

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*

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

2 (1:02 p.m.)

3 CHAIR LHAMON: I'm going to call us to
4 order. This meeting of the U.S. Commission on Civil
5 Rights comes to order at 1:02 p.m. on November 13,
6 2017. The meeting takes place at the Commission's
7 headquarters located at 1331 Pennsylvania Avenue,
8 Northwest, Washington, D.C.

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

15 COMMISSIONER YAKI: Yes.

16 CHAIR LHAMON: Terrific. Commissioner
17 Adegbile.

18 COMMISSIONER ADEGBILE: Present.

19 CHAIR LHAMON: Terrific. Commissioner
20 Kirsanow.

21 COMMISSIONER KIRSANOW: Here.

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

25 STAFF DIRECTOR MORALES: I am.

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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 KLADNEY: 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.

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1 CHAIR LHAMON: Is there a second?

2 COMMISSIONER YAKI: Second.

3 CHAIR LHAMON: Okay. Any other
4 amendments?

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

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

12 COMMISSIONER YAKI: Second.

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

16 (Chorus of ayes.)

17 **II. BUSINESS MEETING**

18 **DISCUSSION ON THE STATEMENT OF IMMIGRATION DETENTION**

19 **CENTERS**

20 CHAIR LHAMON: Any opposed? Any
21 abstentions? The motion passes unanimously. Okay.
22 So, first, we will discuss and vote on the two new
23 amended agenda items that are proposed statements.
24 We'll begin with the statement on immigration
25 detention centers introduced by Commissioner

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1 Narasaki. Commissioner Narasaki, would you mind
2 reading the statement so we know what's under
3 consideration?

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

19 The Commission calls for heightened
20 oversight and transparency of the program and fair
21 compensation for detainees to mitigate the growing
22 risk of abuse. More detainees are set to enter the
23 detention center. U.S. Immigration and Customs
24 Service recently published notices seeking
25 information on new privately-run detention facilities

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1 that would house approximately 4,000 detainees.

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

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

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

22 Private detention centers have a huge
23 financial incentive to exploit detainee labor. In a
24 deposition, one provider testified that, if there were
25 no voluntary workers, the provider would have to hire

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1 additional workers who would have to be paid an hourly
2 wage to comply with its contract with ICE. A report
3 found the provider would have spent over \$125,000 in
4 a one-month period on wages and benefits but, instead,
5 spent \$1,680 for the use of detainee labor. These
6 incentives appear to lead to detainee abuse.

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

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

21 In our 2015 statutory enforcement report
22 "With Liberty and Justice for All: The State of Civil
23 Rights at Immigration Detention Facilities," the
24 Commission investigated immigration detention
25 centers, including those operated by private for-

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1 profit companies that have contracts with the federal
2 government. The Commission found numerous detention
3 centers failed to comply with a performance-based
4 national detention standards, laws, and court orders
5 meant to protect the constitutional and civil rights
6 of detainees. Moreover, private detention centers do
7 not have the same level of transparency as government-
8 run centers, nor do private detention centers
9 necessarily dot the same standards as federally-run
10 ones.

11 For decades, the Commission and its state
12 advisory committees have investigated and reported on
13 the often negative civil rights implications of our
14 nation's immigration laws and policies. The
15 Commission strongly urges Congress to hold a hearing
16 to investigate labor practices at private detention
17 centers, pass legislation requiring all detention
18 centers to pay a fair wage for detainees, and conduct
19 greater oversight to protect the rights of working
20 detainees. Furthermore, DHS Office of Inspector
21 General should investigate alleged abusive labor
22 practices at private detention centers and ICE should
23 immediately revise its 2011 PBNDS to require a fair
24 wage for detainees participating in a work program to
25 eliminate the incentive for labor abuses. Chair

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1 Catherine E. Lhamon stated, "DHS and Congress must
2 act swiftly to correct these documented abuses in
3 detention centers and ensure that private facilities
4 are held to the same standard of accountability as
5 government facilities."

