The need for an accurate count has
typically led the Bureau to do extensive testing and
preparation before making any changes to this
decennial questionnaire, including changes to
instructions, question order, and certainly the
introduction of a wholly separate question.

In 2017 the U.S. Census Bureau conducted
studies in response to the observation of increased
rates of unusual respondent behaviors during test
surveys regarding concerns about confidentiality and
data access relating to immigration.

The findings point to an unprecedented
groundswell in confidentiality and data sharing
concerns, particularly among immigrants or those who
live with immigrants that could have an impact on
participation and data quality for the 2020 Census.

The U.S. Department of Commerce dismissed
these concerns by stating the Census Bureau's analysis
did not provide definitive empirical support for that
belief. But as your analysis also pointed out,
neither does there exist definitive empirical support
for the belief that there will not be a negative
response to the inclusion of a citizenship question.

Moreover, there is an all too real potential for misuse of Census information with a historically and painfully valid basis for concern with participating in a Census that includes such a question.

In the face of the studies by the Census Bureau raising this concern, as well as the concerns raised by Members of Congress, mayors, and state attorneys general from around the country, and the Census Bureau's own advisory committee, we find it alarming that you did not obtain more conclusive information about the potential for damage to the accuracy of this critical survey of Americans before prematurely choosing to include an untested citizenship question.

A group of former Directors of the Census Bureau from both Republican and Democratic administrations noted that it is highly risky to ask untested questions, pointing to the great deal of evidence that even small changes in survey question order, working and instructions can have significant and often unexpected consequences for the rate, quality, and truthfulness of response.

You yourself noted in testimony to the
House Committee on Oversight and Government Reform
late last year that adding untested questions could
reduce response rates, a fact that in and of itself
should counsel against this decision, let alone
factoring in the additional concerns raised by a
significant number of stakeholders and affected
communities.

Thank you for your consideration and we
look forward to your response. Very truly yours, and
it will be signed by the signatures from this
Commission.

I now move to approve the statement and
open the floor for discussion. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: Madam Chair,
this is the Vice Chair, I second the motion.

CHAIR LHAMON: Thank you. Any discussion?

COMMISSIONER NARASAKI: Madam Chair?
Madam Chair, this is Commissioner Narasaki. I need to
note that I must recuse myself from this discussion
and vote.

CHAIR LHAMON: Thank you. Noting that
recusal, any discussion from anyone else?

VICE CHAIR TIMMONS-GOODSON: Yes. I would
like to say just a few words, Madam Chair. I have
what I view as a special connection with the Census
My first professional employment following graduation from law school was as an employee of the U.S. Census Bureau. I served as the 1980 District Aid, one of several 1980 District Managers.

And for me that meant that I was in charge of enumerating the citizens of Cumberland County, North Carolina and ten surrounding counties. And so I supervised the enumeration of citizens.

And from that perch, I observed the large amount of resources that the U.S. Census Bureau expended in order to educate our citizens about the importance of the Census and how hard they worked to gain the trust of our citizens.

And so there have been many, many hours over many, many years to build confidence in the work and the mission of the Bureau and the importance of enumeration. And I'm just really concerned that whatever gains we might make as a result of these changes will be outweighed by the -- I'll call it retrenchment in the willingness of our citizens to volunteer some of their most personal data.

And so out of concern for the effect that it will have on the response rate, I support the letter going out or the statement going ahead.
CHAIR LHAMON: Thank you, Vice Chair. Any further discussion on the draft? Okay.

COMMISSIONER KIRSANOW: Madam Chair, Kirsanow here.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you, Madam Chair. Probably not a surprise, I'm going to vote against this letter for a couple of reasons that are actually contained in the letter.

The letter states that it's highly risky to ask untested questions. I understand the specific basis for that. But I would note, as the letter also notes, that this is a question that has been asked for nearly two hundred years and consistently from 1820 to 1950. And in one form or another, until as recently as 2010, although not of all citizens or respondents. But it's hardly an untested question.

I also agree, and the letter says that critical enforcement of our nation's civil rights laws depends in part on a true and fair count of all Americans. That's exactly right.

Couldn't agree more. A fair count of all Americans. And one of the ways of determining that is to ask whether or not somebody's a citizen of the country. We want to know how many Americans there are.
and how many non-Americans there are.

I also agree that we want to have an accurate Census because it determines, you know, from a political perspective the number of seats or the number of electors. But if we don't know how many citizens there are, we have a distorted or warped understanding of how many people are entitled to vote.

And that affects redistricting. That affects the allocation of electors. There are districts that may have outsized populations of non-citizens.

But because those districts have been drawn in a certain way that could give citizens that live in a district where the number of citizens are diluted, outsize power. That's again something we'd want to know.

So for those reasons and others, I'll be voting against it.

