U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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MONDAY, NOVEMBER 13, 2017

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The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington, D.C.
at 1:02 p.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair
DEBO P. ADEGBILE, Commissioner*
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner*
DAVID Kladney, Commissioner
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel

* Present via telephone
STAFF PRESENT:
LATRICE FOSHEE
ALFREDA GREENE
SARALE SEWELL
BRIAN WALCH
MARIK XAVIER-BRIER
MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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CHAIR LHAMON: I'm going to call us to order. This meeting of the U.S. Commission on Civil Rights comes to order at 1:02 p.m. on November 13, 2017. The meeting takes place at the Commission's headquarters located at 1331 Pennsylvania Avenue, Northwest, Washington, D.C.

I'm Chair Catherine Lhamon. Commissioners who are present at this meeting in addition to me are Commissioner Heriot, Commissioner Kladney, and Commissioner Narasaki. On the phone, if you could confirm you are on the line after I say your name. I believe we have Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIR LHAMON: Terrific. Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Terrific. Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Terrific. A quorum of the commissioners is present. I see the court reporter is present. Is the staff director present?

STAFF DIRECTOR MORALES: I am.
I. APPROVAL OF AGENDA

CHAIR LHAMON: Terrific. The meeting will now come to order. Is there a motion to approve the agenda for the business meeting?

COMMISSIONER HERIOT: So moved.

CHAIR LHAMON: Thanks. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIR LHAMON: Thank you. Are there any amendments to the agenda?

COMMISSIONER HERIOT: Madam Chair, I would like to move to take the discussion and vote on nomination of Curtis Reed, Jr. as Chair of the Vermont Advisory Committee, take that off this month's agenda and with the suggestion it will be on next month's agenda.

CHAIR LHAMON: Terrific. Is there a second?

COMMISSIONER KLASSEY: I'll second.

CHAIR LHAMON: Okay, thank you. Any other amendments? Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you, Madam Chair. I would like to amend the agenda for the Commission to consider a statement expressing concern about labor practices at private immigration detention centers.
CHAIR LHAMON: Is there a second?

COMMISSIONER YAKI: Second.

CHAIR LHAMON: Okay. Any other amendments?

COMMISSIONER KLANDNEY: Madam Chair, I'd like to amend the agenda to consider, for the Commission to consider a statement that supports the sentencing reform legislation currently pending in the Congress.

CHAIR LHAMON: Thank you. Do I have a second?

COMMISSIONER YAKI: Second.

CHAIR LHAMON: Great. Are there any other amendments? Hearing none, let's vote to approve the agenda, as amended. All those in favor, say aye.

(Chorus of ayes.)

II. BUSINESS MEETING

DISCUSSION ON THE STATEMENT OF IMMIGRATION DETENTION CENTERS

CHAIR LHAMON: Any opposed? Any abstentions? The motion passes unanimously. Okay. So, first, we will discuss and vote on the two new amended agenda items that are proposed statements. We'll begin with the statement on immigration detention centers introduced by Commissioner
Narasaki. Commissioner Narasaki, would you mind reading the statement so we know what's under consideration?

COMMISSIONER NARASAKI: Yes. Thank you, Madam Chair. The title is "U.S. Commission on Civil Rights Concerned with Abusive Labor Practices at Private Immigration Detention Centers." The U.S. Commission on Civil Rights calls on the Department of Homeland Security and Congress to end abusive labor practices at corporate for-profit immigration detention centers. Private detention center providers currently are required to pay only a minimum of $1.00 per day to detainees who participate in a so-called voluntary work program. These corporations have a financial incentive to coerce detainees to perform necessary labor, generating higher profits for corporations who avoid paying significantly more for regular workers.

The Commission calls for heightened oversight and transparency of the program and fair compensation for detainees to mitigate the growing risk of abuse. More detainees are set to enter the detention center. U.S. Immigration and Customs Service recently published notices seeking information on new privately-run detention facilities.
that would house approximately 4,000 detainees.

ICE's voluntary work programs are intended to provide immigration detainees with opportunities to work and earn money. ICE's standards set detainee compensation to at least $1.00 per day. The program is based on a 1950 law that allows the U.S. government to pay non-citizens detained under immigration laws for work performed.

Congress originally set the compensated rate to $1.00 per day minimum after modeling the law after the Geneva Convention's requirement that prisoners of war be paid a fair working rate of pay. For almost 70 years, the compensation has not been increased.

