The Commission convened via teleconference at 11:00 a.m., Michael Yaki, Subcommittee Chair, presiding.

PRESENT:

MICHAEL YAKI, Subcommittee Chair*

CATHERINE E. LHAMON, Commission Chair*

DEBO P. ADEGBILE, Commissioner*

DAVID Kladney, Commissioner*

MAURO MORALES, Staff Director*

MAUREEN RUDOLPH, General Counsel*

* Present via telephone
STAFF PRESENT:
PAMELA DUNSTON*, Chief ASCD
ALFREDA GREENE*
ELIZABETH PAUKSTIS*
BRIAN WALCH*

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

* Present via telephone
(11:10 a.m.)

THE OPERATOR: Good day, and welcome to the United States Commission on Civil Rights' Broken Promises Discovery Conference Call.

At this time, I'd like to turn the conference over to Chairman Yaki -- or Commissioner Yaki. Please go ahead.

COMMISSIONER YAKI: Good morning. This is Michael Yaki. Commissioner, U.S. Commission on Civil Rights, Chair of the Discovery Subcommittee.

And at present, it is 11:11 a.m. east coast time; 8:11 a.m. pacific time, which is where I am calling from. It is Tuesday, November 27th, 2018.

Present today by telephone are Commission Chair Catherine Lhamon.

Are you there?

COMMISSIONER LHAMON: I am.

COMMISSIONER YAKI: Commissioner David Kladney.

COMMISSIONER KLADNEY: Yes, here.

COMMISSIONER YAKI: And Commissioner Debo Adegbile.

COMMISSIONER ADEGBILE: Present. Good morning.
COMMISSIONER YAKI: And are there any other commissioners present?

Hearing none, we have a quorum of four commissioners and today's item is to deal with the response of the Department of Homeland Security to the interrogatories approved by this committee and sent out approximately two months ago -- over two months ago.

The Department of Homeland Security has refused to respond, quoting a lack of jurisdiction.

And after repeating that we do have jurisdiction and citing the fact that it is part of the Commission's mandate and its statute, we gave the Department an additional 30 days and they still have not responded.

So, we are here to discuss what response the Commission may have with regard to this action by DHS.

Fellow Commissioners, we have options that we can consider, but, first, I wanted to sort of get a sense from you about what your thoughts are about what we may want to do in response.

And I'll ask the chair for her initial thoughts.

CHAIR LHAMON: Thank you, Commissioner
Yaki. This is Chair Lhamon.

I think there are several issues. One, the issue of how to respond to the fail to respond to our discovery request.

I think we've had some other discovery that we were contemplating propounding, and so we ought to talk about whether and how we would do that.

And it strikes me, given where we are with passage of time and with repeated news reporting of continued family separations, continued unconscionable conditions for children and families in detention and very curious concerns of the ways that these issues continue to proceed, I think it would be good for us to move quickly to get information and to be able to update the Commission's last report on the topic.

My own hopes would be to try to proceed to gather as much information as we could in the near term recognizing that we have not received the response that we expected and to which we are legally entitled to date from the discovery that we have requested.

It seems to me that options we ought to consider would be identifying whether we can hold a briefing or conduct a site visit to allow us to see with our own eyes and ask questions and take in
information, whether there are written responses that we think we need to be able to update the recommendations and to draw current conclusions, and then also identify what cost considerations apply to those choices.

COMMISSIONER YAKI: Thank you.

Commissioner Kladney, your thoughts?

COMMISSIONER Kladney: There we go. I hit the mute button.

Hi there. I've been really focused on the conditions of the stories I've read about these teenagers, they have 14,000 of them, I guess, in custody.

There was recently a story on -- from a Texas reporter about the conditions and the numbers -- the numbers in detention are continuing to rise.

And the photos I've seen are temporary huts -- and I don't know how you describe them -- and the children are spread throughout the country.

I am unsure -- I mean, I think we should go visit these places and maybe a couple of site visits, and bring Spanish-speaking interpreters for this so we can speak to the detainees and see how they're being treated.

I have great concern about creating
permanent damage to these people, PTSD and things like that being in detention because we don't understand the entire conditions.

I remember when we visited Texas before, the detention center is -- at that point, people weren't being held for more than probably six months at the latest -- longest, but now these children are being held without parents for -- indefinitely and they're talking about how they're trying -- they're super vetting the people who are applying to take these children and I just think it's an overall problem.

So, I favor going to these sites and actually having physical inspections and speaking with the detainees and the people who are detaining them. That's my opinion.

COMMISSIONER YAKI: Thank you, Commissioner.

Commissioner Adegbile.

COMMISSIONER ADEGBILE: Thanks for all the views that have been shared thus far.

