

## U.S. COMMISSION ON CIVIL RIGHTS

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## TELEPHONIC BUSINESS MEETING

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## DISCOVERY SUBCOMMITTEE

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TUESDAY, NOVEMBER 27, 2018

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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

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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

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

(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.

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1                   COMMISSIONER YAKI:    And are there any  
2 other commissioners present?

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

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

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

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

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

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

25                   CHAIR LHAMON:    Thank you, Commissioner

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1 Yaki. This is Chair Lhamon.

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

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

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

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

22 It seems to me that options we ought to  
23 consider would be identifying whether we can hold a  
24 briefing or conduct a site visit to allow us to see  
25 with our own eyes and ask questions and take in

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1 information, whether there are written responses that  
2 we think we need to be able to update the  
3 recommendations and to draw current conclusions, and  
4 then also identify what cost considerations apply to  
5 those choices.

6 COMMISSIONER YAKI: Thank you.

7 Commissioner Kladney, your thoughts?

8 COMMISSIONER KLADNEY: There we go. I hit  
9 the mute button.

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

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

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

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

25 I have great concern about creating

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1 permanent damage to these people, PTSD and things like  
2 that being in detention because we don't understand  
3 the entire conditions.

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

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

17 COMMISSIONER YAKI: Thank you,  
18 Commissioner.

19 Commissioner Adegbile.

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

22 The scope of the humanitarian crisis both  
23 with respect to the young people and children and  
24 infants who have been separated from their families  
25 and the impact that it's having on these young people,

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1 as Commissioner Kladney has just spoken to, is sort of  
2 horrifying to think about.

3 60 Minutes -- some of you may have seen  
4 the 60 Minutes piece this weekend, which, among other  
5 things, showed a three-year-old child being reunited  
6 with his mother.

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

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

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

25 And so, I would like to associate myself

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1 with the others and suggest that rather than a long  
2 and drawn out fight over documents, maybe our best and  
3 highest use is to bear witness and to use the power  
4 and authority of the Commission to go and to make a  
5 trip and to have our accounts be based on our direct  
6 observation about what is happening for these young  
7 people who are being held.

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

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

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

19 COMMISSIONER YAKI: Thank you very much,  
20 Commissioner.

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

24 I think that that, without a doubt, is a  
25 humanitarian and human rights abomination that is

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1 occurring, a trauma, and the potentially permanent,  
2 psychological harm being created for children that we  
3 would be criticizing, and probably sanctioning other  
4 countries for if they were to be engaged in any of  
5 these actions, is sobering and worthy of our  
6 attention.

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

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

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

25 Because for this, and future commissions,

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

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

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

19 So, in addition to the discussions --  
20 suggestions we've had so far, I believe that we  
21 should, at the very least, send a letter from this  
22 commission to the appropriate committees in Congress  
23 documenting the lack of cooperation and documenting  
24 the lack of jurisdiction asserted by the Department of  
25 Homeland Security and putting on the record that our

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1 objections and severe disapproval of their actions so  
2 that Congress, in its oversight capacity, can take  
3 this up. I would suggest that we do that regardless  
4 of what course of action we do.

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

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

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

21 Then there's a third option I would  
22 suggest, which would be a combination of the two. And  
23 that would be to do a site visit and briefing on the  
24 border where we would be able to draw upon the  
25 testimony of groups that are there on the ground

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1 working on this where we can firsthand attempt to  
2 visit these.

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

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

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

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

20 A fourth option would be to potentially  
21 take the -- a less expensive option we might want to  
22 consider, and let me just throw it out there, would be  
23 to take essentially the guts of our interrogatories  
24 that we have propounded and give them to -- send them  
25 to organizations and ask what they have found in

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1 response to these types of questions and use that to  
2 supplement our record.

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

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

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

15 COMMISSIONER ADEGBILE: Commissioner Yaki,  
16 this is Commissioner Adegbile.

17 Could you just bullet again the four  
18 different -- just briefly the four different  
19 considerations --

20 COMMISSIONER YAKI: Sure.

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

23 I want to make sure I have all four.

24 COMMISSIONER YAKI: Sure.

25 Number 1, is a briefing in Washington,

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1 D.C., at Commission headquarters.

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

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

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

16 COMMISSIONER ADEGBILE: Thank you. Very  
17 helpful.

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

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

25 We have been, among this subcommittee,

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

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

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

22 For myself, I think it would be helpful to  
23 take in as much information as we can. I also know  
24 that the concerns that we outlined in the  
25 recommendations that the Commission made in the 2015

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1 report obtained today as the conditions exist and  
2 ought to be modified to reflect the facts as they  
3 exist now.

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

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

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

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

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

23 So, then we need to choose how we want to  
24 respond, we could be formalistic about it and insist  
25 on recognition of jurisdiction.

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1 I think choosing that option would operate  
2 to the detriment of the children and families who are  
3 suffering at the border at the moment.