CHAIR LHAMON: Thanks Commissioner Kirsanow. Just to be clear, the letter does not take the position that it would not be valid to include the citizenship question ever on the decennial form.

But that it should have gone through the rigorous testing and analysis process that other questions went through. And while it is of course
correct that the question has been asked in the long form every ten years since 1950, it has not been asked, and therefore has not been tested, in the form that goes to all people who complete the Census survey.

And so its impact on that completion has not been tested and is extremely risky. In addition, the citizenship question will continue to be asked in the American Community Survey, which is the replacement for the long form, which was -- in 2010.

So the ability to get the benefit of that question for all of its purposes will continue as it has every ten years since 1950. So we don't stand at a risk without it.

But we do stand at a risk for what will take place with this survey going forward because of the failure to meet statutory deadlines for -- to appropriately test the question for that purpose.

Are there any further discussions?

COMMISSIONER YAKI: Madam Chair?

CHAIR LHAMON: Go ahead, Commissioner Yaki.

COMMISSIONER YAKI: Madam Chair, I appreciate the intent of this resolution. And I will be supporting it.
But I just wanted to add that for me especially, it is difficult to separate what I think was an 11th hour and extremely cynical attempt to continue the scare and intimidation tactics against minority communities in this country by the Trump Administration.

That the -- and I would just remind, and Commissioner Narasaki would be able to second this, were she would be able to participate, but the -- this kind of information as much as we like to think it is private, it is not as private as we think it is.

It has been used and was used in locating and identifying Japanese Americans for the purposes of ensuring that they were all -- they were accounted for during the internment process in 1942. To the point where they could isolate on a block by block basis on where they could direct troops and law enforcement to ensure that Japanese Americans were removed from their homes and put on trains.

I believe that this by -- you know, the fact that it did not go through testing shows even more the cynical use of this for political purposes almost contrary to the -- and contrary to the purposes that -- and concerns raised by Commissioner Kirsanow.

So I will be supporting this. But I also
wanted to point out that there is a deeper and more insidious context -- to the addition of this question than was raised.

CHAIR LHAMON: Thank you, Commissioner Yaki. Any further discussion?

COMMISSIONER KIRSANOW: Well, I might go along with that if we're also going to remove questions related to race and national origin. It could be used very cynically by nefarious governments such as the Trump Administration to isolate and localize people.

CHAIR LHAMON: Mr. Kirsanow, are you offering an amendment to the letter?

COMMISSIONER KIRSANOW: No. I'm just being facetious as usual. But nonetheless, it is -- there's a little bit of consistency with respect to that.

I still maintain that it's something that is purportedly untested that's been done for years, and years, and years, is the complete opposite of untested. And as a sovereign nation, the United States in an enumeration can ask a number of questions.

And one of the questions seems to be how many of us are Americans? It's an easy question to
ask. And it has to do with things such as the
assignment of electors and the drawing of districts.

COMMISSIONER YAKI: Well, this is
Commissioner Yaki. We can get into a deep
philosophical discussion about what being an American
is. And whether or not a nucleus people who have
lived here almost all their entire lives, and
contributed to this country, fought for this country,
and yet are denied the ability to be citizens of this
country.

So we can discuss what being an American
is. But I don't think this letter is the focal point
for that.

COMMISSIONER KIRSANOW: Okay. Well, it's
the letter that talks about Americans. I simply raise
it to repeat the fact that the letter is concerned
about Americans.

COMMISSIONER YAKI: Yeah. But your
definition of American is a citizen. And I'm telling
you right now that I think that being an American has
a lot more traits than that.

And we can go into a very long discussion
about that, Commissioner Kirsanow. And again, I point
to people who have lived here and who have fought for
our country overseas, and yet are not recognized as
Americans.

But are probably more American in many respect than others that you and I would --

CHAIR LHAMON: All right. Okay. I'm going to call the question. Take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I'm going to vote no.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Narasaki, I'm just confirming you are recused?

COMMISSIONER NARASAKI: It's killing me. And yes, I am recused.

CHAIR LHAMON: Thank you. Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes. Two Commissioners opposed, one Commissioner
is recused, all others were in favor.

The next item on our amended agenda is a discussion and vote on a proposed statement entitled U.S. Commission on Civil Rights Denounces Imposition of Immigration Judge Quotas, introduced by Commissioner Narasaki.

D. DISCUSSION AND VOTE ON PROPOSED STATEMENT

ENTITLED U.S. COMMISSION ON CIVIL RIGHTS

DENOUNCES IMPOSITION OF IMMIGRATION JUDGE QUOTAS

CHAIR LHAMON: Commissioner Narasaki, could you please read the statement you proposed for consideration?

