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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue Northwest, Washington, D.C. at 10:00 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman
PATRICIA TIMMONS-GOODSON, Vice Chair*
ROBERTA ACHTENBERG, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner*
DAVID KLADNEY, Commissioner*
KAREN K. NARASAKI, Commissioner
MAURO MORALES, Staff Director

* Present via telephone
STAFF PRESENT:

ANGELA FRENCH-BELL, Director, OCRE
ALFREDA GREENE, Secretary, OSD
JENNIFER HEPLER, Parliamentarian
PAMELA DUNSTON, Chief, ASCD
PILAR VELASQUEZ MCLAUGHLIN
DANIELLE ROOT

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DEULL
JASON LAGRIA
CARRISA MULDER
AMY ROYCE
JUANA SILVERIO
ALLISON SOMIN
KIMBERLY TOLHURST
A-G-E-N-D-A

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(9:59 a.m.)

CHAIRMAN CASTRO: The meeting is going to come to order. This is a meeting of the U.S. Commission on Civil Rights. It is currently 9:59. Actually, we’re starting a minute early. According to that clock, it’s past 10:00, but. It’s September 11, 2015.

This meeting is taking place at the Commission’s headquarters located at 1331 Pennsylvania Avenue N.W. in Washington, D.C.

I’m Chairman Marty Castro. The Commissioners that are present with me here at the office are, of course, myself, Commissioners Narasaki, Achtenberg and Heriot.

And also we have participating by phone Vice Chair Timmons-Goodson, Commissioner Kladney, and Commissioner Kirsanow.

Commissioner Yaki was to participate by phone but we understand that he is currently stuck on
an airplane and hopefully will be able to join us before
the meeting is over. But if not, we want to make the
record clear he was intending to be on.

So a quorum of the Commissioners is
present. Is the court reporter present?

COURT REPORTER: Yes.

CHAIRMAN CASTRO: Is the Staff Director
present?

STAFF DIRECTOR MORALES: Yes.

CHAIRMAN CASTRO: Okay. So the meeting
will now come to order. Before we approve the agenda,
just a couple of items. We all know today is the 14th
anniversary of September 11th, a day that, obviously,
we all want to remember.

And throughout the day, there will be
remembrances back home in our communities as well as
here in the United States Capitol. But I thought it
would be appropriate for us here at the Commission to
take a few moments of silence.

(Moment of silence.)

CHAIRMAN CASTRO: So as we remember all
those that were lost on that day and subsequent to that,
we have to remember what our role is as a Commission.

We did a report not long ago on issues of
hate crimes and other issues related to violations of
the civil rights of Muslim and Arab Americans. And I’m
sad to say that, you know, even 14 years later we still
see hate crimes being committed in the name of what
happened on 9/11.

Just the day before yesterday in a suburb
of Chicago, a Sikh American man was very badly beaten.
He was followed on the road by a road rager yelling at
him to go back to his country, calling him a terrorist.

When the gentlemen pulled over to let these
folks go by, allegedly they blocked his car, came into
his car, and beat him tremendously and terribly. He’s
suffering from broken facial bones in the hospital.
And while he was being beaten, was being told to go back
to his country, because he’s a terrorist.

We heard testimony like this in our
Islamophobia hearing, and I think it’s appropriate that
today we remember that this is still a ramification of
what happened on 9/11 and misplaced hatred for
Americans, so. With that in mind B-

COMMISSIONER HERIOT: Can I mention
though --

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: -- also, that 9/11
was itself a hate crime.

CHAIRMAN CASTRO: It was, yes. Terrible.

Was someone else on the phone to say something? Okay. Let’s move on to the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: We have an agenda set forward in the notice, but there are some potential amendments we would like to entertain. One of them would be in a motion to amend the agenda to remove the appointment of the Ohio State Advisory Committee.

Another would be to amend the agenda to read the notational vote regarding the Flores letter into the record. And the third would be to add a discussion and vote on the letter to the President regarding Flores.

Is there anyone who would like to make a motion to amend on all three or any one of those?

COMMISSIONER NARASAKI: So moved.

CHAIRMAN CASTRO: On all three? I’m sorry?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER HERIOT: Is Tennessee going to be B-
CHAIRMAN CASTRO: No. Tennessee was taken off. Do we --

COMMISSIONER HERIOT: It's already --

CHAIRMAN CASTRO: -- need a motion on that?

STAFF DIRECTOR MORALES: No, it's not on the B

CHAIRMAN CASTRO: It's not on the agenda.

It was taken off.

COMMISSIONER HERIOT: Oh, it's on mine.

CHAIRMAN CASTRO: Is it?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: It's on yours?

COMMISSIONER HERIOT: I have an old one.

CHAIRMAN CASTRO: Yes.

CHAIRMAN CASTRO: No. Oh, okay. Well, we'll also discuss it, though. Was Tennessee on the agenda?

STAFF DIRECTOR MORALES: Not the one that was submitted and formally sent to B

CHAIRMAN CASTRO: Yes. It's only got Ohio. Okay.

COMMISSIONER HERIOT: So mine must be old, I guess.
CHAIRMAN CASTRO: Yes. Well, okay.

STAFF DIRECTOR MORALES: I’m sorry if that occurred.

CHAIRMAN CASTRO: Okay. So then it’s just Ohio.

STAFF DIRECTOR MORALES: It’s the only one I have.

CHAIRMAN CASTRO: No. I think was just the draft that was sent to the Special Assistants.

STAFF DIRECTOR MORALES: Okay.

CHAIRMAN: Okay. So we have a motion. Do we have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Okay. All those in favor say aye.

GROUP: Aye.

CHAIRMAN CASTRO: Any abstentions?

(No audible response.)

CHAIRMAN CASTRO: Any nos?

(No audible response.)

CHAIRMAN CASTRO: Okay. So the first item on the agenda is program planning.

II. PROGRAM PLANNING

STATUS ON COMMISSION REPORTS AND HIRING

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OF CONTRACTORS BY OCRE

CHAIRMAN CASTRO: We have an update on the reports and the hiring of the contractors from Angela French-Bell.

MS. FRENCH-BELL: Good morning, Chairman Castro. Is it on? Good morning, Chairman Castro, Madam Vice Chair, Special Assistants and Staff. I’m reporting on two things today, the status of the contractor and a few of our reports.

We want to thank you for the patience in the contractor. As promised, we’ve completed the Statement of Work and it’s been forwarded to GSA.

The next step is they are working with us to select the top vendor. From there, we will interview the top three candidates and we are working diligently to turn that around as quickly as possible. Our goal is to get them here as quickly as we can after we’ve selected the top candidate.

The next thing that I wanted to talk about are our reports. We will have the Statutory Enforcement Report completed by today. So that will be sent over to ASCD so that we will be ready to get that up and running on the Web. So thank you for that.
CHAIRMAN CASTRO: Could I just interrupt you?

MS. FRENCH-BELL: Yes?

CHAIRMAN CASTRO: But it won’t go up on the Web until the 17th, right?