Private detention center providers are relying on detainees to perform work required to maintain and operate detention centers such as general cleaning, including scrubbing bathrooms, toilets, showers, and windows; washing laundry; preparing and serving meals; and maintenance, operational barber and library services.

Private detention centers have a huge financial incentive to exploit detainee labor. In a deposition, one provider testified that, if there were no voluntary workers, the provider would have to hire
additional workers who would have to be paid an hourly wage to comply with its contract with ICE. A report found the provider would have spent over $125,000 in a one-month period on wages and benefits but, instead, spent $1,680 for the use of detainee labor. These incentives appear to lead to detainee abuse.

Detainees at numerous facilities have alleged being forced to work under threat of solitary confinement and restraint. In one case, a detainee was allegedly punished for complaining about unsafe work conditions.

In February of 2017, a Colorado Federal District Court judge certified a first-of-its-kind class action lawsuit against one provider for violations of the Trafficking Victims Protection Act and unjust enrichment. Similarly, in September 2017, the State of Washington sued a provider for violating state minimum wage laws and unjust enrichment and alleged the provider sometimes paid detainees with candy and snacks instead of money.

In our 2015 statutory enforcement report "With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities," the Commission investigated immigration detention centers, including those operated by private for-
profit companies that have contracts with the federal government. The Commission found numerous detention centers failed to comply with a performance-based national detention standards, laws, and court orders meant to protect the constitutional and civil rights of detainees. Moreover, private detention centers do not have the same level of transparency as government-run centers, nor do private detention centers necessarily dot the same standards as federally-run ones.

For decades, the Commission and its state advisory committees have investigated and reported on the often negative civil rights implications of our nation's immigration laws and policies. The Commission strongly urges Congress to hold a hearing to investigate labor practices at private detention centers, pass legislation requiring all detention centers to pay a fair wage for detainees, and conduct greater oversight to protect the rights of working detainees. Furthermore, DHS Office of Inspector General should investigate alleged abusive labor practices at private detention centers and ICE should immediately revise its 2011 PBNDS to require a fair wage for detainees participating in a work program to eliminate the incentive for labor abuses. Chair
Catherine E. Lhamon stated, “DHS and Congress must act swiftly to correct these documented abuses in detention centers and ensure that private facilities are held to the same standard of accountability as government facilities.”

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

COMMISSIONER YAKI: So moved.

CHAIR LHAMON: A second? I'll second it. Is there any discussion on the statement? Commissioner Heriot?

COMMISSIONER HERIOT: Yes. I intend to vote no on this statement. I have a number of objections to it, but, rather than go through all of them, I will just talk about one or two here. First, I just wanted to footnote the fact that Commissioner Narasaki's very fine reading omitted the footnotes just for the purpose of the transcript, so they know that. [Brief inaudible conversation.] -- Yes, I just wanted the record to reflect that.

As I said, I have a number of objections, but one of them is why does it focus just on for-profit immigration detention centers? For example, in the footnotes, we cite Guevara v. I.N.S., a
decision of the Fifth Circuit that actually dealt not
with a private prison but with a federally-run
immigration detention center. In particular, it dealt
with Port Isabel, the one that this Commission visited
just a couple of years ago. I think all the issues
are the same regardless of whether or not we are
talking about private prisons or federally-run
prisons.

In our report two years ago on immigration
detention facilities, in my statement I talked at
length about what seems to me to be a Commission
obsession with private prisons, that there is no
evidence that private prisons are less well run or
any differently run on this issue than federally-run
prisons. Now, that doesn't mean that Commissioner
Narasaki's argument is wrong. It could be applied to
federally-run prisons, as well.

But the problem is the way this is worded,
it opens us up to the criticism that we are carrying
water for the prison guard unions, which is
frequently, you know, a cited criticism. And, in
fact, I cited it in our report on immigration
detention facilities last year.

As I said, Guevara v. I.N.S. is about a
federally-run prison. We talk about here, for
example, private detention centers have a huge financial incentive to exploit detainee labor. Yes, but so do federally-run prisons. The notion that only privately-run prisons are interested in the bottom line I think is just plain wrong. And, in fact, when we talked, I think, at length in our report on immigration detention centers two years ago, we tried to make the argument, the Commission tried to make the argument over my dissent, that food service was worse at privately-run prisons when, in fact, the evidence went the other way. And I will refer that members of the Commission to my statement in that report.