COMMISSIONER NARASAKI: Yes. Thank you, Madam Chair. And I repeat your reminder that I, by tradition, I am not reading all of the footnotes because that would keep us here forever.

The statement reads, U.S. Commission on Civil Rights Denounces Imposition of Immigration Judge Quotas. The U.S. Commission on Civil Rights strongly objects to what amounts to an annual seven hundred case closure quota on immigration judges imposed by the Department of Justice.

The Commission is aware that the backlog of immigration cases itself poses substantial due process concerns. However, placing limitations or
ill-considered pressures on immigration judges to resolve cases impedes fair access to justice, endangers the due process rights of immigrants, and is a startling attack on the independence of immigration judges.

As Judge Ashley Tabaddor, President of the National Association of Immigration Judges, NAIJ, notes, the recent DOJ action marks a crisis point. Immigrants are entitled to have their immigration carefully adjudicated by judges who do not base their decisions on factors beyond the merits of each case.

Moreover, because immigrants only have the right to counsel in immigration proceedings at their own expense, most have no attorney, which places additional responsibilities on the judges to ensure that due process is provided and that cases are correctly decided under our laws.

The immigration court system faces a large backlog, and immigrants, including those seeking refuge or fighting deportation, often wait years for their cases to be decided.

Although addressing these issues is critically important, imposing quotas is the wrong approach and will do little to address the problem. Congress has recently appropriated funds that enable
the Administration to add one hundred judges to the approximately three hundred fifty judges already on the bench.

This addition of jurists who can exercise their judgement in the fair administration of justice is an appropriate response to the backlog. Quotas will negatively affect the quality of immigration decisions and increase judicial errors that have a life or death consequence, and will only create inefficiencies on the appellate level.

Separately, measuring judges by the number of cases they close rather than the quantum of justice they deliver and the soundness of their decisions badly misses the mark for actual access to justice in this country.

For decades the Commission and its state advisory committees have investigated and reported on the often negative civil and human rights implications of our nation's immigration laws and policies. We strongly urge the Department of Justice to rescind the quota system.

Chair Catherine E. Lhamon stated, the fair administration of justice requires that each individual who comes before a judge has the assurance that his or her case is not hastily judged merely to
meet a quota requirement. Anything less is an attack on the necessary independence and impartiality of the judiciary.

CHAIR LHAMON: Thank you, Commissioner Narasaki. Do we have a motion to approve the statement to open the floor for discussion?

VICE CHAIR TIMMONS-GOODSON: So moved.

CHAIR LHAMON: Is there a second?

COMMISSIONER ADEGBILE: Yes, I second, Commissioner Adegbile.

CHAIR LHAMON: Thank you. Is there any discussion on this statement? I'll begin with you, Commissioner Narasaki, as the sponsor of the statement.

COMMISSIONER NARASAKI: Yes. I want to add that the immigration laws are extremely complicated because they often raise questions of human rights, international law, state and local law, and very complicated asylum refugee law on top of the immigration laws.

Immigrants also often are not speaking English and may be facing trauma when they come, particularly those who are seeking asylum. And it takes them time to be able to tell their stories and also to be able to identify counsel who can help them
get through these often complicated cases.

There was a hearing this week in the Senate Judiciary Committee. And I think the case was finally made that it would be -- the issue is not whether immigration judges are working hard enough, they have huge caseloads already. So simply forcing them to try to do more is not going to actually help the situation.

And in fact, one time when in another Administration, efforts were made to try to expedite this, what happened was the immigration appellate system became overly backlogged because judges stopped writing decisions and articulating their reasoning.

So people automatically were appealing. And then the appellate judges have no real record in which to try to make their assessments.

We -- I believe that the answer is what Congress is already pursuing, which is adding to immigration judges. But I also would add they need to add support staff and law clerks. Most judges do not have much assistance in trying to get through their cases.

In addition, unfortunately if the Administration was truly concerned about the efficiency, they would look at the decision they
recently made, which is to suspend the Legal Orientation Program.

And under this program, attorneys and paralegals working pro bono for nonprofit organizations meet with detainees and help them try to understand the law and help them try to understand whether in fact they have a case or not.

This has been found repeatedly to help make the system more efficient and less costly. And yet the Administration has suspended this while they evaluate it.

So I will stop there.

CHAIR LHAMON: Thank you. Any further discussion on the statement?

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I just have a question. I have been told that requirements of this sort are very common for ALJs throughout the federal bureaucracy.

Commissioner Narasaki, do you happen to have information? For example, I'm told that Social Security ALJs have similar requirements.

COMMISSIONER NARASAKI: I think that any -
COMMISSIONER Kladney: Actually, I do have that information. In case anybody wants to hear it.

They don't have a requirement of a case number. They have what is called, I think it's goals or guidelines to try to achieve a certain number.