MS. FRENCH-BELL: That’s correct.

CHAIRMAN CASTRO: Okay.

MS. FRENCH-BELL: But they needed the time to get it running.

CHAIRMAN CASTRO: Just want to make sure.

(Off microphone discussion.)

CHAIRMAN CASTRO: All right, please proceed.

MS. FRENCH-BELL: Okay. Civil rights for vets. We received your comments. We appreciate it and we’re working to edit the report accordingly.

State immigration is currently with the Office of the Staff Director and that will be coming out soon. It’s been rewritten and that will be competed at the end of this month. We wanted to at least give you two weeks.

CHAIRMAN CASTRO: Could anyone on the phone mute your phone, please. We’re getting some weird feedback. Thank you. Go ahead.
MS. FRENCH-BELL: Thank you. So we at least wanted to give you some time between statements so that you are able to do your comments in a timely manner. And we wanted to be fair to all of you.

And the last thing is Stand Your Ground. The investigation is complete. Dr. Sean Goliday did go to Florida. Found out some great information. It’s been incorporated into the report. We’re meeting with Kimberly Tolhurst, Commissioner Yaki’s assistant, on Monday to talk about next steps.

Are there any questions for me? Yes?

COMMISSIONER HERIOT: Yes. I understood you, right, you were talking about posting the Immigration Detention Report today?

CHAIRMAN CASTRO: No.

MS. FRENCH-BELL: No. We’re just having -- the report will be completed --

COMMISSIONER HERIOT: Okay.

MS. FRENCH-BELL: -- and sent over to ASCD to be reported.

COMMISSIONER HERIOT: I’m assuming that I can get you my statement with its rebuttal by the five o’clock today, is that right?

MS. FRENCH-BELL: That’s correct.
COMMISSIONER HERIOT: You’ll probably get it a little bit before that, because I’ve got a plane to catch.

MS. FRENCH-BELL: Oh, absolutely. Absolutely. Thank you. Are there any other questions? Yes?

COMMISSIONER NARASAKI: I’m sorry, miss, did you say when the NVRA will be recirculated?

MS. FRENCH-BELL: NVRA is going to be a little more time. We’ve decided to rewrite that report. So we’re looking more of a late fall time frame for that report. We’re working diligently. I promise you, we are. It’s just going to take us some time.

COMMISSIONER NARASAKI: Yes. I thought it was fine without the rewriting so I didn’t know you were rewriting.

MS. FRENCH-BELL: Yes.

CHAIRMAN CASTRO: Apparently, someone else must have thought otherwise.

MS. FRENCH-BELL: And that’s what happens sometimes. Any other comments or questions? Thank you so much for your time.

CHAIRMAN CASTRO: Thank you. Next we have a discussion on hearing dates for the 2016...
DISCUSSION ON HEARING DATES FOR 2016

STATUTORY ENFORCEMENT REPORT

STAFF DIRECTOR MORALES: I’ll defer to Angela. We’ve had a discussion about the potential of having the Statutory Enforcement Report in November, depending on the date that you select for moving that meeting, because we have a Commission and business meeting on December 11th at the Lincoln Cottage.

And so the next opportunity would be in January for a hearing on the Statutory Report. So I’ll let Angela talk about what she can do.

MS. FRENCH-BELL: It would be beneficial to us to have the briefing either on the 13th or the 20th of November. Beyond that, we start getting into the holiday season and it’s much more difficult to get government panelists to attend because of their vacation plans or use or lose time.

Also, it would be better for us in terms of our time line for the Statutory Enforcement Report to have it in November versus having it in January. That could substantially impact our time line for that report.

CHAIRMAN CASTRO: Yes.
COMMISSIONER HERIOT: Could I ask a question about that?

CHAIRMAN CASTRO: Sure, go ahead.

COMMISSIONER HERIOT: What about the discovery that will be involved in this? I mean, I worry about having a hearing before we really know what we’re looking for. And so, do we have a discovery plan, and is the Commission going to see that discovery plan?

MS. FRENCH-BELL: We are working on our discovery plan. We will send that through Mauro to the Commission. We are also working collaboratively with a couple of different agencies to obtain information as well, so that will help to determine what exactly needs to go in to the interrogatories.

COMMISSIONER HERIOT: So are we going to—B I just worry about the notion of having the hearing or the briefing at a time when we really aren’t clear on what we’re looking for yet. I mean, is that B—

MS. FRENCH-BELL: Well, we’ve done a lot of research. We are working on an annotated outline, so we have a pretty good idea of the information that we need.

COMMISSIONER HERIOT: I don’t have it, though, and I’m, you know, that’s a problem. I mean,
it seems like every year B-

MS. FRENCH-BELL:  Mm-hmm.

COMMISSIONER HERIOT:  -- we aren’t as
careful about our discovery plan as we need to be and
we figure that out in July that we really didn’t look
for the right things and didn’t ask the right things.
And so, that worries me.

MS. FRENCH-BELL:  Well, thank you for your
concern.  We’re definitely taking that into
consideration.  We’re definitely going to work with
Mauro to send you a detailed, annotated bibliography
so that you B-

COMMISSIONER HERIOT:  I don’t want just a
bibliography.  I want a, here’s what we’re going to
ask, here’s what we’re looking for.

MS. FRENCH-BELL:  Yes.

COMMISSIONER HERIOT:  Here’s what we, you
know, we think this is the right question for the
following reasons.

Thank you.

COMMISSIONER KIRSANOW:  When do we expect
to get that document?

MS. FRENCH-BELL:  Beginning of October.
You’ll have it at the beginning of October.

CHAIRMAN CASTRO: And I think in the past we have actually voted on discovery --

COMMISSIONER HERIOT: Yes, I think that’s --

CHAIRMAN CASTRO: -- too, haven’t we?

COMMISSIONER HERIOT: Yes. And we need a real discovery plan. Not just a vague, you know, here’s vaguely what we think the problem is, you know. What I want to hear is, like, we’re going to ask for the following documents in the following way.

MS. FRENCH-BELL: Thank you, Commissioner Heriot.

COMMISSIONER NARASAKI: Yes. I have to say I agree with Commissioner Heriot and I understand that Commissioner Yaki also is concerned.

MS. FRENCH-BELL: Mm-hmm.

COMMISSIONER NARASAKI: We understand the concern on the back end, right, that it’s hard to pull together the report by the statutory deadline.

But I also feel that if you take the time up front to do what, you know, needs to be done in terms of really focusing on what we’re going to do, then the back end will be more efficient.
And I am concerned about the fact that we’re talking about, you know, basically six weeks, which is not a lot of time to really get there. So, Mr. Chair, I think, even though -- no choice is ideal, but I would rather wait to January than to try to rush and try to do something in November.

MS. FRENCH-BELL: I definitely understand your concern. For us, we have already done a lot of the front end research. We just need to make sure that we are collaborating with you and that you understand what our plan is. So I don’t think it’s much of a concern on the front end as it might initially appear.