As for, you know, whether the same argument should be made in the context of both private and federally-run prisons, what I can say is that we definitely want to provide an opportunity for detainees to be able to earn some money while they're in detention centers. That's a good thing. It may well be that a dollar a day is not a great amount for that. But that means we should be aiming this at Congress and not phrasing it as if it's a criticism of privately-run detention centers. Had we said that a dollar a day might be too low, that might be too low, you know, that's something we can certainly
discuss. It sounds low to me. But, yes, it sounds quite low to me. However, that's not what's been drafted here, and I don't think I can sign this the way it is.

CHAIR LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: I appreciate Commissioner Heriot's comments and if she would join this and work with me to expand it to cover the publicly run, I'd be happy to do that. I felt that I was trying to narrow the focus because that's where the current cases, the challenges, are, so it seems like -- and I actually disagree. I think that for-profit entities, because they're trying to maximize profits, as opposed to federally-run facilities, have a little bit more incentive.

Also, because there is a question as to whether they are subject to FOIA laws and are as transparent, required to be as transparent as federal-run detention centers, I feel that there is just a lot more room for coercion. So that's actually part of my concern. It's both the ridiculously-low compensation, because I agree with Commissioner Heriot, it is good for the detainees to be given an opportunity to occupy their time and to be able to
make money, but I think we agree that a dollar per
day or snacks is not the best way to go about it and
sort of smacks of indentured servitude. So if you
would like me to work with you on this to cover public
prisons, I'd be happy to delay that and rework it.

I would say that the other thing is this
is aimed at Congress and the Department of Homeland
Security. The request is for Congress to change the
law and the request is for the Department of Homeland
Security, which it actually has the power to do
already to change the regulations and require
something higher than what they currently require.
And also, and I want to thank Commissioner Kladney
for this, it calls for the inspector general to look
at this issue to see how widespread it is.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to
point out, as Kevin Landy, assistant director for
ICE's Office of Detention and Policy Planning, said
about privately-run detention facilities, that, in
fact it wasn't that privately-run detention
facilities have more violations of law or policy than
federally-run ones. He, rather, said that the
problems with immigration detention facilities tend
to be those that are dedicated to immigration
detention, as opposed to multi-purpose, part prison, part jail, part immigration detention center. That's where you get the problems. It's not a difference between public and private, it's a difference between centers population-- Is it 100 percent immigrants or is it partly used for convicted criminals, partly used for arrestees?

So if Commissioner Narasaki would like to withdraw this draft and start from the beginning again, I might well be able to sign onto it. But it would be far more limited in the sense that I think it's an important thing that we make the ability for detainees to make some money. I think that's important to preserve that.

COMMISSIONER NARASAKI: Well, I'm not calling for the end of the use of private detention centers. Actually, the statement does not go that far. It asks for both congressional and DHS oversight to investigate the extent of the problem, and, you know, I'd be happy to add a sentence that they should be investigating not only the privately-run centers but also the federally-run centers. But if it's going to be much more limited than this, then I think I will not withdraw.

COMMISSIONER HERIOT: I have a hard time
predicting what it would be like. [Briefing inaudible conversation.] Well, it would be more limited, yes. The way this now just picks on privately-run detention facilities, and, if you want to maintain the focus there, then, no, I'd be against that.

COMMISSIONER NARASAKI: Well, I'd be happy to expand the focus to include the non-
privately-run --

COMMISSIONER HERIOT: What I don't want is like something that says, you know, a couple of pages of privately-run facilities and then say and, by the way, federally-run facilities, too. It should focus on both equally, and that means not making a distinction. I'm with Landy that this is not where the problem is. The problem’s on a different axis.

CHAIR LHAMON: It sounds to me like -- oh, go ahead, Commissioner Kladney.

COMMISSIONER KLANDNEY: Why couldn't you just add publicly-run prisons and privately-run prisons wherever privately-run prisons appear?

COMMISSIONER HERIOT: Well, private detention centers and federally-run detention centers have a huge financial incentive to exploit detainee labor, I don't like the word exploit but I've got no problem with a sentence that says that. Sure they
have a financial incentive to use such labor, and the
detainees have a financial incentive to participate
in that. That's what makes a happy world where you've
got people on both sides of a transaction that are
willing to participate.

COMMISSIONER NARASAKI: I think one of
the issues that I try to raise is, in fact, it may
not be voluntary, that, in fact, there are reports
and people have complained that, in fact, they're
being coerced.