The scope of the humanitarian crisis both with respect to the young people and children and infants who have been separated from their families and the impact that it's having on these young people,
as Commissioner Kladney has just spoken to, is sort of horrifying to think about.

60 Minutes -- some of you may have seen the 60 Minutes piece this weekend, which, among other things, showed a three-year-old child being reunited with his mother.

And as the mother cried, the child seemed almost not to recognize her and not to really come to her and recognize her as his mother.

They had psychologists and others testifying -- or giving opinions about the impact consistent with what Commissioner Kladney has just spoken to, the idea being that relatively short separations for children at these critical, developmental stages can have carry-on effects through the years. It really speaks to the dimension of the crisis.

And what we've seen, additionally, is that other young people who are now at the border, or close to the border, are in danger and in situations that are physically exposing kids to tear gas and other agents that are not something that we should be seeing for kids in diapers being exposed to tear gas and those traumatic situations.

And so, I would like to associate myself
with the others and suggest that rather than a long
and drawn out fight over documents, maybe our best and
highest use is to bear witness and to use the power
and authority of the Commission to go and to make a
trip and to have our accounts be based on our direct
observation about what is happening for these young
people who are being held.

I say this not only for the reasons that
have been articulated, but I also want to take
cognizance of the fact that there are many
investigatory bodies who are entering the fray in
terms of seeking discovery about some of these issues.

And maybe the unique contribution we could
make, is along the lines that Commissioner Kladney and
others have suggested.

And so, those are my initial thoughts, but
I look forward to hearing the discussion from
everybody. Thank you.

COMMISSIONER YAKI: Thank you very much,
Commissioner.

Commissioners, this is what I think: I
think all of you have eloquently stated the magnitude
of the crisis involving young people at the border.

I think that that, without a doubt, is a
humanitarian and human rights abomination that is
occurring, a trauma, and the potentially permanent, psychological harm being created for children that we would be criticizing, and probably sanctioning other countries for if they were to be engaged in any of these actions, is sobering and worthy of our attention.

To me, there is an overriding issue that we need to discuss. There is an issue here that goes to create what we are as a commission, and that is we are given, by the Congress, and it has been our mission, from the beginning, that we have the ability to have unfettered investigatory powers into civil rights activities and violations in our country included by our government.

And the fact that a federal agency directly under our purview has refused that jurisdiction, is a very troubling issue.

And I agree that given the anomaly of -- is not an anomaly given our nature of divided government of where the enforcement of our activities is controlled by -- or delegated to an executive branch that is the same executive branch refusing to allow us jurisdiction, puts us in an interesting position.

Because for this, and future commissions,
and for commissions that have to have gone in the past, to simply raise the white flag on this, I think, is a disturbing precedent to set regarding our ability to ask the tough questions about civil rights violations in this country.

DHS' interesting and flawed assertion that individuals subject to our prosecution are not subject to our jurisdiction, we have to realize that this is something that has to be addressed.

Now, given the fact that there is a crisis currently happening that we need to continue to look at what options and remedies we have at our disposal given our budget limitations, it is obvious that attempting to enforce our jurisdiction will be possibly time-consuming and not in the best interest of the people, especially the children, but I think nevertheless we need to do something about this particular issue.

So, in addition to the discussions -- suggestions we've had so far, I believe that we should, at the very least, send a letter from this commission to the appropriate committees in Congress documenting the lack of cooperation and documenting the lack of jurisdiction asserted by the Department of Homeland Security and putting on the record that our
objections and severe disapproval of their actions so that Congress, in its oversight capacity, can take this up. I would suggest that we do that regardless of what course of action we do.

I think that -- I would like to get your thoughts on that, but then the second thing I'd like to say, is that I think we have essentially three options with regard to the imminent crisis.

Option 1 would be a briefing, as the chair stated. There are many agencies and entities that are dealing with this that have information that they can use to help us document our records to supplant and replace and with possibly even better accuracy than the DHS would provide to us. We can do that briefing in Washington, D.C.

The second would be to bring the power of our witness, as Commissioners Kladney and Adegbile have suggested, and have a site visit in Texas at a facility that would enable us to bring our firsthand experiences to this.

Then there's a third option I would suggest, which would be a combination of the two. And that would be to do a site visit and briefing on the border where we would be able to draw upon the testimony of groups that are there on the ground.
working on this where we can firsthand attempt to
visit these.

And, again, given DHS' lack of recognition
of our jurisdiction, we may not even be able to get
in, but at least being there at the border with these
groups.

And I would just add there are entities
that are not federal that would be subject to our
discovery power and a site visit in a third-party
private operator of the facilities that we might want
to think about in terms of trying to get -- compel
their attendance at such a thing.

I think those are the three -- those are
three options I can think of that we can discuss.

It may be that the best course of action
would be to have staff give us budget and timing
suggestions for each because, again, we have our
resource limitations and we have a lot of other work
that we need to get done that is very important to do.