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

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

11 COMMISSIONER YAKI: Commissioner Kladney,  
12 Commissioner Adegbile.

13 COMMISSIONER ADEGBILE: Go ahead, Kladney.

14 COMMISSIONER KLADNEY: Okay.

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

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

23 I think that we should inform Congress  
24 about the difficulty we've had in getting response  
25 from the administration, but my idea is perhaps a site

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1 visit so that we can have some actual substance to the  
2 letters to what we have done in regards to the issue  
3 would be helpful.

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

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

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

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

20 COMMISSIONER YAKI: Commissioner Adegbile.

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

25 I guess my -- where I am right now is that

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1 I think that there are a couple of core points that  
2 are animating what our response should be.

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

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

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

21 And faced with that choice, I think any  
22 parent would exercise the desperate decision to try  
23 and live another day than to stay and face the  
24 violence that is occurring in many Central American  
25 countries.

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1           And so, I think all of this underscores  
2 the urgency point that I know we all feel and that  
3 Chair Lhamon has pointed us to.

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

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

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

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

22           Those are the three principles I'm focused  
23 on, urgency, who are all the players in the field so  
24 we can have a distinctive contribution, and then what  
25 is the right size in terms of budget constraints.

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1           And, you know, I think that there are  
2 aspects of the site visit that may line up nicely with  
3 those considerations, but I'm open to hearing other  
4 permutations that they think could be brought together  
5 in an effective way.

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

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

22           And in that, we can work to highlight  
23 those for oversight by Congress in supplementing those  
24 responses. I think that would be one way to have an  
25 immediate contribution to the ongoing work of these

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1 groups.

2 So, would anyone have an objection to that  
3 going forward?

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

6 COMMISSIONER YAKI: Sure. Sure.

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

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

20 That would be one question whether we  
21 would ask -- and I say that because that's one track,  
22 and I don't want them to potentially respond back on  
23 what information they do have, because I think that  
24 would duplicate what my next thing would be, which is  
25 do we want to -- given the sense of urgency, and I

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1 think we all feel it, and especially these images of  
2 Homeland Security tear-gassing women and children at  
3 the border becomes even more exigent, I wonder if the  
4 -- and I do have concerns that given DHS' posture,  
5 whether we would be able to get into any facility at  
6 the border at this time. I have severe doubt on our  
7 ability on that front.

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

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

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

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1 refer to oversight bodies to act upon as well.

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

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

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

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

24 CHAIR LHAMON: This is Catherine Lhamon.  
25 Thank you, Commissioner Yaki. I appreciate the

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1 summary and also the path forward.

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

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

13 COMMISSIONER YAKI: Sure.

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

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

20 So, my hope would be that we would issue  
21 them and then we would -- if we were to share copies  
22 of interrogatories with groups, we would share both  
23 interrogatories that we have already propounded to DHS  
24 and the newly propounded interrogatories to HHS and  
25 solicit views on both.

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1                   COMMISSIONER KLADNEY: But I thought you  
2 said something about subpoena.

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

4                   COMMISSIONER KLADNEY: Okay.

5                   CHAIR LHAMON: Sorry.

6                   COMMISSIONER YAKI: A Freudian slip.

7                   CHAIR LHAMON: It was. Thank you.

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

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

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

22                   So, she wanted to add the DHS  
23 interrogatories to that, but we've still yet to land  
24 on what will be the expedient -- full expedient  
25 response that others have mentioned.

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1 Commissioner Lhamon -- Chair Lhamon, may I  
2 ask a question of you? In your initial statement, you  
3 have spoken about a briefing.

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

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

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

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

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

22 COMMISSIONER YAKI: Your suggestion is  
23 that we have a public forum and ask for written  
24 information from those people working on this -- in  
25 this area; is that correct?

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1 CHAIR LHAMON: I think that would work  
2 well and it would be a good way for us to allow people  
3 with all kinds of views to share information on which  
4 we could rely and to submit written information on  
5 which we could rely.

6 COMMISSIONER KLADNEY: Do you see the full  
7 commission participating in this public forum or just  
8 the subcommittee?

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

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

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

24 And possibly one way we could also use the  
25 time wisely would be instead of opening for written

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1 public comment that would follow, that that in-person  
2 testimony we could open for written public comment now  
3 and have that -- the time for that written public  
4 comment coincide with the oral public testimony so  
5 that then we could, following that oral public  
6 testimony, begin creation and generations of what our  
7 --

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

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

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

23 Chair, do you agree?

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

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1 need.

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

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

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

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

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

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1 solicitation of these comments?

2 CHAIR LHAMON: Yes, I think we do.

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

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

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

19 I don't want to get bogged down in the  
20 language here, but the idea would be -- it would be  
21 for written comment on the more existential issue,  
22 which is the separation of children and families and  
23 treatment of children and families at the border that  
24 was part of the mandate of this committee to begin  
25 with.