COMMISSIONER NARASAKI: Well, part of my concern is that we have a backlog of reports that we’re trying to get out. You’ve just told me that we’re delaying the NVRA again, which I actually thought was ready a year ago.

And we’ve been working on the findings and recommendations, so we were hoping to try to get that done in a timely way. So you have so much that we’re trying to push out in the fall. That’s also a concern to me as well.

CHAIRMAN CASTRO: Yes. I know that while Commissioner Yaki is not here, he did express through
his Special Assistant a desire to try to get this report
done, or the hearing done, before the end of the year.

And I appreciate that. I know that this
is his, he’s the primary movement behind this. But it
sounds to me like January is probably a better day for
all involved and we’ll have a stronger and better
hearing. We, as Commissioners, will be better
prepared for it.

So that’s the sense I’m getting. And I
don’t know if folks want to make a motion on that. I
think we probably should.

COMMISSIONER NARASAKI: I so move.

COMMISSIONER KLADNEY: And I’ll second
that, Mr. Chair.

CHAIRMAN CASTRO: Okay. Any additional
discussion? Hearing none, I will take a vote.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN CASTRO: Commissioner Heriot,
how do you vote?

COMMISSIONER HERIOT: Aye.

CHAIRMAN CASTRO: Commissioner Narasaki,
how do you vote?

COMMISSIONER NARASAKI: Yes.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, I assume you’re not on the phone yet? Okay. Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. It is unanimous with seven yeses. Okay, so January will be the hearing date for the 2016 Enforcement Report.

Next, we have a discussion and vote on the actual changing of the October, excuse me, October/November business meeting dates.

DISCUSSION ON CHANGING OCTOBER 16 AND NOVEMBER 6 COMMISSION BUSINESS MEETING DATES

CHAIRMAN CASTRO: As I indicated, I think, to all of you at some point, I am going to be out of the country on the dates that we had previously chosen and I was hoping to be able to adjust those dates to allow my participation.

The Staff Director circulated two dates as
alternatives to begin the discussion. October 30th for the October meeting and November 13th for the November meeting.

I understand there are some issues with some other Commissioners on those dates. I’d like to kind of get folks’ input. I know in the past we have had meetings on days other than Fridays. I’m open to, depending on scheduling, doing something on a Tuesday or a Wednesday, et cetera.

So I don’t know if folks want to opine on those two initial dates. The 30th of October or the 13th of November. Or let’s just take October for the first and then we’ll deal with November next.

COMMISSIONER NARASAKI: Mr. Chair?

CHAIRMAN CASTRO: Yes.

COMMISSIONER NARASAKI: So I’m one of the Commissioners not available to change to the 30th. I would hope that we could do it on the, you know -- I’m not sure what your openings are and when you come back, but would the 26th, Monday the 26th, or the 27th or 28th be available to you?

CHAIRMAN CASTRO: 27th would work.

COMMISSIONER NARASAKI: No, I can’t.

CHAIRMAN CASTRO: No? How about the
28th?

COMMISSIONER NARASAKI: No.

CHAIRMAN CASTRO: No?

COMMISSIONER NARASAKI: No.

CHAIRMAN CASTRO: Let’s see. How about the 29th?

COMMISSIONER NARASAKI: No.

CHAIRMAN CASTRO: So the 30th doesn’t work for you?

COMMISSIONER NARASAKI: No.

CHAIRMAN CASTRO: And who else doesn’t that work for?

COMMISSIONER KIRSANOW: The 30th doesn’t work for Kirsanow.

CHAIRMAN CASTRO: Okay. Let me see.

COMMISSIONER HERIOT: When are you out, Mr. Chairman?

CHAIRMAN CASTRO: I am out until the 9th of October. Then I leave again the 16th of October. I think I come back the 21st of October. I’ve got to be at a meeting in Chicago on the 23rd. unless I could do that remotely.

COMMISSIONER HERIOT: How about the 14th?

CHAIRMAN CASTRO: Let’s see. That’s
possible. Yes, I could do the 14th. The 14th work for everybody? All right. Wednesday, November 14th B-

FEMALE PARTICIPANT: Could the people on the phone hear you.

CHAIRMAN CASTRO: I’m sorry, October 14th. Wednesday, October 14th, does that work for everybody?

FEMALE PARTICIPANT: Does it work for David?

CHAIRMAN CASTRO: We don’t know.

COMMISSIONER KLABNEY: I don’t know if it works for me or not, but do what you want.

CHAIRMAN CASTRO: Thank you, Commissioner Kladney. So I’ll entertain a motion.

COMMISSIONER KIRSANOW: Mr. Chair?

CHAIRMAN CASTRO: Yes?

COMMISSIONER KIRSANOW: This is Kirsanow. I’m always in favor of trying to accommodate the schedules of Commissioners and we have done so in the past, but I’m wondering if it’s possible that we could keep the date as is. Have the Vice Chair chair the meeting and maybe you call in. Is that a possibility?

CHAIRMAN CASTRO: I would hesitate to say I can call in from Egypt. I don’t know what the
situation is going to be like there. Where I’m going to be deployed.

I’m going possibly to be the -B the plan is that I’m going to be one of the observers of their Congressional races. And, you know, if I’m assigned to Cairo, probably.

If I’m assigned to somewhere else in the country, I can’t say. That’s, you know, I could be sent anywhere. So I have no idea whether I’d have access to any kind of B- you know, what my communication access will be.

COMMISSIONER KLADNEY: Well, I have the same problem with the date you just chose. I mean, I’m going to be traveling somewhere. And I don’t really even know where, but it’s not going to be in this country.

CHAIRMAN CASTRO: Oh, no.

COMMISSIONER KLADNEY: And I think you take -- I think you have to either try and attend or you miss the meeting. I mean, that’s how I’m looking at it for myself.

CHAIRMAN CASTRO: I could say the same to you, Commissioner Kladney, since I’m the Chairman.

COMMISSIONER KLADNEY: But I’m just
saying, I mean --

CHAIRMAN CASTRO: I know. And I’m just saying, too.

COMMISSIONER Kladney: -- that’s how I’m looking at it for myself, Mr. Chairman. I’m not saying that B-

CHAIRMAN CASTRO: I appreciate that.

COMMISSIONER Kladney: -- that’s how you might look upon it.

CHAIRMAN CASTRO: I appreciate that.

Sure. Well, you know, folks can make a motion if they want. If they’re willing to make a change and make accommodations. If not, then so be it.

VICE CHAIR TIMMONS-GOODSON: Are we satisfied that we are not able to come up with an alternate date in October? Have we exhausted all of the possibilities already?

COMMISSIONER HERIOT: The 14th.

CHAIRMAN CASTRO: The 14th seemed to be the one that worked for everybody except Commissioner Kladney. We don’t know Commissioner Yaki’s availability because he’s not available to talk right now.

COMMISSIONER HERIOT: Does Kimberly know?
CHAIRMAN CASTRO: She doesn’t know.

VICE CHAIR TIMMONS-GOODSON: Well, do we

COMMISSIONER ACHTENBERG: I’ll move

October 14th, Mr. Chairman.