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

9 COMMISSIONER YAKI: So moved.

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

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

22 As I said, I have a number of objections,
23 but one of them is why does it focus just on for-
24 profit immigration detention centers? For example,
25 in the footnotes, we cite Guevara v. I.N.S., a

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1 decision of the Fifth Circuit that actually dealt not
2 with a private prison but with a federally-run
3 immigration detention center. In particular, it dealt
4 with Port Isabel, the one that this Commission visited
5 just a couple of years ago. I think all the issues
6 are the same regardless of whether or not we are
7 talking about private prisons or federally-run
8 prisons.

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

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

24 As I said, Guevara v. I.N.S. is about a
25 federally-run prison. We talk about here, for

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1 example, private detention centers have a huge
2 financial incentive to exploit detainee labor. Yes,
3 but so do federally-run prisons. The notion that only
4 privately-run prisons are interested in the bottom
5 line I think is just plain wrong. And, in fact, when
6 we talked, I think, at length in our report on
7 immigration detention centers two years ago, we tried
8 to make the argument, the Commission tried to make
9 the argument over my dissent, that food service was
10 worse at privately-run prisons when, in fact, the
11 evidence went the other way. And I will refer that
12 members of the Commission to my statement in that
13 report.

14 As for, you know, whether the same
15 argument should be made in the context of both private
16 and federally-run prisons, what I can say is that we
17 definitely want to provide an opportunity for
18 detainees to be able to earn some money while they're
19 in detention centers. That's a good thing. It may
20 well be that a dollar a day is not a great amount for
21 that. But that means we should be aiming this at
22 Congress and not phrasing it as if it's a criticism
23 of privately-run detention centers. Had we said that
24 a dollar a day might be too low, that might be too
25 low, you know, that's something we can certainly

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1 discuss. It sounds low to me. But, yes, it sounds
2 quite low to me. However, that's not what's been
3 drafted here, and I don't think I can sign this the
4 way it is.

5 CHAIR LHAMON: Thank you. Commissioner
6 Narasaki?

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

17 Also, because there is a question as to
18 whether they are subject to FOIA laws and are as
19 transparent, required to be as transparent as federal-
20 run detention centers, I feel that there is just a
21 lot more room for coercion. So that's actually part
22 of my concern. It's both the ridiculously-low
23 compensation, because I agree with Commissioner
24 Heriot, it is good for the detainees to be given an
25 opportunity to occupy their time and to be able to

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1 make money, but I think we agree that a dollar per
2 day or snacks is not the best way to go about it and
3 sort of smacks of indentured servitude. So if you
4 would like me to work with you on this to cover public
5 prisons, I'd be happy to delay that and rework it.

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

16 CHAIR LHAMON: Commissioner Heriot?

17 COMMISSIONER HERIOT: I just wanted to
18 point out, as Kevin Landy, assistant director for
19 ICE's Office of Detention and Policy Planning, said
20 about privately-run detention facilities, that, in
21 fact it wasn't that privately-run detention
22 facilities have more violations of law or policy than
23 federally-run ones. He, rather, said that the
24 problems with immigration detention facilities tend
25 to be those that are dedicated to immigration

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1 detention, as opposed to multi-purpose, part prison,
2 part jail, part immigration detention center. That's
3 where you get the problems. It's not a difference
4 between public and private, it's a difference between
5 centers population-- Is it 100 percent immigrants or
6 is it partly used for convicted criminals, partly used
7 for arrestees?

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

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

25 COMMISSIONER HERIOT: I have a hard time

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1 predicting what it would be like. [Briefing inaudible
2 conversation.] Well, it would be more limited, yes.
3 The way this now just picks on privately-run detention
4 facilities, and, if you want to maintain the focus
5 there, then, no, I'd be against that.

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

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

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

18 COMMISSIONER KLADNEY: Why couldn't you
19 just add publicly-run prisons and privately-run
20 prisons wherever privately-run prisons appear?

21 COMMISSIONER HERIOT: Well, private
22 detention centers and federally-run detention centers
23 have a huge financial incentive to exploit detainee
24 labor, I don't like the word exploit but I've got no
25 problem with a sentence that says that. Sure they

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1 have a financial incentive to use such labor, and the
2 detainees have a financial incentive to participate
3 in that. That's what makes a happy world where you've
4 got people on both sides of a transaction that are
5 willing to participate.

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

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

24 CHAIR LHAMON: While we're pausing, let's
25 see if we can hear from folks on the phone, too. Any

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1 of the commissioners on the phone have discussion?