A fourth option would be to potentially
take the -- a less expensive option we might want to
consider, and let me just throw it out there, would be
to take essentially the guts of our interrogatories
that we have propounded and give them to -- send them
to organizations and ask what they have found in
response to these types of questions and use that to supplement our record.

That would probably be the most inexpensive, probably the least compelling, but nevertheless it could be useful depending on what our budget resource and timing limitations are.

So, I turn this floor open to discussion and may decide that we want to task this to staff, but we may want to, in order to -- what we may want to do, is have staff prepare recommendations for the full board meeting -- Commission meeting in December for us to vote on and take action as an entire body.

So, I throw that open to the floor and ask for your thoughts.

COMMISSIONER ADEGBILE: Commissioner Yaki, this is Commissioner Adegbile.

Could you just bullet again the four different -- just briefly the four different considerations --

COMMISSIONER YAKI: Sure.

COMMISSIONER ADEGBILE: -- that you've laid out?

I want to make sure I have all four.

COMMISSIONER YAKI: Sure.

Number 1, is a briefing in Washington,
D.C., at Commission headquarters.

Option 2, a site visit by the Commission to a facility in Texas to bear witness as has been described before more accurately by you and by Commissioner Kladney.

Option 3 is a site briefing. That will be a briefing on the border combined with a potential site visit, if we can do that.

Option 4, and this may be a supplement to the existing three, not standalone, Option 4 would be to send our interrogatories to groups that have been working on this issue to see what information they have so we know what holes there are that need to be plugged that perhaps could be filled by congressional oversights in the future.

COMMISSIONER ADEGBILE: Thank you. Very helpful.

CHAIR LHAMON: This is Catherine Lhamon. I have several thoughts. Thank you for laying out the options and also for considering all of our views today.

I think each of us views this as an actual emergency that is devastating to know is happening and to worry about the situation.

We have been, among this subcommittee,
working on this issue now, I believe, (telephonic interference), and I have very serious concerns about delay in continuing our thinking given the seriousness of the issues that people are living every day right now and the seriousness of the recommendations and concerns that this commission outlined in 2015 that have only become more extreme and more emergent in the time since then that I think it would be helpful for us to be able to update our views about.

So, I think it's important for us to act as quickly as I can and remind us that when we formed the subcommittee, I had committed that we would not be able to use staff time for this work because of the severe budget constraints that the Commission operates within and because of the full-time agenda that the Commission had already voted to take on.

So, as we think about these options, I believe they are options are dependent on commissioner and special assistant work as distinct from staff work, and also dependent on the existence of budgetary support for the options.

For myself, I think it would be helpful to take in as much information as we can. I also know that the concerns that we outlined in the recommendations that the Commission made in the 2015
report obtained today as the conditions exist and ought to be modified to reflect the facts as they exist now.

Much of that we know based on public reporting and the concurrence in that reporting from this administration and its officials.

So for myself, I think that speed in getting to a recommendation based on facts that we can be confident about is the critical way for us to use our voice.

The concerns, Commissioner Yaki, that you raised about a particular agency or administration not responding to the jurisdiction of the Commission, I think we have outlined, in very strong terms, our disagreement with those views.

And we have, as one would in any adversarial context, the choice about how to respond to that.

And it is not unfamiliar, I think, to any of us to have counsel for an adversary reluctant to accede to a request and reluctant to respond in a timely fashion.

So, then we need to choose how we want to respond, we could be formalistic about it and insist on recognition of jurisdiction.
I think choosing that option would operate
to the detriment of the children and families who are
suffering at the border at the moment.

And it is more important for us here, as
in so many situations like this, to speak to the
critical issues that are within our jurisdiction and
for which we accepted our commission appointment and
to be able to bring our expertise to the subject.

If there are ways that allow us to do that
quickly, I vote we take them.

COMMISSIONER YAKI: Commissioner Kladney,
Commissioner Adegbile.

COMMISSIONER ADEGBILE: Go ahead, Kladney.

COMMISSIONER KLADENEY: Okay.

I understand the budget constraints. We
talked about that several times before and we had made
the agreement that you're not going to use staff time.

So, I think any kind of site briefing,
which, in my years on the Commission, takes an
extraordinary effort on behalf of our staff, would be
difficult to have or to conduct. I'm trying to use my
"big boy" words.

I think that we should inform Congress
about the difficulty we've had in getting response
from the administration, but my idea is perhaps a site
visit so that we can have some actual substance to the
letters to what we have done in regards to the issue
would be helpful.

And the other issue is whether we're going
to be allowed into these sites in light of the
response to the interrogatories. So, that's kind of
where I'm thinking -- or what I'm thinking.