COMMISSIONER HERIOT: I’ll second that.

CHAIRMAN CASTRO: Okay. Any additional
discussion? Do I do a voice vote or do you want me to
go roll call? Is there B-

VICE CHAIR TIMMONS-GOODSON: A voice

vote.

CHAIRMAN CASTRO: A voice vote? Okay.

All in favor of changing the October meeting to October

14th, signify by saying aye.

GROUP: Aye.

CHAIRMAN CASTRO: Those against?

(No audible response.)

CHAIRMAN CASTRO: Any abstentions?

(No audible response.)

CHAIRMAN CASTRO: Okay. Thank you. Now

we move on to November. I had suggested the 13th, but

I know that was a problem for, I think it was you,

Commissioner Heriot?

COMMISSIONER HERIOT: Which one?
CHAIRMAN CASTRO: November 13th.

COMMISSIONER HERIOT: Yes. 13th was B- 

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: -- was a problem for me. You’re going to be out of the country on that date, too? I thought we were just moving this because it made it too close to the other meeting, but now we don’t have that problem.

CHAIRMAN CASTRO: Right. No, that wasn’t it. I’ve got a B- I’m going to be out of the country then as well.

COMMISSIONER HERIOT: Okay.

CHAIRMAN CASTRO: And so, how about the -B no, that the Thanksgiving break. We can’t do that.

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: You know, Wednesdays or Tuesdays are B- no, I’m leaving for Egypt that day again.

COMMISSIONER HERIOT: What days are you out?

CHAIRMAN CASTRO: The 20th. The Fridays I’m out are the 6th B-

COMMISSIONER HERIOT: Now what days altogether are you out?
CHAIRMAN CASTRO: November 5th through the 10th and then November 20th through the 27th.

COMMISSIONER HERIOT: So what days are you available?

CHAIRMAN CASTRO: The 11th, the 12th --

COMMISSIONER HERIOT: Yes.

COMMISSIONER NARASAKI: Is the 11th Veteran’s Day?

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: That’s a holiday, though, right?

FEMALE PARTICIPANT: Yes. Our staff would --

CHAIRMAN CASTRO: Yes, it’s a federal holiday.

FEMALE PARTICIPANT: Our staff would be off.

CHAIRMAN CASTRO: Okay.

FEMALE PARTICIPANT: We could do it, but I don’t think we’d happy about that.

FEMALE PARTICIPANT: We’d be lonely.

CHAIRMAN CASTRO: Yes. 17th or 18th?

FEMALE PARTICIPANT: Yes, I can do those.
FEMALE PARTICIPANT: I can, too.

FEMALE PARTICIPANT: I can do the 18th.

CHAIRMAN CASTRO: The 18th? How’s the 18th look for folks on the phone?

COMMISSIONER KLANDY: Looks fine for me.

CHAIRMAN CASTRO: Okay.

COMMISSIONER KIRSANOW: Kirsanow can do it.

CHAIRMAN CASTRO: Okay. Do we have a motion?

COMMISSIONER ACHEMENBER: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER NARASAKI: Second.

CHAIRMAN CASTRO: Okay. For November 18th, any additional discussion?

If not, I’ll call the question. All those in favor of a new November date of November 18th say aye.

GROUP: Aye.

CHAIRMAN CASTRO: Opposed?

(No audible response.)

CHAIRMAN CASTRO: Abstentions?

(No audible response.)

CHAIRMAN CASTRO: Okay. Thank you. I
really appreciate everybody’s courtesy on this. Next item is a discussion and vote on Part A of the Peaceful Coexistence Report.

DISCUSSION AND VOTE ON PART A OF PEACEFUL COEXISTENCE REPORT

CHAIRMAN CASTRO: I know the Staff Directors Office had circulated a copy of that, based on our request for some changes a couple meetings ago.

I believe Commissioner Achtenberg’s office also circulated a redraft a couple days ago as well. So I’ll turn it over to you, Commissioner, to maybe if you could explain the changes that you proposed.

COMMISSIONER ACHTENBERG: The changes were modest, Mr. Chairman. They were delineated to all the Commissioners. They included Pages 2, 3, 11 and 16. If there are any specific questions with regard to those pages, I’m happy to entertain those questions.

CHAIRMAN CASTRO: Any questions? Okay. Then why don’t we entertain a motion. Does anyone want to make a motion on this?

COMMISSIONER ACHTENBERG: I’ll make a motion to adopt the report.

CHAIRMAN CASTRO: As revised by --
COMMISSIONER ACHTENBERG: As revised.

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Is there a second?

Okay. Any discussion? Hearing none, let’s take a vote on that. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: I abstain.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, are you on the phone yet? No? Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: I’m abstaining.

CHAIRMAN CASTRO: Okay. And I’ll vote...
yes. So we have one, two, three, four, five yeses. Two abstentions. So the motion passes on the report as amended.

Let’s see. All right, now we move on to reading into the record the notational vote on Flores.

COMMISSIONER HERIOT: Can I ask a question? Findings and recommendations on this report. What’s our schedule on that?

CHAIRMAN CASTRO: I don’t know if we set one up, or if whether we’re going to do that.

COMMISSIONER HERIOT: Are we going to have them?

CHAIRMAN CASTRO: I’m sorry.

FEMALE PARTICIPANT: I think usually the Staff Director B-

CHAIRMAN CASTRO: The Staff Director’s Office does that?

FEMALE PARTICIPANT: Does the time line.

COMMISSIONER HERIOT: Time line, yes.

STAFF DIRECTOR MORALES: I’ll circulate it now that the -- and then we’ll --

COMMISSIONER HERIOT: Yes, I’m kind of worried that we’re going to be able to come up with anything, because this is a very complicated area.
It’s an area that I sort of get scared of because it is so complicated. I wouldn’t mind not having them, but I just want a schedule for knowing when I’m supposed to write a statement.

COMMISSIONER KIRSANOW: Mr. Chairman, this is Kirsanow.

CHAIRMAN CASTRO: Yes.

COMMISSIONER KIRSANOW: Maybe I’m misremembering, but it was my recollection that a long time ago, we had come to the conclusion that we would have findings and recs. Does anybody remember anything along those lines?

COMMISSIONER ACHTENBERG: I do not.

CHAIRMAN CASTRO: I don’t but, you know, it’s very possible that no one’s going to have any. Maybe they will. I don’t know.

COMMISSIONER HERIOT: Do we want to, like, call for proposals for this, like, for the next two weeks? And if it looks like we can’t we do it, then --

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: I just want to get the show on the road for some of these reports.

CHAIRMAN CASTRO: Yes. Yes. So the Staff Director will circulate something that builds in
a little time for us. If folks want to recommend some findings and recs, they can do it in that window. And if not --

COMMISSIONER HERIOT: Yes.
CHAIRMAN CASTRO: -- then we’ll set up a time for statements.

COMMISSIONER HERIOT: Yes.
CHAIRMAN CASTRO: Does that work?