2 COMMISSIONER KIRSANOW: Madam Chair,
3 Kirsanow here.

4 CHAIR LHAMON: Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: Yes, I have a
6 question just out of curiosity. Do we know, Karen,
7 do you know how many of these detainees participate
8 in the program or what percentage of those detainees
9 participate in this program?

10 COMMISSIONER NARASAKI: No, that's why we
11 would want to have the DHS inspector general look at
12 what's going on. But the fact that you have a court
13 that actually ordered a class action, which is fairly
14 rare in these kind of circumstances, I think signals
15 that there's some serious problem.

16 COMMISSIONER KLADNEY: I think a class
17 action is ordered where there's a complaint on file
18 and that the action affects numerous people within
19 the system, and it doesn't say anything as to what
20 exactly is going on or not going on. It's just a
21 certifying a class.

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

24 CHAIR LHAMON: So, Commissioner Narasaki,
25 do you want to withdraw or do you want to proceed? I

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1 note that the recommendation at the end include urging
2 Congress to pass legislation requiring all detention
3 centers to pay a fair wage for detainees. It seems
4 like the concerns go to addressing these issues, to
5 the extent they exist, at any detention center, it
6 seems like there might be value in incorporating all
7 in the conversation.

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

14 COMMISSIONER HERIOT: That's probably
15 going to run into some trouble here. You know,
16 changing it off the cuff here without having looked
17 at each sentence where it's mentioned. I'm happy to
18 re-address this in December and, you know, if it turns
19 out -- we'll agree on at least something.
20 [Commissioner Narasaki:] "and that's always good,
21 Gail." It will always be, like, you know, you write
22 your statement and I do I agree with Commissioner
23 Narasaki on X, Y, and Z.

24 COMMISSIONER NARASAKI: I appreciate the
25 goodwill with which that has been offered, and I will

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1 accept that offer.

2 **DISCUSSION AND VOTE ON THE STATEMENT OF SENTENCING**
3 **REFORM LEGISLATION**

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

11 The title of the statement is "U.S.
12 Commission on Civil Rights Supports Sentencing Reform
13 Legislation." The U.S. Commission on Civil Rights
14 supports certain sentencing reduction provisions in
15 the bipartisan Sentencing Reform and Corrections Act
16 of 2017 recently introduced in the Senate. The bill
17 proposes to reduce mandatory minimum sentences for
18 particular non-violent offenses and to return
19 discretion to judges on sentencing in more cases. It
20 moves sentencing levels down in many cases so that
21 low-level crimes are adequately but not excessively
22 punished. It also makes retroactive sentencing
23 reductions in crimes involving crack cocaine, which,
24 prior to the enactment of the Fair Sentencing Act of
25 2010, were punished with extreme sentences compared

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1 with crimes involving powder cocaine.

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

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

25 In the last 30 years, the federal prison

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1 population alone has nearly tripled. Currently, our
2 nation has over two million people behind bars in
3 state and federal prisons. Significantly, this
4 alarming trend was propelled by criminal justice
5 policies and not an increase in crime.

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

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

22 National and international bodies have
23 noted racially disparate treatment throughout the
24 American criminal justice system, including in the
25 application of mandatory minimum sentences. Perhaps

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1 the most notable and egregious example of the racial
2 disparities can be found in the different mandatory
3 minimum sentences provided for offenses involving
4 crack versus powder cocaine.

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

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

24 Reductions in mandatory minimums, by
25 contrast, allow for proportional and fair sentencing

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1 in more cases, reducing these negative effects. Chair
2 Catherine Lhamon said, "The sentencing reduction
3 provisions in this legislation are necessary to hew
4 closer to the fair administration of justice in our
5 country and ensure that the criminal justice system
6 does not more harshly judge marginalized communities
7 without basis. I urge Congress to take swift action
8 to correct these injustices."

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

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

17 COMMISSIONER KLADNEY: I move.

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

20 COMMISSIONER HERIOT: Sorry. I'm going
21 to vote no on this one, though I'm happy that, given
22 that the bill is 168 pages long, that you did quote
23 from that footnote number one so we have on the record
24 that this is not the Commission supporting the entire
25 bill. I assume that most of us have not looked that

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1 closely at the entire bill but, rather, just Sections
2 101, 102, 103, and 105.