I think a briefing on the site would be
too difficult to do with just special assistants.
They don't have the experience or expertise to set one
up.

I know Ms. Dunston and the staff have done
miraculous work in the past, however, we promised that
we would not impose upon that because of they're being
stretched to the limit now. So, I think we should
because we made a promise.

Briefing in D.C., I still think that takes
a lot of staff time. That's something I think the
director should weigh in on. Those are my thoughts.

COMMISSIONER YAKI: Commissioner Adegbile.

COMMISSIONER ADEGBILE: So, I'm -- first,
I thought it was very helpful, Commissioner Yaki, that
you laid out these four approaches and are prepared to
think about these in creative ways.

I guess my -- where I am right now is that
I think that there are a couple of core points that are animating what our response should be.

One, is the one that Chair Lhamon pointed to, which is just the urgency of the problem and finding a response that meets the urgency of the crisis.

You know, I think what is noteworthy and what many tend to miss as we think about the impact at the border and for the United States, is that, you know, many of these families and kids -- people ask the question, "Well, why are parents putting their kids in harm's way in the first place?" and try and heap some blame upon the parents for putting their kids in very difficult circumstances, and I think that misses the point.

The point is, of course, that these people are leaving because of the very difficult circumstances in which they are living, and sometimes it's a choice about whether or not you stay and die today or take a chance to live to see tomorrow.

And faced with that choice, I think any parent would exercise the desperate decision to try and live another day than to stay and face the violence that is occurring in many Central American countries.
And so, I think all of this underscores the urgency point that I know we all feel and that Chair Lhamon has pointed us to.

The two other things that I think need to shape our decision, whatever it is, and I think Commissioner Yaki spoke to this, is understanding the range of actors in the field that are dealing with this issue so that we can focus our limited resources on being a value add.

And I appreciated the extent to which Commissioner Yaki was focused in that direction not simply duplicating efforts that others are making, but thinking about what the distinctive contribution could be, I think that's always important for us.

And then the budgetary constraints, how do we find a best solution in light of the resources that we have available to dedicate to this because it's a tremendously important issue.

Obviously, there are other commitments that the Commission had simultaneously, and so we have to figure out a way to balance our many commitments.

Those are the three principles I'm focused on, urgency, who are all the players in the field so we can have a distinctive contribution, and then what is the right size in terms of budget constraints.
And, you know, I think that there are aspects of the site visit that may line up nicely with those considerations, but I'm open to hearing other permutations that they think could be brought together in an effective way.

COMMISSIONER YAKI: Here's a question I want to pose to the group: We have a situation where through, really, no fault of our own we have been stymied by the administration in getting information in a timely basis that I believe, at that time, would have been extremely helpful and valuable to many of the groups that were working.

I think that the -- I think that we should proceed on a set of parallel tracks. One, I would like to proceed by immediately sending copies of the interrogatories to groups that we know are working on this and ask them whether there are any -- whether -- in the questions that we asked, is there any information that they did not receive that they do currently not have and they would find helpful if the agency -- if they were to answer that question.

And in that, we can work to highlight those for oversight by Congress in supplementing those responses. I think that would be one way to have an immediate contribution to the ongoing work of these
So, would anyone have an objection to that going forward?

COMMISSIONER KLADNEY: Can you explain that a little fuller, Commissioner Yaki?

COMMISSIONER YAKI: Sure. Sure.

COMMISSIONER KLADNEY: And I -- so, you want to send the interrogatories to groups so they can supply us with the information they have and what they don't have; is that correct?

COMMISSIONER YAKI: Well, I don't want to make a lot of work for them, but instead -- so, we can talk about whether we want them to send us information that they have or if we just want them to identify what questions we asked that they were to find useful in their efforts and had answers to, and then have those questions delivered to the appropriate oversight body in Congress for them to follow up on through their oversight of DHS.

That would be one question whether we would ask -- and I say that because that's one track, and I don't want them to potentially respond back on what information they do have, because I think that would duplicate what my next thing would be, which is do we want to -- given the sense of urgency, and I
think we all feel it, and especially these images of Homeland Security tear-gassing women and children at the border becomes even more exigent, I wonder if the -- and I do have concerns that given DHS' posture, whether we would be able to get into any facility at the border at this time. I have severe doubt on our ability on that front.

And the type of time in negotiation that might occur with that might be, you know, frivolous, but I welcome thoughts on that.

But I think that if we want to address the issue, the urgency and timing for the Commission to get its voice heard on this, perhaps the most responsive and least costly method would be to invite the -- to the extent possible, the Washington representatives and organizations that are down at the border to a -- what I would call a supplemental briefing at our Commission meeting in December, which we already have scheduled.

It would be as informal as we could make it in terms of the demand and time on our staff, and simply set aside some time for them to come and testify about what they have found and what their conclusions are and what additional information they seek that we could act upon and that we could also
refer to oversight bodies to act upon as well.