COMMISSIONER HERIOT: Because, like, if we come to the conclusion that we can’t come up with Findings and Recs, we could then start the count down at that point and that might get this, move this a little bit more quickly.

CHAIRMAN CASTRO: Okay. All right, we’ll have the Staff Director’s Office issue something on that.

VICE CHAIR TIMMONS-GOODSON: Timmons-Goodson here. Would it be worth our while to go ahead and propose a date by which if we have not come up with agreed Findings and Recs, that we agree that this will not contain any?

CHAIRMAN CASTRO: Sure. What do you propose? Two weeks?

VICE CHAIR TIMMONS-GOODSON: I didn’t have
a particular date in mind, but looking at the schedule and when we hope to get it out, just come up with a date.

CHAIRMAN CASTRO: Sure. The Vice Chair has suggested that we come up with a date today to say if by that date no one circulates --

VICE CHAIR TIMMONS-GOODSON: I’m sorry, I can’t hear you, Mr. Chair.

CHAIRMAN CASTRO: Oh, I’m explaining to Commissioner Heriot what you just proposed. That if we hit that date by which that date comes and goes, no one has submitted findings and recs, then we start the schedule.

COMMISSIONER HERIOT: We start the count down automatically then?

CHAIRMAN CASTRO: Yes. So I suggested two weeks.

COMMISSIONER HERIOT: That’s fine.

CHAIRMAN CASTRO: Okay.

COMMISSIONER ACHTENBERG: Point of --

CHAIRMAN CASTRO: Yes.

COMMISSIONER ACHTENBERG: -- clarification, Mr. CHAIRMAN. Shouldn’t the determination about whether or not to propose findings and recommendations be subject to a public meeting? I
don’t know that --

CHAIRMAN CASTRO: No, no. We would then meet and vote on those findings and recommendations.

COMMISSIONER HERIOT: Yes. If they’re proposed, then we’ll --

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: But if nobody proposes anything.

CHAIRMAN CASTRO: So the thing here is we’re trying to figure out whether any of us even wants to put Findings and Recs forward. I don’t think anyone right now sitting here knows for sure. Although, there seems to be the thought that maybe not.

But if we say if there are going to be findings and recs, submit them by X date. Once X date comes, then we will schedule a vote on those findings and recs. They will not automatically become the official Findings and Recs. Could be we still vote them down or --

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: -- vote them up.

COMMISSIONER HERIOT: This is basically a mechanism just in case nobody wants to propose them. We might as well get the show on the road.
CHAIRMAN CASTRO: But if there’s a concern, you know, how would you propose we do it?

COMMISSIONER ACHTENBERG: A decision not to go forward with Findings and Recs, it seems to me, has to be the subject of a notice.

CHAIRMAN CASTRO: I see what, I understand what you’re saying.

COMMISSIONER ACHTENBERG: Meeting.

COMMISSIONER HERIOT: But the thing is, see, if we adopt this proposal now, we will have decided that if nobody proposes, then we’re not going to have them. So we’d be making that decision here.

VICE CHAIR TIMMONS-GOODSON: And that --

COMMISSIONER HERIOT: The notion that nobody proposes. Anybody could stop that by simply proposing something.

VICE CHAIR TIMMONS-GOODSON: Exactly.

COMMISSIONER ACHTENBERG: No, I understand. I don’t --

CHAIRMAN CASTRO: So are you suggesting that we, at the October meeting, or that we vote on whether or not here today or at the next meeting, we vote do we want Findings and Recs or not?

COMMISSIONER ACHTENBERG: Yes.
CHAIRMAN CASTRO: So do you want to make a motion right now that we not, or that we --

COMMISSIONER ACHTENBERG: That we --

CHAIRMAN CASTRO: -- not have findings?

COMMISSION ACHTENBERG: -- consider the adoption of Findings and Recs at our October meeting.

CHAIRMAN CASTRO: That’s your motion?

COMMISSIONER ACHTENBERG: In the ordinary course. That’s typically the way we do it. And the Staff Director can set up a time by which we agree today that if you’re going to submit proposed Findings and Recs, submit them two weeks hence.

CHAIRMAN CASTRO: It sounds like we’re on the same page here. It’s just a matter of how we’re wording it.

COMMISSIONER HERIOT: No, it sounds like we’re not on the same page.

COMMISSIONER ACHTENBERG: No, we’re not on the same page.

(Off microphone comment.)

CHAIRMAN CASTRO: Yes. Could you mute your phones back on the phone there? Okay, then I’m missing something. You’re saying, let’s set a vote up in October for Findings and Recs. Should there be any?
Right?

COMMISSIONER HERIOT: No. Even if there’s not, I think is her proposal. In which case, it’s going to go on for several months.

CHAIRMAN CASTRO: But you still give people two weeks to submit something if they want?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Is that what you’re saying? So I’m --

COMMISSIONER NARASAKI: Gail is trying to take two weeks off the clock for resubmitted statements, so we can get the report out to --

COMMISSIONER HERIOT: Can you use the microphone?

COMMISSIONER NARASAKI: Oh, I'm sorry. My understanding is the difference is Commissioner Heriot is trying to speed up the process by taking, starting the clock for Commissioner's statements two weeks earlier than we would otherwise --

CHAIRMAN CASTRO: Ah, okay

COMMISSIONER NARASAKI: -- do. That's the difference.

COMMISSIONER HERIOT: If there are no proposals for it.
CHAIRMAN CASTRO: I see. Do we have a motion up for that?

COMMISSIONER NARASAKI: I don't know.

CHAIRMAN CASTRO: Is there anyone who wants to make a motion? Commissioner Achtenberg, do you want to make a motion?

COMMISSIONER ACHTENBERG: I will make a motion that we consider the adoption of Findings and Recs at our October meeting on the Peaceful Coexistence Report.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER ACHTENBERG: Well --

COMMISSIONER NARASAKI: I second.

COMMISSIONER ACHTENBERG: -- if that happens do we do it?

(Simultaneous speaking.)

VICE CHAIR TIMMONS-GOODSON: I'm having a hard time hearing.

CHAIRMAN CASTRO: Yes, who can -- could you please mute your phones while you're on the phone? We're getting this weird sound. Thank you.

Commissioner Achtenberg just made a motion that we consider -- actually, could you repeat your motion?
COMMISSIONER ACHTENBERG: We consider -- I move that we consider the adoption of Findings and Recommendations on the Peaceful Coexistence Report at our October meeting.

CHAIRMAN CASTRO: And that was seconded by Commissioner Narasaki. Any additional discussion? Hearing none, I --

COMMISSIONER KIRSANOW: Kirsanow here. Clarification. All right, are we going to be voting on Findings and Recs at that point? In other words, are certain Findings and Recs going to be proposed between now and that date, and then we'll be voting on it? Or is it something that we're going to be voting as to whether or not we're going to have Findings and Recs?

CHAIRMAN CASTRO: Commissioner Achtenberg, your interpretation?