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

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

17 But it's important for, I think, people
18 to understand that the original impetus behind the
19 notion of punishing crack cocaine especially harshly
20 was something that the Black Caucus and Congressman
21 Rangel were very much in favor of. At the time, the
22 view was that, in particular, African-American
23 neighborhoods were being devastated by crack cocaine
24 and, therefore, the emergency required that harsh
25 punishments come in.

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1 People have since reconsidered that, and that's fine,
2 you know. You can reconsider something like that.
3 But the way it's drafted here, we're just going back
4 and forth too much here, and I can't run on that.

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

18 The criticism of the Department of
19 Justice's May 2017 policy I think is inappropriate.
20 I think that that policy is in keeping with what
21 prosecutors are supposed to do, and that is policy
22 gets made by Congress and prosecutors should not be
23 doing an end run around the policy that's set by
24 Congress. If Congress wants to pass this bill, then
25 they're setting a policy, and that's fine. But I

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1 think the criticism of that, of the Department of
2 Justice is off-base, so I'm going to be voting no.

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

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

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

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

24 CHAIR LHAMON: Well, I think most readers
25 understand a cite, so the cite to racially disparate

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1 treatment is to a particular set of national and
2 international bodies and then the example does not
3 use that same cite and so it uses a different term.
4 That is consistent with the term of art -- but I
5 appreciate that you have a set of other concerns that
6 sentence edits sounds like they won't correct. I
7 don't know if others have other statements.

8 COMMISSIONER ADEGBILE: Madam Chair, this
9 is Commissioner Adegbile.

10 CHAIR LHAMON: Commissioner Adegbile, go
11 ahead.

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

17 COMMISSIONER HERIOT: Disparity between
18 what and what?

19 COMMISSIONER ADEGBILE: So crack cocaine
20 used to be, crack cocaine penalties used to be charged
21 at a much heavier level than powder cocaine. And then
22 with the bill in 2010, they were reduced under
23 President Obama, but it's not clear to me that they're
24 reasonably close, as you said, but maybe I'm missing
25 something.

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1 COMMISSIONER HERIOT: One of us is
2 misinformed. If you're saying that the sentences are
3 18 times higher for crack cocaine than for powder
4 cocaine after the 2010 act, one of us is misinformed.

5 COMMISSIONER ADEGBILE: Okay. We can
6 clarify.

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

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

20 In addition, when it comes to policies of
21 DOJ and criticism of that, which I think the
22 Commissioner was criticizing herself, there's an open
23 letter from state and local prosecutors that I think
24 is cited in the statement saying that they believe
25 that the policy taken by the current Department of

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1 Justice is incorrect. So just . . .

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

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

10 COMMISSIONER HERIOT: It hasn't passed
11 yet.

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

14 CHAIR LHAMON: Commissioner Narasaki?

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

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

24 COMMISSIONER HERIOT: I'm trying to wrap
25 my mind around the notion of you would get 100 years

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1 at some point in the past versus one year, so I'm not
2 -- hold on.

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

8 COMMISSIONER ADEGBILE: Aye.

9 CHAIR LHAMON: Commissioner Heriot?

10 COMMISSIONER HERIOT: No.

11 CHAIR LHAMON: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: No.

13 CHAIR LHAMON: Commissioner Kladney?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIR LHAMON: Commissioner Narasaki?

16 COMMISSIONER NARASAKI: Yes.

17 CHAIR LHAMON: Commissioner Yaki?

18 COMMISSIONER YAKI: Aye.

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

22 **A. STATE ADVISORY COMMITTEES**

23 **DISCUSSION AND VOTE ON THE NOMINATION OF SHAAKIRRAH**

24 **SANDERS AS CHAIR OF THE IDAHO ADVISORY COMMITTEE**

25 CHAIR LHAMON: So today's agenda gives us

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1 two interim advisory committee chairs to nominate.
2 I'll begin with the Idaho Advisory Committee. I move
3 that the Commission appoint Shaakirrah Sanders as
4 chair of the Idaho Advisory Committee. If the motion
5 passes, the Commission will authorize the staff
6 director to execute the appropriate paperwork for the
7 appointment. Do I have a second for this motion?