COMMISSIONER HERIOT: Just like the
reports of maggot-infested food that were pretty much
unsubstantiated in the previous report. You know, we
have a lot of rumors that don't seem to pan out. You
know, it may well be that this is the case. I've no
objection to saying, you know, if this is the case,
it needs to stop. I have no objection to the notion
that, if there are enough people complaining about
this, it ought to be investigated. I'm happy to
investigate it myself, I mean, as part of the
Commission's work. That's not a -- is that a
proposal? Would you like the Commission to look into
that?

CHAIR LHAMON: While we're pausing, let's
see if we can hear from folks on the phone, too. Any
of the commissioners on the phone have discussion?

COMMISSIONER KIRSANOW: Madam Chair,

Kirsanow here.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes, I have a

question just out of curiosity. Do we know, Karen,
do you know how many of these detainees participate
in the program or what percentage of those detainees
participate in this program?

COMMISSIONER NARASAKI: No, that's why we

would want to have the DHS inspector general look at
what's going on. But the fact that you have a court
that actually ordered a class action, which is fairly
rare in these kind of circumstances, I think signals
that there's some serious problem.

COMMISSIONER Kladney: I think a class

action is ordered where there's a complaint on file
and that the action affects numerous people within
the system, and it doesn't say anything as to what
exactly is going on or not going on. It's just a
certifying a class.

COMMISSIONER Narasaki: I think you have
to show more than that, but that's okay.

CHAIR LHAMON: So, Commissioner Narasaki,
do you want to withdraw or do you want to proceed? I
note that the recommendation at the end include urging Congress to pass legislation requiring all detention centers to pay a fair wage for detainees. It seems like the concerns go to addressing these issues, to the extent they exist, at any detention center, it seems like there might be value in incorporating all in the conversation.

COMMISSIONER NARASAKI: I'm open to the amendment of adding, however it's phrased, federally-run centers wherever we say for-profit, as well, except for where it talks about transparency because it's just the case that, in fact, there's less transparency.

COMMISSIONER HERIOT: That's probably going to run into some trouble here. You know, changing it off the cuff here without having looked at each sentence where it's mentioned. I'm happy to re-address this in December and, you know, if it turns out -- we'll agree on at least something.

[Commissioner Narasaki:] “and that’s always good, Gail.”] It will always be, like, you know, you write your statement and I do I agree with Commissioner Narasaki on X, Y, and Z.

COMMISSIONER NARASAKI: I appreciate the goodwill with which that has been offered, and I will
accept that offer.

DISCUSSION AND VOTE ON THE STATEMENT OF SENTENCING REFORM LEGISLATION

CHAIR LHAMON: Okay, thank you. So next we'll consider the statement on sentencing reform legislation. I'll first read the statement under consideration so we know what it is we're considering, and I will follow Commissioner Narasaki's convention of not reading the footnotes so that we will not be here all day.

The title of the statement is "U.S. Commission on Civil Rights Supports Sentencing Reform Legislation." The U.S. Commission on Civil Rights supports certain sentencing reduction provisions in the bipartisan Sentencing Reform and Corrections Act of 2017 recently introduced in the Senate. The bill proposes to reduce mandatory minimum sentences for particular non-violent offenses and to return discretion to judges on sentencing in more cases. It moves sentencing levels down in many cases so that low-level crimes are adequately but not excessively punished. It also makes retroactive sentencing reductions in crimes involving crack cocaine, which, prior to the enactment of the Fair Sentencing Act of 2010, were punished with extreme sentences compared
with crimes involving powder cocaine.

The fair administration of justice requires criminal penalties to be proportional to the offense committed and for similar crimes to be subject to similar punishments. In addition, fair administration depends on public faith in the American justice system. This bipartisan bill takes important steps to restore the basis for that faith by addressing longstanding inequity.

The Sentencing Reform and Corrections Act contains necessary and important steps towards more equitable punishments in the federal system, advancing the fair administration of justice by better fitting punishment to crime. If enacted, it would help reduce the outsized U.S. prison population without jeopardizing public safety. It stands in contrast to the change in charging policy announced by the United States Department of Justice in May. The Department of Justice policy regarding mandatory minimum sentences will result in lengthier, harsher prison sentences and additional taxpayer costs for both actual imprisonment and post-incarceration integration unless it is changed or checked by Congress through sentencing reform.