COMMISSIONER ACHTENBERG: Well, Chairman, if proposals are put forward then we would --

CHAIRMAN CASTRO: Well then October --

COMMISSIONER ACHTENBERG: -- vote on them in October. If no proposals are put forward then we will --

CHAIRMAN CASTRO: Not have any Findings and Recs.
COMMISSIONER ACHTENBERG: -- not have any Findings and Recs. Seems that we've done with --

COMMISSIONER HERIOT: What's the advantage of that?

CHAIRMAN CASTRO: It sounds to me --

COMMISSIONER ACHTENBERG: It's --

CHAIRMAN CASTRO: -- like it's the same thing you all were asking for.

COMMISSIONER ACHTENBERG: -- the ordinary course. That's exactly how we do it every time.

CHAIRMAN CASTRO: All right.

COMMISSIONER HERIOT: What's the advantage?

CHAIRMAN CASTRO: Well, from your perspective, what's the disadvantage of it?

COMMISSIONER HERIOT: When we go to Congress and they say where are your reports we feel embarrassed because we'll just get one out two weeks earlier perhaps.

CHAIRMAN CASTRO: Well, that won't make a big difference in the grand scheme of things. But we'll see. Do we have any other comments on this? If not, I'm going to take a roll call vote. Commissioner Kirsanow, how do you vote?
COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I guess I vote no. That doesn't seem to make a lot of sense to me.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, are you on the yet? Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. That's one, two, three, four, five -- five yeses and two nos so the motion passes.

READING INTO THE RECORD OF THE NOTATIONAL VOTE ON THE FLORES LETTER

Okay, so now I will read into the record, this is the notational vote on the Flores letter.
"The notational vote occurred on August 31st, 2015 and addressed the following. Pursuant to Administrative Instruction AI 1-7, at the request of Chairman Martin R. Castro, the Office of the Staff Director circulated a ballot for the Commission vote to approve a letter on the recent court order on Flores updated August 25th, 2015 to be sent to President Barack Obama, Attorney General Loretta Lynch and Secretary Jeh Johnson."

The notational vote failed to get a majority with four yes votes, two no votes, one abstention and one recusal. As a result of that I know that there was some interest and revisiting that letter. I don't know if the Vice Chair and Commissioner Kladney had an opportunity to discuss what, if anything, we were going to present today or if we just do not have an alternative to discuss today. Madame Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Yes. Oh, yes, Mr. Chair. We have come up with a letter, or a letter has been sent to Commissioner Kladney for him to take a look at. And, truthfully, the two of us have not conferred.

The small changes that were proposed were just that, very small. One of our major concerns was
this letter being sent without the dissent and all competing thoughts attached to our report.

And it looks like, based on the timing now, that at the time that we, if we were to send the letter, the parties would have a full picture or report, complete report would be released concurrently or about the same time.

And then a stab was made at possibly softening it. And I'm willing to put it forward. I'll go along with it at the time.

CHAIRMAN CASTRO: Well, just a reminder, we're issuing the report on September 17th, as I believe I emailed. So all Commissioners were actually due at 9 o'clock over here at the National Press Club. So that certainly answers the concern about that.

But without -- I think we need something in front of us to kind of take a look at before we vote on it. So, Commissioner Narasaki?

COMMISSIONER NARASAKI: Could I suggest that perhaps we try to do a notational vote because it would be ideal to be able to release it, at least at the same time as --

CHAIRMAN CASTRO: Yes.

COMMISSIONER NARASAKI: -- the report is
released?

CHAIRMAN CASTRO: Yes. I would suggest that that sounds like a good idea as well. If we could --

COMMISSIONER HERIOT: That means we're going to have to do it fast so we need see the draft.

CHAIRMAN CASTRO: Yes. Yes, we, definitely. So can you get us a draft of those, of that changed letter as soon as possible so that we can --

VICE CHAIR TIMMONS-GOODSON: At the close of the meeting.

CHAIRMAN CASTRO: Okay, and then we will have the staff director issue a notice of notational vote. Can we get this all done quickly enough? I think it's an urgent situation, so.

STAFF DIRECTOR MORALES: As soon as I get the letter then we can send out the notice of the notational vote.

CHAIRMAN CASTRO: Okay. Commissioner Narasaki?

(Off microphone discussion.)

COMMISSIONER NARASAKI: Yes, no, this can wait until after you close this part, but it's related to this.
CHAIRMAN CASTRO: Okay, so that's what we'll do. We will have the staff director issue the notational vote on the letter as soon as we get a draft from Commissioner Timmons-Goodson.

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And, okay, Commissioner Narasaki?

COMMISSIONER NARASAKI: Then you're waiving the notice?

CHAIRMAN CASTRO: I can waive the notice, period. So I will waive the notice, period.

COMMISSIONER NARASAKI: Okay. So I just want to note that the voting process sort of laid bare that we have some ambiguity in our AIs about what happens when a Commissioner is recusing herself and how the votes get counted.

And so I would request that the Commission work on trying to clarify some of those requirements in the AIs.

CHAIRMAN CASTRO: Okay.

COMMISSIONER NARASAKI: Because even though I recused myself my vote ended up being counted as no, which I don't think was appropriate, so.

COMMISSIONER HERIOT: Yes, I want to
second Commissioner Narasaki's point here, and that is that, first, I am not at all convinced that that motion did not carry. I think there's an argument both ways.

I thought that the particular provision that was cited to us dealt with reports and not with letters and that --

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: -- there were also other parts of the rules, which I haven't given full thought to. But I thought that was, that's something that we need to have clarified. We need to know exactly how these votes work.

CHAIRMAN CASTRO: All right.

COMMISSIONER HERIOT: And so I would appreciate an effort to look back at our AIs and make sure we know what we're doing here.

CHAIRMAN CASTRO: Sure. Miss Hepler's going to sit down and speak with us about that. And as she's doing that maybe she could give --

COMMISSIONER NARASAKI: Actually, Mr. Chair, I'm not asking. I completely understand what the theory is that the counsel's office put forward. And I don't think it's necessary to discuss it here because my request was actually to revisit the AI, to
clarify what should be done regardless of what is currently thought to be done at this point.

So I just don't feel like we need to spend time on what is or what isn't the debate.

CHAIRMAN CASTRO: Yes, one thought is to maybe just amend an AI to say it should reflect Robert's Rules of Order. I don't know if that's even doable.

MS. HEPLER: I was going to say the applicable section in 1.7 says, if a commissioner returns a ballot to the staff director but fails to put an appropriate mark in one of the block then that shall constitute an abstention. A commissioner who abstains shall be considered to have participated in the vote for purposes of ascertaining a quorum."

COMMISSIONER NARASAKI: I completely understand that. But what we did was, it wasn't that I turned in a ballot with no mark. We turned, I turned in a ballot, noting I was recusing myself which, under Robert's Rules of Order, would have a different impact.

So I'm not arguing with you on your interpretation. I am saying that we need to fix the problem.

MS. HEPLER: Oh.