8 COMMISSIONER KLADNEY: Second.

9 CHAIR LHAMON: Thank you. Any discussion?
10 Okay. We'll call the question and take a roll call
11 vote. Commissioner Adegbile, how do you vote?

12 COMMISSIONER ADEGBILE: Aye.

13 CHAIR LHAMON: Commissioner Heriot?

14 COMMISSIONER HERIOT: Aye.

15 CHAIR LHAMON: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIR LHAMON: Commissioner Kladney?

18 COMMISSIONER KLADNEY: Yes.

19 CHAIR LHAMON: Commissioner Narasaki?

20 COMMISSIONER NARASAKI: Yes.

21 CHAIR LHAMON: Commissioner Yaki?

22 COMMISSIONER YAKI: Aye.

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

25 **DISCUSSION AND VOTE ON THE NOMINATION OF ALEXES**

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1 **HARRIS AS CHAIR OF THE WASHINGTON ADVISORY COMMITTEE**

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

8 COMMISSIONER NARASAKI: Second.

9 CHAIR LHAMON: Thank you. Any discussion?
10 I'll call the question and take a roll call vote.
11 Commissioner Adegbile, how do you vote?

12 COMMISSIONER ADEGBILE: Aye.

13 CHAIR LHAMON: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIR LHAMON: Commissioner Heriot?

16 COMMISSIONER HERIOT: Yes.

17 CHAIR LHAMON: Commissioner Kladney?

18 COMMISSIONER KLADNEY: Yes.

19 CHAIR LHAMON: Commissioner Narasaki?

20 COMMISSIONER NARASAKI: Yes.

21 CHAIR LHAMON: Commissioner Yaki?

22 COMMISSIONER YAKI: Aye.

23 CHAIR LHAMON: And I vote yes. The motion
24 passes unanimously. I'll note again that these
25 interim appointments come to the Commission after we

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1 stood up all 51 of our advisory committees who act as
2 our eyes and ears around the country reporting on
3 civil rights issues, and I'm deeply grateful for our
4 regional program staff for their continuing hard work
5 in keeping these committees active and productive.

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

8 **B. MANAGEMENT AND OPERATIONS**

9 **STAFF DIRECTOR'S REPORT**

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

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

23 Lastly, Madam Chair, I want to remind
24 commissioners to join us tomorrow at our 60th
25 anniversary commemoration event at the Library of

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1 Congress from 1 until 3 p.m. We will hear from the
2 Librarian of Congress, members of Congress, and from
3 former chairs of the Commission.

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

6 CHAIR LHAMON: Thank you.

7 COMMISSIONER YAKI: I have a question.

8 CHAIR LHAMON: Commissioner Yaki?

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

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

21 CHAIR LHAMON: Just as a student of
22 history --

23 COMMISSIONER YAKI: Okay. So --

24 CHAIR LHAMON: -- I will say that I
25 understand that that exhibit will be amazing and not

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1 want to miss it.

2 COMMISSIONER YAKI: And just so I know
3 because, being out here sometimes, I don't get all
4 the information about what exactly is going on. So
5 you're telling me that we can actually be there before
6 1:00 in order to see the exhibition?

7 STAFF DIRECTOR MORALES: Yes, that is
8 correct.

9 COMMISSIONER YAKI: And what time would
10 that period commence?

11 CHAIR LHAMON: At 12:30.

12 COMMISSIONER YAKI: When are we allowed
13 in?

14 STAFF DIRECTOR MORALES: 12:30, sir.

15 COMMISSIONER YAKI: Okay, thank you.

16 CHAIR LHAMON: Thank you. Commissioner
17 Narasaki?

18 COMMISSIONER NARASAKI: Yes. I just
19 wanted to commend and thank the OCRE staff, especially
20 Maureen Rudolph, Marik Xavier-Brier, and LaShonda
21 Brenson for putting together a very excellent briefing
22 before our upcoming December briefing into the
23 intersection of racial and disability discrimination
24 and school discipline. There's not been, I think,
25 sufficient attention on students of color with

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1 disabilities, and I'm very much looking forward to
2 hearing the experts and the investigation. But I
3 wanted to acknowledge staff for putting together
4 something that has enough meat but is not so heavy
5 that I could actually bring it home. Thanks.

6 **III. ADJOURN MEETING**

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

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

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