I just think that in terms of being the least staff demanding in timing, that might be something we could -- might be able to pull off, I don't know if we can, in a short period of time, without ratcheting up the whole machinery of the Commission.

I would like to go to the border, I mean, that would be our preference, I just think that we would be stuck in negotiations with a recalcitrant and obstinate and obfuscating agency that has already refused the jurisdiction of the Commission to ask it questions, much less go inside physically and bear witness to what is going on.

That's my -- and I agree with Commissioner Kladney that a full briefing at the border would be a production -- at a border facility would be a production and would be expensive, probably not within our reach at this point.

And, you know, those are my thoughts and I welcome your thoughts. Let's start to narrow this down a little bit and accede to the chair's admonition to move quickly and to move with urgency.

CHAIR LHAMON: This is Catherine Lhamon.

Thank you, Commissioner Yaki. I appreciate the
summary and also the path forward.

I wonder if we could offer the friendly amendment that we would also issue the subpoena to HHS [Department of Health and Human Services] that we have drafted and, I think, that the subcommittee has approved.

And so, if we were actually to issue it, we may get some information from HHS and perhaps we also could share -- if we were to send the copies of the interrogatories - if we were to share the copies of the interrogatories, we would then share both, the DHS and the HHS interrogatories.

COMMISSIONER YAKI: Sure.

COMMISSIONER KLADNEY: I'm not clear on that, Madam Chair.

CHAIR LHAMON: We had drafted, and I think that the subcommittee had approved, text for a set of interrogatories to issue to HHS, but we then didn't take the staff to issue them.

So, my hope would be that we would issue them and then we would -- if we were to share copies of interrogatories with groups, we would share both interrogatories that we have already propounded to DHS and the newly propounded interrogatories to HHS and solicit views on both.
COMMISSIONER KLADNEY: But I thought you said something about subpoena.

CHAIR LHAMON: I did, but I'm misspeaking.

COMMISSIONER KLADNEY: Okay.

CHAIR LHAMON: Sorry.

COMMISSIONER YAKI: A Freudian slip.

CHAIR LHAMON: It was. Thank you.

COMMISSIONER ADEGBILE: Can somebody restate the overall proposal with the amendment just so we're clear on what we're trying to land on?

COMMISSIONER YAKI: Well, I don't think we have a -- Commissioner Adegbile, I don't think we have quite a full proposal yet.

What we have, is that Commissioner Lhamon has suggested that, to the extent that we share interrogatories with groups that have been working on this issue, we share both the set that was refused response by DHS, and the one that was approved and which has not yet been sent to the Department of Homeland by Health and Human Services regarding their jurisdiction and treatment of young people since then.

So, she wanted to add the DHS interrogatories to that, but we've still yet to land on what will be the expedient -- full expedient response that others have mentioned.
Commissioner Lhamon -- Chair Lhamon, may I ask a question of you? In your initial statement, you have spoken about a briefing.

What kind of briefing were you thinking of and what kind of timing were you suggesting?

CHAIR LHAMON: Well, I think that certainly an option of a briefing in D.C., I think that is an expensive option and I'm not sure it's the best use of resources, but it is an option.

We also could invite people to share information with us in writing that we then can assess and rely on.

And we -- if we were to conduct the site visits, could hold an open forum, for example, or we could hold an open forum following one of our federal meetings.

I think it's probably hard to get any of those options done for our December meeting, which is just next week, but for the January meeting we would have sufficient time to prepare and give notice if we were to follow limited task for that.

COMMISSIONER YAKI: Your suggestion is that we have a public forum and ask for written information from those people working on this -- in this area; is that correct?
CHAIR LHAMON: I think that would work well and it would be a good way for us to allow people with all kinds of views to share information on which we could rely and to submit written information on which we could rely.

COMMISSIONER KLANDNEY: Do you see the full commission participating in this public forum or just the subcommittee?

CHAIR LHAMON: I welcome my fellow commissioners who are not on the subcommittee participating if they are so inclined, but we did vote for a subcommittee and so, at minimum, we would want to see the subcommittee members participate.

COMMISSIONER YAKI: So, what you're saying is essentially take the ending that we have at our briefing in which we invite members of the public for public comments and create that public comment opportunity perhaps at the end of our January Commission meeting for the purposes of soliciting views on reports that would be directed at the border crisis issue involving children and families.

CHAIR LHAMON: Yes, Commissioner Yaki. I think that would work well.

And possibly one way we could also use the time wisely would be instead of opening for written
public comment that would follow, that in-person testimony we could open for written public comment now and have that -- the time for that written public comment coincide with the oral public testimony so that then we could, following that oral public testimony, begin creation and generations of what our --

COMMISSIONER YAKI: Okay. So, here's what I would suggest, is that for the January -- for the December meeting, we put on the agenda the formal written request for comment as part of the actual agenda item. I think that would be one way of getting it out there quickly.