CHAIRMAN CASTRO: All right. Thank you.
COMMISSIONER HERIOT: I don't want to say
that I'm not arguing at this point.
CHAIRMAN CASTRO: That's okay.
COMMISSIONER HERIOT: But I agree that --
CHAIRMAN CASTRO: Appreciate it.
COMMISSIONER HERIOT: -- you know, there
are arguments here. We need to have clear rules.
CHAIRMAN CASTRO: Yes, we will put that on
one of our agendas, to clarify this, so that we don't
run into this problem in the future. But just keep this
in mind for this next notational vote though.
COMMISSIONER HERIOT: On the Robert's
Rules, all of this is simple stuff.
CHAIRMAN CASTRO: I understand.
COMMISSIONER HERIOT: It's just that our
rules possibly change that. And --
CHAIRMAN CASTRO: You know, the thing
about our AIs, as we all know, is that they are an
amalgamation of years of situations which, to us, today
are not present as to why it happened. And some --
COMMISSIONER HERIOT: The more you look at
--
CHAIRMAN CASTRO: -- were for good
intention, maybe some were with bad --
COMMISSIONER HERIOT: -- the more you realize the older rules have actually make sense.

CHAIRMAN CASTRO: -- intention. But --

COMMISSIONER HERIOT: And we keep adding things that mess it up.

CHAIRMAN CASTRO: Well, the thing is, we haven't had a complete rehaul --

COMMISSIONER HERIOT: We need to make modifications.

CHAIRMAN CASTRO: -- overhaul. And it's just been a tremendously big --

COMMISSIONER HERIOT: The trouble is it's a big job.

CHAIRMAN CASTRO: Yes. So --

COMMISSIONER HERIOT: And like nobody's going to want to do it, including me.

CHAIRMAN CASTRO: So then we live with these anachronisms of things that happened in the past or AIs that no longer fit the current situation and then we --

COMMISSIONER HERIOT: Some of these things, like the rule that says you have to actually have a majority to issue a report, I think that actually makes sense. At least that's --
CHAIRMAN CASTRO: Yes, and I wouldn't want to play with that.

COMMISSIONER HERIOT: The trouble is what constitutes a report? And will people like get behind -- be, you know, will they get around the rule by calling something not a report that really is a report? Should a letter be regarded as a report or not? And I don't know the answer to that. That's a policy question. But it's a significant --

CHAIRMAN CASTRO: Now you put some ideas in people's heads there.

COMMISSIONER HERIOT: Well.

CHAIRMAN CASTRO: All right, we'll move on. Thank you. Next we go to Management and Operations. Mr. Staff Director?

III. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR REPORT

STAFF DIRECTOR MORALES: Thank you, Mr. Chairman. I'm going to grab your mic here?

CHAIRMAN CASTRO: Oh, yes, please.

STAFF DIRECTOR MORALES: Thank you, Mr. Chairman. I got the report out a little bit late to everybody yesterday. But I just want to focus on a
couple of items if I can. Of course, I can entertain questions. I want to first acknowledge we have Pilar Velasquez who is on detail from the U.S. Department of Agriculture, the Office of Civil Rights. She started a five-month detail. She's already been -- Pilar, can you step forward so the commissioners on the panel -- yes, can see you.

Thank you for coming and helping us on this detail. We're, as you well know, short-handed in the Office of General Counsel, and she's been very helpful to me and to Jennifer in helping us get through some legal considerations.

She comes with some really outstanding experience from the Office of Civil Rights over at USDA. And so they've loaned her to us, and while she's here we're going to utilize her skills and talents.

So, Pilar, thank you. And hopefully you'll get a chance to meet with some of the commissioners today as they're here, before they leave. So thank you.

MS. VELASQUEZ: Thank you very much.

STAFF DIRECTOR MORALES: Second, I sent out an email to all the commissioners, I believe, yesterday regarding security awareness training on the
Internet. I know it's, you know --

COMMISSIONER NARASAKI: I took mine.

STAFF DIRECTOR MORALES: Oh, thank you, Commissioner Narasaki. You're an angel. It takes about an hour. It's not fun. It's, you know, but it's important, given the cyber hack --

CHAIRMAN CASTRO: Now you're really talking me into doing it.

STAFF DIRECTOR MORALES: The cyber hacking that occurred, it's important for our audit in regards to our security audit and our technology audit that the government goes through. So please -- I want to -- please respectfully engage.

And if you can't please notify Pam and she can make some sort of accommodations for you. So the staff is all being told they need to do this. And there is a cut-off date. If you don't do it then your technology gets turned off.

So I just wanted to put that on notice to everybody, so thank you for your -- yes? Yes, Commissioner Narasaki?

COMMISSIONER NARASAKI: I'd like to note its relatively painless. And have a glass of wine and the time will speed by.
STAFF DIRECTOR MORALES: When I did mine I didn't have a glass of wine but that's a great idea. Thank you.

CHAIRMAN CASTRO: Anything else?

STAFF DIRECTOR MORALES: Yes, I had a couple more items. I'm sorry, Mr. Chairman. One is the General Counsel position. I have completed my first round of interviews. And so I'm going through the written samples and the resumes that I've looked at and will continue the process.

I hope to start conducting the second round of interviews next week and make the selections shortly thereafter, have the individual in place if not the beginning of October, certainly within the first few, week or two of October.

So hopefully by the time of the next meeting we will have a General Counsel or at least a date that the General Counsel's starting in place that I can report on. So thank you for you know, your assistance on this. And I'll try to be very transparent on this and so thank you.

COMMISSIONER KIRSANOW: Mr. Staff Director, Kirsanow here.

STAFF DIRECTOR MORALES: Yes, sir.
COMMISSIONER KIRSANOW: Is the name of the individual going to be presented to the Commission for a vote?

STAFF DIRECTOR MORALES: No, sir.

COMMISSIONER KIRSANOW: We've had a discussion on this in the past, and we're going back, but in the past prior to the last General Counsel the Commission has had, assigned General Counsels. What's changed?

STAFF DIRECTOR MORALES: Well, sir, you know, definitely you have a good question. In respect to the applicability of AI-116, after consideration my view is that the prior staff director for the Commission, Marlene Sallo, did not follow AI-116 because the position of the General Counsel, the Commission was deemed a career position and not a political position.

The Commission has authority to hire career attorneys under that accepted service designation, under Schedule A following the decision of the previous staff director. And I have concluded that AI-116 is not applicable and that the General Counsel with the Commission is a career position and not a political position.
As the designated hiring official I am authorized to hire certain career employees for the Commission. And the position was advertised on USAJOBS.gov as a career position. It's a supervisory attorney advisor, a classification of GS090515. It's a GS15 slot.

And because AI-116 does not apply commissioners are not permitted to vote on my selection for the Commission's General Counsel. A vote by the commissioners to approve the hiring of the General Counsel could result in a violation of 5 U.S. Code Section 2302, Prohibited Personnel Practices.

Because it is a career position, voting on their qualifications when you haven't interviewed them, when you haven't gone through the process of selection would be a violation. And voting on them in regards to any potential political affiliation they have would be a prohibited personnel practice.