In the last 30 years, the federal prison
population alone has nearly tripled. Currently, our nation has over two million people behind bars in state and federal prisons. Significantly, this alarming trend was propelled by criminal justice policies and not an increase in crime.

The cornerstone of these policies were the harsh sentencing and mandatory minimums propagated under the so-called war on drugs. The application of harsher penalties and mandatory minimum sentences historically falls hardest on communities of color. Although facially race neutral, these policies have been applied in a racially disparate manner, raising concerns regarding legitimacy and fairness of our nation's criminal justice system.

Use of mandatory minimum sentencing contributed to high incarceration rates for African-American and Latino men despite comparable rates of drug use across communities of all races. Devastated community-wide impacts of these policies include one in nine children of color having a parent in prison.

National and international bodies have noted racially disparate treatment throughout the American criminal justice system, including in the application of mandatory minimum sentences. Perhaps
the most notable and egregious example of the racial
disparities can be found in the different mandatory
minimum sentences provided for offenses involving
crack versus powder cocaine.

A bipartisan consensus in Congress passed
the Fair Sentencing Act in 2010, reducing disparities
between mandatory minimum sentences for different
drugs, in part "because the public had come to
understand sentences embodying the 100 to 1 ratio as
reflecting unjustified race-based differences."
These changes should be made retroactive as the
Sentencing Reform and Corrections Act of 2017 proposes
in order to reduce excessive punishments for those
already sentenced.

After decades of steep growth, the
federal prison population dropped when prosecutors
were encouraged not to charge offenses with mandatory
minimum sentences and crime rates continued to fall.
Many of the nation's prosecutors have stated their
view that increases in sentencing will lead to
increases in prison populations with the attendant
negative community effects without an increase in
public safety or a decrease in crime.

Reductions in mandatory minimums, by
contrast, allow for proportional and fair sentencing
in more cases, reducing these negative effects. Chair Catherine Lhamon said, “The sentencing reduction provisions in this legislation are necessary to hew closer to the fair administration of justice in our country and ensure that the criminal justice system does not more harshly judge marginalized communities without basis. I urge Congress to take swift action to correct these injustices.”

Before discussing this statement, I should just note also, although I said I wouldn't read the footnotes, footnote one identifies the specific sections of the act that the Commission supports and those are Sections 101, 102, 103, and 105 of Title I.

So now we can discuss the statement. Is there a motion so we can open the floor for discussion?

COMMISSIONER KLADNEY: I move.

CHAIR LHAMON: And I second. Any discussion on the statement? Commissioner Heriot?

COMMISSIONER HERIOT: Sorry. I'm going to vote no on this one, though I'm happy that, given that the bill is 168 pages long, that you did quote from that footnote number one so we have on the record that this is not the Commission supporting the entire bill. I assume that most of us have not looked that
closely at the entire bill but, rather, just Sections 101, 102, 103, and 105.

I certainly have a lot of sympathy for the notion that crack cocaine and powder cocaine possession or sale should be punished in a way that is reasonably close. The law now does that. This is an effort to go back and retroactively apply the new law.

And I want to point out, however, since there's a little bit of going back and forth in this draft, you know, sometimes it talks about applying laws in a racially disparate manner, sometimes it talks about racially disparate treatment, sometimes it talks about racial disparities. I'm not sure, you know, when we're talking about disparate treatment and when we're talking about disparate impact.

But it's important for, I think, people to understand that the original impetus behind the notion of punishing crack cocaine especially harshly was something that the Black Caucus and Congressman Rangel were very much in favor of. At the time, the view was that, in particular, African-American neighborhoods were being devastated by crack cocaine and, therefore, the emergency required that harsh punishments come in.
People have since reconsidered that, and that's fine, you know. You can reconsider something like that. But the way it's drafted here, we're just going back and forth too much here, and I can't run on that.

Another thing that bothers me about the way this is done is that it's in very conclusory language. Rather than arguing the point, it just assumes that it's right. The sentence that it moves sentencing levels down in many cases so that low-level crimes are adequately, but not excessively, punished. Well, what's adequate is in the eye of the beholder, and we haven't argued what's adequate here. We just asserted that it's adequate. And if enacted, it would help reduce outsized U.S. prison population without jeopardizing public safety. You know, it's a trade-off, and to just assert that, I think, is not an appropriate way to argue.