And then, secondly, that we would recommend and also have on the December meeting the proposal to have a -- invite public comments after the January meeting on - for oral comment on this issue as well and make that part of an action item for next week's meeting as well to put on the schedule in January.

That would be, I think, probably the procedural way to do this.

Chair, do you agree?

CHAIR LHAMON: I think it -- I don't mind doing that. I think it adds a step that we don't
need.

I mean, this subcommittee can vote for creation of an invitation for people to submit testimony to us.

So, I think we can do that whether or not we discuss it next week, but I don't have any objection to discussing it next week with the full committee.

COMMISSIONER YAKI: But in terms of formally appending a portion of our meeting for oral comment, I think you would have to take that at the full board, actually.

I don't think this committee could, in and of itself, unless we wanted to simply notice a time -- we could just simply notice a time after the meeting on -- in January to -- okay. Let's do it that way. So, I agree with you, Chair. Thank you for your leadership on this.

So, members of the Discovery Committee, I propose that we immediately draw up a written request for comments that will include copies of our interrogatories to both DHS and HHS that will go out to whatever list you think of and want to add to, as well as put out a -- do we need to formally put this out on the federal register, Chair, for the
solicitation of these comments?

CHAIR LHAMON: Yes, I think we do.

COMMISSIONER YAKI: Okay. And then, secondly, to formally notice, after the January commission meeting, a subcommittee meeting of the other committees to receive oral comments and testimony on these same issues.

COMMISSIONER KLADNEY: So, we're going to make a list of groups or interested people who have knowledge, and request that they submit written, for lack of a better word, statements or testimony that relates to the interrogatories that you have sent and have not sent to the administration, and then we're going to also conduct a public forum, is that correct?

COMMISSIONER YAKI: Well, it would be -- yes and no. I think that the first instance will include the comment and the question then -- will include the interrogatories.

I don't want to get bogged down in the language here, but the idea would be -- it would be for written comment on the more existential issue, which is the separation of children and families and treatment of children and families at the border that was part of the mandate of this committee to begin with.
It will include a subsection of comments targeted at the experience and whether or not any of this information had not been responded to by organizations or would be found useful if heard by organizations from the Department.

And then the second part would be to have a public forum sponsored by this committee following the -- immediately following the January Commission meeting, and it would be limited in time and subject matter and the amount of time each speaker may have.

I think that we would want to make it more flexible so that we could ask questions if we wanted to, and not just simply have the -- just people citing testimony at the time, but that would be my suggestion realizing that we might be slightly further refined between now and when we send out the notice.

CHAIR LHAMON: Commissioner Yaki, that's really helpful to hear and also, as an aspiration, makes perfect sense to me.

I think we may need to have staff weigh in. I know that when we were generating the public comment periods, we benefitted a lot from hearing staff's views about ways to maintain safety and planning and effective way of taking testimony.

So, would you mind if we just pause to
hear from the Staff Director about that?

COMMISSIONER YAKI: Sure.

STAFF DIRECTOR MORALES: Thank you, Madam Chair. Thank you, Commissioner Yaki and commissioners on the line.

I think I can speak on behalf of the staff and myself, of course, to say that we all are feeling the situation that's occurring on the border and with the children and separation of families is a tragic situation and certainly, you know, want to do what we can to assist, and, Ms. Lhamon, as you've mentioned in a couple occasions, warrant the use of our scarce, limited funds.

You know, of course as the staff director, I have fiduciary duty. You know, you've mentioned the fact that this was not budgeted in our budget for this level of, you know, involvement.

And I will remind you that we're under continuing resolution at the moment, so we're limited to our funding for Commission or business meeting travel, our salaries, our rent, and we don't know what's going to occur after the December 7th budget showdown. We don't know if we're going to be in the shutdown or not.

And if you do decide at a later date or
after further discussion that you want to do a briefing, you know, either a field briefing or one here, you know, please allow us to do an estimate of what that cost would be and to get back to you on that.

We'd have to look at the logistics, the staff time, any external costs for, you know, court reporters, live streaming and all the rest of that, and I don't believe we could do a briefing or a field briefing without staff.

And, again, keeping in mind this could impact some of the reports or briefings that you've already planned in February or May, they either may get postponed or not done for whatever reason if we have to do this.

I think I can say there is a desire of the staff and myself to do something, to weigh in, you know, the ability to do that at this time, you know.