But it is not a requirement. If you look at the different judges, there are reports and the number of cases that they're able to close vary.

There is no minimum requirement.

COMMISSIONER Narasaki: Thank you, Commissioner Kladney. As he notes, there are targets. But these are set in a way that it would actually affect the judges' ratings and their ability to keep their jobs, which induces a whole different incentive in terms of how they react to cases. And I also note that immigration cases are not analogous to social security cases where the laws are pretty clear and far less complex than what you're facing with immigration laws.

And the loss for social security is generally dollars, which can be made up on appeal. But the loss in immigration cases is deportation, sometimes to countries where people have been persecuted and may actually lose their lives. And certainly, they'd be separated from families, from
their businesses, from homes that they may have.

So there is a lot more at stake when you're talking about the immigration system when there are erroneous decisions and much harder to actually make up for those mistakes.

VICE CHAIR TIMMONS-GOODSON: Madam Chair, I'll be voting in favor of the statement. And in my mind, as a former judge, there is a huge difference in goals and quotas.

You know, when you're talking about quotas and whether or not someone's going to -- a judge is going to keep his or her job, you are getting into the judicial independence arena. And it's not something that we want to do. I hope that we'll do all we can to discourage the Administration from going forward with this.

CHAIR LHAMON: Any further discussion on this proposed statement?

COMMISSIONER Kladney: Madam Chair, this is Commissioner Kladney.

CHAIR LHAMON: Go ahead, Commissioner.

COMMISSIONER Kladney: If I may?

CHAIR LHAMON: Sure.

COMMISSIONER Kladney: I haven't been able to determine whether the government did any time
management study at all in coming up with the figure of seven hundred cases. It appears that this was kind of picked out of the air.

And it does provide that 700 cases is a mandate rather than a goal or a guideline. I know in my district we have one judge. We have a two year backlog for cases here, and my judges would be very helpful. I think it would be interesting for the record if we actually set out the types of cases that these judges view.

As Commissioner Narasaki said, social security law is well set. And the case -- the cases have just fact patterns that have to fit into the law.

Here there are many different types of cases. First of all, there are two, only two hearings. There's a master hearing which is like, I think, a preliminary hearing. At least this is what I have been able to determine, you know. And then there's a merit hearing, which is a hearing on the facts.

And immigration judges do a very -- varied types of hearings and have to review the files prior to the hearing. They do green card cancellation and removal hearings. They do asylum hearings. They do 42B application hearings on ten year residents. They
do I-751 hearings on the bona fides of marriages. They do proof of citizenship hearings where someone is arguing citizenship which will affect the jurisdiction of the court. And they do waiver hearings.

Whenever these hearings are conducted, they last two to three hours at a minimum. And I would note for the record that having done social security hearings, if you get a 30 minute hearing, you're doing pretty good.

So I think these judges are very busy. And I think the government by mandating the case is actually -- and mandating 700 cases a year is -- violating the due process rights of the people who would be normally found to be able to stay in this country and not violating the immigration laws if in fact they get deported in the hearing where a judge feels rushed and has to get a number out.

For those reasons I think that we should all be supporting this letter. I don't believe any lawyer believes that a judge should be held to a certain number.

Clearly if, you know, there are guidelines and somebody is consistently failing to meet objective guidelines, that might be a reason for a training or something like that, but clearly not to affect the due
process rights of the people that come before the
judge. Thank you.

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I just want to point
out, I'm looking at the document right now. It does
use the term goals, not quotas.

So if the concern is that these are quotas
and not goals, and I think that the difference is
often overstated. But it says goals, it doesn't say
quotas.

COMMISSIONER NARASAKI: I would like to
note that in fact my statement notes that they act as
quotas. They're not being called quotas for obvious
reasons.

But because of -- it's a set number. And
because it automatically notes and then you will be
considered to be performing less than satisfactory,
then it is in fact a quota.

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I just want to point
out that the next time we talk about quotas and goals,
I hope that Commissioner Narasaki will retain her view
that goals really are quotas.
Usually people who are left of center are arguing it the other way.

COMMISSIONER NARASAKI: We can debate what is a quota. But I'm saying in the way this is being used, it is in fact a quota.

And in fact, that is not just my personal view, but it's also the view of the American Bar Association and others who have raised this issue.

COMMISSIONER KLADNEY: I think it's more like a mandate.

CHAIR LHAMON: Okay. Unless there's further discussion, I'm going to call the question. Take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADENEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.
CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes. Two Commissioners opposed, no Commissioner abstained, all others were in favor.

III. ADJOURN MEETING

And if there is nothing further, I hereby adjourn our meeting at 11:44 a.m. Eastern Time. Thank you all.

(Whereupon, the above-entitled matter went off the record at 11:44 a.m.)