The criticism of the Department of Justice's May 2017 policy I think is inappropriate. I think that that policy is in keeping with what prosecutors are supposed to do, and that is policy gets made by Congress and prosecutors should not be doing an end run around the policy that's set by Congress. If Congress wants to pass this bill, then they're setting a policy, and that's fine. But I
think the criticism of that, of the Department of Justice is off-base, so I'm going to be voting no.

CHAIR LHAMON: To be clear, the different phrasing about racially disparate manner, racially disparate treatment, and racial disparities comes from citation, so the time that the statement refers to racially disparate treatment is, in a sense, it says that national and international bodies have noted racially disparate treatment throughout the American criminal justice system. It's a cite --

COMMISSIONER HERIOT: But the problem is you then go and argue from that that that's somehow connected to racial disparities and suggesting to the reader that this is all of a piece, and it's not.

CHAIR LHAMON: Well, they are connected, but the other language doesn't refer to racially disparate treatment because that's not what's being discussed in the other context. So I think that it is --

COMMISSIONER HERIOT: It's the same paragraph. It's the same thought just carried on in the next sentence, and the reader can't tell what's going on when you do something like that.

CHAIR LHAMON: Well, I think most readers understand a cite, so the cite to racially disparate
treatment is to a particular set of national and international bodies and then the example does not use that same cite and so it uses a different term. That is consistent with the term of art -- but I appreciate that you have a set of other concerns that sentence edits sounds like they won't correct. I don't know if others have other statements.

COMMISSIONER ADEGBILE: Madam Chair, this is Commissioner Adegbile.

CHAIR LHAMON: Commissioner Adegbile, go ahead.

COMMISSIONER ADEGBILE: Madam Chair, I think I heard, I think I heard Commissioner Heriot say that the disparity had been reduced to make it reasonably close. Is it the case that the current disparity under federal law is 18 to 1?

COMMISSIONER HERIOT: Disparity between what and what?

COMMISSIONER ADEGBILE: So crack cocaine used to be, crack cocaine penalties used to be charged at a much heavier level than powder cocaine. And then with the bill in 2010, they were reduced under President Obama, but it's not clear to me that they're reasonably close, as you said, but maybe I'm missing something.
COMMISSIONER HERIOT: One of us is misinformed. If you're saying that the sentences are 18 times higher for crack cocaine than for powder cocaine after the 2010 act, one of us is misinformed.

COMMISSIONER ADEGBILE: Okay. We can clarify.

COMMISSIONER Kladney: If I could respond to a couple of points made by Commissioner Heriot. I think the bill, when it speaks about adequate sentencing, or when the statement speaks about adequate sentences it refers to the bill itself, which reduces sentences and also allows judges a little more discretion in making sentences, as opposed to the chart that they go by now.

Also, in regards to public safety, the prison population plateaued, the federal prison population plateaued in 2015 and, since then, crime has continued to decrease. There is also a Pew study on that, as well.

In addition, when it comes to policies of DOJ and criticism of that, which I think the Commissioner was criticizing herself, there's an open letter from state and local prosecutors that I think is cited in the statement saying that they believe that the policy taken by the current Department of
Justice is incorrect. So just . . .

COMMISSIONER HERIOT: Of course. It takes away some of their discretion. What a shock. What I'm saying is they should not have that discretion. That discretion is Congress's.

COMMISSIONER KLADNEY: Right. And Congress, in this bill, is reducing sentences and allowing judges more discretion in sentencing. So I think the policy --

COMMISSIONER HERIOT: It hasn't passed yet.

COMMISSIONER KLADNEY: I know it hasn't passed. That's the purpose of the statement.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: So I just wanted to note, if you believe Google search and the ACLU, that before the change crack and powder cocaine sentencing the difference was 100 to 1 and the compromise was to take it to 18 to 1. So it is currently 18 to 1.

COMMISSIONER ADEGBILE: I would then re-put my question to see if it would be 18 to 1 that Commissioner was describing as reasonably close.

COMMISSIONER HERIOT: I'm trying to wrap my mind around the notion of you would get 100 years
at some point in the past versus one year, so I'm not
-- hold on.

CHAIR LHAMON: Okay. [Briefing inaudible
conversation.] Any further commentary about this
statement? Okay. Unless there's further discussion,
I'll call the question and take a roll call vote.
Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLABDNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: And I vote yes. The motion
passes. Two commissioners opposed, no commissioner
abstained. All others were in favor.