And all things being equal, you know, we do have that limited funding, you know, the cost of having a field briefing, depending on what it is and how extensive it is, you know, could run anywhere from, you know, 45,000 on up to what it cost us in North Carolina, but I think we are prepared to help you in any manner we can.
COMMISSIONER YAKI: Well, Mr. Staff Director --

COMMISSIONER KLANDNEY: Mr. Staff Director, I don't think we were talking about a field briefing and we're not even talking now about a briefing in D.C. I think they're just talking about having a public comment period and that will also take up staff time.

I understand that, but I don't know what that means. It sounds like Commissioner Yaki is going to take it on himself to send out these interrogatories to whatever groups, because I do know -- and I hate to say this because my office is pretty stretched right now as well and we're not going to be able to do that much either, so if I get the temperature of the subcommittee, that's what I think is happening; is that right?

COMMISSIONER YAKI: Yeah. And, Mr. Staff Director, I think that what -- we are trying to be respectful of your commitment and time and resources and the only option I believe we have at the table right now -- and if anyone objects, please speak up -- is that we would simply have a time set aside immediately following the closure of our regular business meeting -- adjourn of our regular business
meeting to have an open session of the Discovery Committee at the same location using the same facilities for the purposes of perhaps one or two hours of public testimony on the subject matter that is the focus of this subcommittee.

So, we would be -- it would be using resources already in place, just extending the time for which they are used, which I believe would be the most cost effective means of obtaining external information useful to producing materials for our amendment to the report.

STAFF DIRECTOR MORALES: Well, I could speak on behalf of the staff and tell you we would be very supportive of that effort, and we'll do everything we can to assist the subcommittee and commissioners.

COMMISSIONER YAKI: Great.

So, we're at the hour point and, again, my apologies for being eight minutes late, so I'm going to try and end it at eight minutes after.

COMMISSIONER ADEGBILE: I have one quick question about a piece that we discussed.

So, is the idea that we would not consider a visit of any kind?

COMMISSIONER YAKI: Commissioner Adegbile,
as much as I would want to, I believe that the amount of time for staff and commissioners to negotiate a site visit with DHS, which might ultimately prove fruitless, at this time, would be difficult.

I would not rule it out in -- with the new budget and with changed circumstances in oversight that are occurring that we may not be able to have that opportunity in the new year, but I think that for given the time constraints, what we have now and the fact that we need to take some action now, that the path we are choosing to go right now is the -- is the most expeditious path toward getting information and answers -- information that we may need to move forward and which would help inform us if we do indeed decide to go to a facility in the new year.

But I think that given the staff director's admonition regarding the December 7th situation and the fact that we cannot use our own resources to do this - our personal resources to do this, I think it would be more prudent to act now and then perhaps, as things unfold in the next month or so, we can revisit whether we should take the opportunity to go down there.

I don't think that -- I would like to go down there, I think everyone on the subcommittee would
like to go down there, I think that we should take these steps now, get -- show some urgency and movement going forward, demonstrate to the Department of Homeland Security that we are not sitting back and taking it from them, and maybe that will make them more conducive to us coming down sometime in the new year to a facility.

COMMISSIONER ADEGBILE: I got it. Thank you.

COMMISSIONER Kladney: I don't have it, actually. I understand the visitation issue, but are we passing a motion now contingent on obtaining a budget on December 7th or are we putting this off until after December 7th, having another meeting and then deciding what to do?

I mean, if we pass a motion conditionally to have this public forum -- I mean, and I don't even have a clear picture of whether the staff can set up a public forum at the end of January. It's January 25th, I think, our meeting is.

I'm not -- I have no clarity as to exactly what we're doing here today.

COMMISSIONER ADEGBILE: Commissioner Kladney, this is Commissioner Adegbile.

As I understood it, we are talking about
separate undertakings with respect to the public forum and the site visit that Commissioner Yaki was just speaking about.

I understood the proposal to be go forward with the sharing, the propounding the HHS discovery, sharing the discovery and noticing a public -- noticing a forum in which -- I guess two versions; One, where people could submit written comments, and then a subsequent forum in which people could come forward with all comments, but that those were distinct from the site visit.

Is that right or am I confused?

COMMISSIONER KLADNEY: Well, I just -- from what the Director was saying, I didn't get any clarity as to whether we could conduct a public forum in January, if he was talking about the budget, December 7th, the staff, the cost, things like that.

And I feel that we should leave the meeting today with at least a conditional motion if we need to get a budget before we hold the public forum; or if we don't need a budget to hold a public forum, just pass a resolution saying this is what we want to do and ask the Commission to do it.

I mean, I don't know -- did I miss something along the way?
COMMISSIONER YAKI: No, Commissioner Kladney, you didn't miss something along the way, but I think that we can accomplish the same thing without getting quite so procedurally complicated.

I think that the motion that we want to pass today is a motion that would open up a written comment period for comments about -- for testimony or comment on the issue before - the subject matter, jurisdiction of the subcommittee.