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1           It will include a subsection of comments  
2 targeted at the experience and whether or not any of  
3 this information had not been responded to by  
4 organizations or would be found useful if heard by  
5 organizations from the Department.

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

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

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

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

25           So, would you mind if we just pause to

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1 hear from the Staff Director about that?

2 COMMISSIONER YAKI: Sure.

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

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

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

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

25 And if you do decide at a later date or

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1 after further discussion that you want to do a  
2 briefing, you know, either a field briefing or one  
3 here, you know, please allow us to do an estimate of  
4 what that cost would be and to get back to you on  
5 that.

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

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

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

19 And all things being equal, you know, we  
20 do have that limited funding, you know, the cost of  
21 having a field briefing, depending on what it is and  
22 how extensive it is, you know, could run anywhere  
23 from, you know, 45,000 on up to what it cost us in  
24 North Carolina, but I think we are prepared to help  
25 you in any manner we can.

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1                   COMMISSIONER YAKI:     Well, Mr. Staff  
2 Director --

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

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

18                  COMMISSIONER YAKI: Yeah. And, Mr. Staff  
19 Director, I think that what -- we are trying to be  
20 respectful of your commitment and time and resources  
21 and the only option I believe we have at the table  
22 right now -- and if anyone objects, please speak up --  
23 is that we would simply have a time set aside  
24 immediately following the closure of our regular  
25 business meeting -- adjourn of our regular business

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1 meeting to have an open session of the Discovery  
2 Committee at the same location using the same  
3 facilities for the purposes of perhaps one or two  
4 hours of public testimony on the subject matter that  
5 is the focus of this subcommittee.

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

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

17 COMMISSIONER YAKI: Great.

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

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

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

25 COMMISSIONER YAKI: Commissioner Adegbile,

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1 as much as I would want to, I believe that the amount  
2 of time for staff and commissioners to negotiate a  
3 site visit with DHS, which might ultimately prove  
4 fruitless, at this time, would be difficult.

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

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

24 I don't think that -- I would like to go  
25 down there, I think everyone on the subcommittee would

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1 like to go down there, I think that we should take  
2 these steps now, get -- show some urgency and movement  
3 going forward, demonstrate to the Department of  
4 Homeland Security that we are not sitting back and  
5 taking it from them, and maybe that will make them  
6 more conducive to us coming down sometime in the new  
7 year to a facility.

8 COMMISSIONER ADEGBILE: I got it. Thank  
9 you.

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

16 I mean, if we pass a motion conditionally  
17 to have this public forum -- I mean, and I don't even  
18 have a clear picture of whether the staff can set up a  
19 public forum at the end of January. It's January  
20 25th, I think, our meeting is.

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

23 COMMISSIONER ADEGBILE: Commissioner  
24 Kladney, this is Commissioner Adegbile.

25 As I understood it, we are talking about

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1 separate undertakings with respect to the public forum  
2 and the site visit that Commissioner Yaki was just  
3 speaking about.

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

12 Is that right or am I confused?

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

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

24 I mean, I don't know -- did I miss  
25 something along the way?

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1                   COMMISSIONER YAKI:     No, Commissioner  
2                   Kladney, you didn't miss something along the way, but  
3                   I think that we can accomplish the same thing without  
4                   getting quite so procedurally complicated.

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

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

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

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

25                  I believe that the Staff Director

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

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

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

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

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

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1 principles.

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

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

13 COMMISSIONER KLADNEY: Commissioner Yaki,  
14 this is Kladney again.

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

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

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

25 STAFF DIRECTOR MORALES: This is Staff

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1 Director Morales.

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

7 COMMISSIONER YAKI: Commissioner Adegbile,  
8 any comments?

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

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

14 STAFF DIRECTOR MORALES: As has been  
15 outlined by the subcommittee this afternoon, this  
16 morning, having the briefing -- I'm sorry, having the  
17 public comment period after the briefing on January  
18 25th will not -- we have the budget capacity and I  
19 believe we have the staff capacity that it won't  
20 impact the work of OCRE and of the briefing for Women  
21 in Prison and the briefing on Sexual Harassment in the  
22 Federal Workforce at this time.

23 If anything were to change, it could  
24 change that. But as you've outlined, I believe, and  
25 it's my belief, that it will -- we have staff capacity

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1 and we have budget capacity to accommodate the public  
2 forum after the January 25th business meeting.

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

5 COMMISSIONER YAKI: Madam Chair?

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

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

13 Is there a second?

14 CHAIR LHAMON: I second.

15 COMMISSIONER YAKI: Any objections?

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

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

22 COMMISSIONER KLADNEY: Yes. I vote yes.

23 COMMISSIONER YAKI: Commissioner Adegbile,  
24 your vote?

25 COMMISSIONER ADEGBILE: Aye.

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1 COMMISSIONER YAKI: Commissioner Lhamon?

2 CHAIR LHAMON: Aye.

3 COMMISSIONER YAKI: I'm Commissioner Yaki.

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

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

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

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