A. STATE ADVISORY COMMITTEES

DISCUSSION AND VOTE ON THE NOMINATION OF SHAAKIRRAH
SANDERS AS CHAIR OF THE IDAHO ADVISORY COMMITTEE

CHAIR LHAMON: So today's agenda gives us
two interim advisory committee chairs to nominate.

I'll begin with the Idaho Advisory Committee. I move that the Commission appoint Shaakirrah Sanders as chair of the Idaho Advisory Committee. If the motion passes, the Commission will authorize the staff director to execute the appropriate paperwork for the appointment. Do I have a second for this motion?

COMMISSIONER KLADNEY: Second.

CHAIR LHAMON: Thank you. Any discussion?

Okay. We'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Aye.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLABE: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: And I vote yes. The motion passes unanimously.

DISCUSSION AND VOTE ON THE NOMINATION OF ALEXES
HARRIS AS CHAIR OF THE WASHINGTON ADVISORY COMMITTEE

CHAIR LHAMON: I now move that the Commission appoint Alexes Harris as chair of the Washington Advisory Committee. If the motion passes, the Commission will authorize the staff director to execute the appropriate paperwork for the appointment. Do I have a second for this motion?

COMMISSIONER NARASAKI: Second.

CHAIR LHAMON: Thank you. Any discussion? I'll call the question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLASTNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: And I vote yes. The motion passes unanimously. I'll note again that these interim appointments come to the Commission after we
stood up all 51 of our advisory committees who act as our eyes and ears around the country reporting on civil rights issues, and I'm deeply grateful for our regional program staff for their continuing hard work in keeping these committees active and productive.

Next, we'll hear from the staff director for the monthly staff director report.

B. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

STAFF DIRECTOR MORALES: Thank you, Madam Chair. I'll not go into any specific detail. I'm always available to answer any questions the commissioners may have about the report.

I would like to mention a couple of things. One, I want to commend the hard work the staff has been doing to prepare reports, hold the briefings, and prepare for today's business meeting. In particular, I want to acknowledge staff work that they've been doing to close out the fiscal year, including the finalization of our annual audit and the performed accountability report that is due this week.

Lastly, Madam Chair, I want to remind commissioners to join us tomorrow at our 60th anniversary commemoration event at the Library of
Congress from 1 until 3 p.m. We will hear from the Librarian of Congress, members of Congress, and from former chairs of the Commission.

At this time, that's all I have, Madam Chair, so thank you very much.

CHAIR LHAMON: Thank you.

COMMISSIONER YAKI: I have a question.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Yes, what time does the program begin at the reception tomorrow?

STAFF DIRECTOR MORALES: We believe it will start, we've planned for it to start at approximately 1:20. There will be, the Library of Congress has been kind enough to provide us with some historical documents that we'll be able to begin to look at 12:30. But we wanted to allow time for commissioners and for, you know, the public that's attending to examine the exhibits, so you can look at them starting at 12:30, but the program itself will start at approximately 1:20.

CHAIR LHAMON: Just as a student of history --

COMMISSIONER YAKI: Okay. So --

CHAIR LHAMON: -- I will say that I understand that that exhibit will be amazing and not
COMMISSIONER YAKI: And just so I know because, being out here sometimes, I don't get all the information about what exactly is going on. So you're telling me that we can actually be there before 1:00 in order to see the exhibition?

STAFF DIRECTOR MORALES: Yes, that is correct.

COMMISSIONER YAKI: And what time would that period commence?

CHAIR LHAMON: At 12:30.

COMMISSIONER YAKI: When are we allowed in?

STAFF DIRECTOR MORALES: 12:30, sir.

COMMISSIONER YAKI: Okay, thank you.

CHAIR LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes. I just wanted to commend and thank the OCRE staff, especially Maureen Rudolph, Marik Xavier-Brier, and LaShonda Brenson for putting together a very excellent briefing before our upcoming December briefing into the intersection of racial and disability discrimination and school discipline. There's not been, I think, sufficient attention on students of color with
disabilities, and I'm very much looking forward to hearing the experts and the investigation. But I wanted to acknowledge staff for putting together something that has enough meat but is not so heavy that I could actually bring it home. Thanks.

III. ADJOURN MEETING

CHAIR LHAMON: Terrific. Well, thank you all. Thank you for the report. And with that, I will adjourn this meeting at 1:43 p.m. Eastern Daylight Time. Thank you and I hope to see you all tomorrow.

(Whereupon, the foregoing matter went off the record at 1:43 p.m.)