Part of that written motion will be the inclusion of these comments -- inviting comments or information, either information responsive to or information related to the need for information related to any of the questions that were propounded.

These written comments would have a date probably set 30 days after the date of the oral -- because we're always going to need people that will submit comments afterwards as well -- that would go out immediately.

The second would be to set up a public meeting of the Discovery Subcommittee with a -- a public forum, I'm sorry, sponsored by the Discovery Subcommittee to occur at the conclusion of business of the Commission meeting in January.

I believe that the Staff Director
indicated that that would be possible. And there's a caveat, obviously, if he comes back and says we can't afford to do it, then we'll evaluate it, but I don't think we need to caveat it beforehand on whether it can be done or — not.

And between now and then, depending on the budget, depending on circumstances, this committee can reconvene and discuss a site visit that if our budget and other circumstances make it more possible.

I do not want to, as Commissioner Lhamon has suggested, wait for a condition for any of this to occur for the other things to happen first.

So, I think a motion to open up a public — a written comment period on the subject matter of this committee, including with it the interrogatories that have been propounded to DHS and will be propounded by the time that notice gets out to DHS — HHS, number one.

Number two, there will be a public forum of the Discovery Subcommittee to occur at the completion of business of the January Commission meeting that will -- and in that motion, we will work with the staff director on the time, length and manner in which that public forum is conducted consistent with good and sound management safety and budgetary
principles.

And, three, we will -- oh, I know I'm going to forget the -- three, we will send appropriate correspondence to oversight committees regarding the refusal of DHS to respond to our jurisdiction.

And, four, vis-a-vis declare the motion, a commitment from me that after December 7th, and we have no idea what our budget certainties may or may not be, we can convene and discuss whether we should start spending the amount of staff time to go forward and arrange a site visit of this committee to a facility housing children and families by DHS.

COMMISSIONER KLADNEY: Commissioner Yaki, this is Kladney again.

I'm in favor of that. I want to make sure it's not going to affect my Women in Prison briefing in February. And so, I think I need to know that because I put that off for a year and a half now. I made a commitment.

COMMISSIONER YAKI: That would be to the Chair, not to me.

CHAIR LHAMON: I don't think that's to the Chair either. I think that's a staff issue similar to what the Staff Director was raising.

STAFF DIRECTOR MORALES: This is Staff
Director Morales.

As you outlined the public comment period after the January 25th business meeting, I believe our staff -- and we have the staff capacity and the budget capacity to do that without interfering with the Women in Prison hearing. Thank you.

COMMISSIONER YAKI: Commissioner Adegbile, any comments?

COMMISSIONER ADEGBILE: Staff Director, you said that it won't affect the Women in Prison briefing.

I'm inquiring about the other scheduled and voted on briefings that are planned.

STAFF DIRECTOR MORALES: As has been outlined by the subcommittee this afternoon, this morning, having the briefing -- I'm sorry, having the public comment period after the briefing on January 25th will not -- we have the budget capacity and I believe we have the staff capacity that it won't impact the work of OCRE and of the briefing for Women in Prison and the briefing on Sexual Harassment in the Federal Workforce at this time.

If anything were to change, it could change that. But as you've outlined, I believe, and it's my belief, that it will -- we have staff capacity
and we have budget capacity to accommodate the public forum after the January 25th business meeting.

COMMISSIONER ADEGBILE: Thank you. I'm in support of the proposal as framed.

COMMISSIONER YAKI: Madam Chair?

CHAIR LHAMON: I can support -- are we voting or -- I vote yes.

COMMISSIONER YAKI: So, as framed by me earlier, and I'm not going to repeat it again, I'd like to move this to be the order of business for the committee moving forward and designate myself to work with staff on getting the appropriate notices out.

Is there a second?

CHAIR LHAMON: I second.

COMMISSIONER YAKI: Any objections?

COMMISSIONER KLABDNEY: I'm in favor, if that's -- you're asking for a vote? Yes.

COMMISSIONER YAKI: I was going to say -- okay. Let me -- on the motion as seconded by -- on the motion, as described by me earlier and as seconded by the Chair, Commissioner Kladney, your vote?

COMMISSIONER KLABDNEY: Yes. I vote yes.

COMMISSIONER YAKI: Commissioner Adegbile, your vote?

COMMISSIONER ADEGBILE: Aye.
COMMISSIONER YAKI: Commissioner Lhamon?

CHAIR LHAMON: Aye.

COMMISSIONER YAKI: I'm Commissioner Yaki.

Also, it's aye. The ayes are four to zero. That concludes the business before this Discovery Subcommittee.

Thank you very much, Mr. Staff Director, for attending. Thank you, Commissioners, and I will begin working on this right now.

(Whereupon, at 12:22 p.m. the meeting was concluded.)