And so on that basis I've decided that AI-116 does not apply. It's a career position. And the commissioners are not permitted to vote on them.

COMMISSIONER KIRSANOW: I respect the amount of thought you've put into it and your analysis. I'm not necessarily convinced, not that I've spent as
much time on it as you have.

I have looked at 5 USC 2302, and I'm not sure that's necessarily determinative. I mean, there's a lot moving parts to an analysis such as this. And we've had a discussion among commissioners and as a Commission regarding the role of the Commission and what constitutes the Commission and the scope of our authority, especially vis-a-vis Staff Director and General Counsel.

And I would just respectfully submit maybe what should and whether or not any other commissioners might want to weigh in on whether or not the Commission, meaning commissioners, should have a voice in selecting the Commission -- at least not a voice, but a ratified selection by the Staff Director of General Counsel.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: I'm waiting to hear.

Okay, go ahead.

COMMISSIONER HERIOT: I guess I agree with Commissioner Kirsanow. The AI itself doesn't make any distinction between career and Schedule C position. And so I don't that that's going to get us off the hook.

As a matter of we cannot consider the politics of the particular applicants, well, that goes
without saying. And that's also true, of course, of the Staff Director who, I assume, will not allow politics to get into this, just as if the Commission were to vote on this. Knowing that the law prohibits the consideration of the political affiliation of the applicant, they would not consider that.

Just as we are political appointees, so is the Staff Director a political appointee. So the notion that he can select without regard to the political affiliation of the candidate but that we somehow can't, that, I think, is error.

I doubt that this is actually going to be something that would come to a head here. And I don't really think that we need to spend a lot of time. What I'm concerned about is the precedent. I believe that the Commission does, in fact, have authority over this.

But my understanding of the rule is that it's not one where the Commission would necessarily vote even if this were a political appointee. It's simply that if it chooses to vote it has that power.

What I would suggest is that the Staff Director give us the name. Not saying that we have authority or that we don't have authority over this but that the odds are we're not going to want to take a vote on it anyway.
But if it's submitted to us then we haven't decided whether or not we have that authority only if a majority decides that they would otherwise wish to veto the candidate would it come up. If it's simply submitted to us odds are nothing's ever going to happen. And that way we skip the question.

CHAIRMAN CASTRO: The precedent's already been set. The last time we hired a Staff Director --

COMMISSIONER HERIOT: Lots of mistakes have been made in the past. There's a lot of precedent from before that as well.

CHAIRMAN CASTRO: Okay. And that distinction is clear that, prior to that these were political appointments. The reason, when I became chair, that we asked the White House to change that, because there was a lot of politicization in the prior General Counsel's offices. And, whether democrat or republican, we wanted the next administrations to be able to have a career General Counsel. And sometimes you know what, we're maybe not happy --

COMMISSIONER HERIOT: No, but our last decision was not a happy one.

CHAIRMAN CASTRO: Well, you know what, maybe we're not happy sometimes with the decisions the
General Counsel makes. But that's part of why we're picking people --

COMMISSIONER HERIOT: These are for a long time. No.

CHAIRMAN CASTRO: -- that were going to make decisions based on the law and not on politics. But I don't know if you want to add anything, Mr. Staff Director. And then did you want to say something? So, Commissioner Narasaki, after you. All right, yes, go ahead.

COMMISSIONER NARASAKI: Yes, I mean, my understanding is that that's, there was decision before I can onboard to try to take this out of the political realm. And I think that I'm concerned about commissioners being given a candidate and then making a decision, whether we have the power or not to override that.

I think that, then, undermines the whole effort and the change to, and the purpose of making this a career position. I'm not saying whether I agree whether that was a good idea or not, but it's the reality and I don't think it would be appropriate for the commissioners to weigh in now that that person is a career position.
STAFF DIRECTOR MORALES: I'd just like to point out one more thing, that this position was advertised as a career GS15, Supervisory Attorney, position. We went through a interview, a selection process whereby we looked at their qualifications, their education. They were certified as qualified, a select number of the application.

And from those that were certified we went through and looked at their qualifications further and developed a criteria that they met the criteria we set in our advertisement. And they were interviewed by me. And there's another round of interviews to take place before that selection.

So for another entity to come in and review my process would, again, not only because it's political but because they haven't been involved in the process, is a prohibited personnel practice.

So, with that, I'll leave it and say that I believe, you know, if you want to change that position at some future date it can be. But at this point my selection is -- and I will share, once I select and make the offer and the individual accepts the position, I will have him or her meet with you and talk to you about their interest here at the Commission.
But until that point, I believe it's within my authority as the designated hiring official for the Commission to make this selection.

CHAIRMAN CASTRO: Okay. I'd like to --

COMMISSIONER HERIOT: Can I make one more comment? Again, I would think it's better just to push this issue off. You know, if you bring in somebody without observing what I consider to be the proper procedure, you could get litigation in the future under quo warranto, if I got that right.

And I don't think anybody wants that. It would be so much easier just to submit it. Given that the present makeup of the Commission, it seems very likely that the decision would be simply approved. But if you don't approve it then you leave the question open and it can be pushed into litigation later.

CHAIRMAN CASTRO: Oh, please. You're not threatening litigation, Gail?

COMMISSIONER HERIOT: No, I'm not threatening litigation.

CHAIRMAN CASTRO: All right. So I think we've, this has been discussed enough now. We'll move on. Anything else, Mr. Staff Director?

STAFF DIRECTOR MORALES: No, sir.
CHAIRMAN CASTRO: Okay.

STAFF DIRECTOR MORALES: Oh, one more thing. I'm sorry. Two more things, real quick, real brief. One, that the Pope will be in town next week. It could impact -- it will impact our personnel here in the Washington, D.C. office. I just wanted, I sent out an email to the staff, to all folks to utilize any tele-work.

We've been warned several times that, especially because of where we're situated downtown there will be significant traffic and commuting problems. But on the other hand, I want to make sure that all the operations of the Commission continue to run and function and we carry out our responsibilities and our duties. So I'm working with the supervisors to make sure we're able to accommodate all that.

And the second and last piece, I just want to let you know, is that we're moving forward with the planning on the meeting in December 11 for the Lincoln Cottage. I've gone with several of the staff assistants out to the Lincoln Cottage to view the site and to see its availability.

And it looks like we're able to secure the date, and I'm working with the staff assistants to
create a program that will be worthy of the Commission
and the commemoration of the passage of the 13th
amendment. And so we'll continue to advise you as we
get more.

I'm going to be meeting with the staff
assistants early next week on continuing planning. So
I just wanted to put that forward and let everybody know
what we're doing. Thank you, Mr. Chairman.

IV. ADJOURN MEETING

CHAIRMAN CASTRO: All right, anything
else? Any questions on that? If not, then that
concludes our agenda and the meeting is hereby adjourned
at 10:56 Eastern Time. Thank you.

(Whereupon, the above-entitled matter went
off the record at 10:56 a.m.)