The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C., at 10:00 a.m., Catherine E. Lhamon, Chairman, presiding.

PRESENT:

CATHERINE E. LHAMON, Chairman
PATRICIA TIMMONS-GOODSON, Vice Chair
DEBO P. ADEGBILE, Commissioner*
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner*
DAVID KLDANEY, Commissioner*
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel

*Present via telephone
STAFF PRESENT:

ROBERT AMARTEY
LASHONDRA BRENSON
PAMELA DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
JOHN RADCLIFFE
SARALE SEWELL
JUANDA SMITH
BRIAN WALCH
MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DEULL*
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC

*Present via telephone
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CHAIR LHAMON:  Good morning.  This meeting of the United States Commission on Civil Rights comes to order at 10:00 a.m. on February 24, 2017.

The meeting takes place at the Commission's headquarters at 1331 Pennsylvania Avenue, Northwest, Washington, D.C.

I'm Chair Catherine Lhamon.

Commissioners who are present, in addition to me, at this meeting are Vice Chair Timmons-Goodson, Commissioner Heriot, Commissioner Narasaki, Commissioner Yaki, and on the telephone I believe are Commissioners Kirsanow, Adegbile, and Kladney. Is each of you on the telephone?

COMMISSIONER KIRSANOW:  Kirsanow here.

COMMISSIONER KLADNEY:  Kladney here.

COMMISSIONER ADEGBILE:  Adegbile here.

CHAIR LHAMON:  Terrific.  Thank you.

And a reminder to each of the Commissioners on the phone to, as you just did, state your name before speaking, so the Court Reporter knows who is speaking.

We have a quorum of the Commissioners present.  Is the Court Reporter present?  She is.  Is the Staff Director present?
MR. MORALES: Yes, I am.

CHAIR LHAMON: Terrific. So this meeting now comes to order.

I. APPROVAL OF AGENDA

CHAIR LHAMON: Before moving to approve the agenda, I move to amend the agenda to add a discussion and a vote on the approval of a Commission statement on voter suppression. Is there a second?

COMMISSIONER YAKI: Second.

CHAIR LHAMON: Thank you. And, in addition, I move to amend the agenda to add a discussion and vote on the approval of a Commission statement on recent Executive Orders on immigration. Is there --

COMMISSIONER YAKI: Second.

CHAIR LHAMON: Thank you. Okay. If there are no further amendments, let's vote to approve the agenda, as amended. All those in favor, say aye?

(Chorus of ayes.)

CHAIR LHAMON: Any opposed?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR LHAMON: And any abstentions?

Okay. So the motion passes. Kirsanow -- Commissioner Kirsanow opposed, and there were no abstentions, and all others were in favor.

II. BUSINESS MEETING
Planning

CHAIR LHAMON: So turning to the agenda, for Program Planning we have four agenda items today. First, a discussion on the planning process for the 2018 to 2022 strategic plan; second, a discussion on the Office for Civil Rights Enforcement Planning for the 2018 Statutory Enforcement Report, concept papers, and briefing; third, a discussion and approval of a statement on voter suppression; and, fourth, a discussion and approval of a statement on executive actions on immigration.

Discussion on Planning Process for
2018-2022 Strategic Plan

CHAIR LHAMON: First, I'll invite the Staff Director to discuss the planning process for the 2018 to '22 strategic plan.

MR. MORALES: Thank you, Madam Chair and Commissioners. Good morning. I just wanted to bring this and put this on everybody's radar in terms of the 2018 to 2022 strategic plan. In your Commissioners' folders, I attached two of the most recent strategic plans, plus the governing statute, which requires us to create one. And even though 2018 seems a little bit away, I just wanted to make sure that we put you -- or I put you on notice that we need to begin the process...
for creating a strategic plan.

I was informed that the last one was done and a lot of things were left out, unfortunately. I wanted to make sure that we were engaged in a more thoughtful, thorough process, and thought I wanted to put this forward for all of you for your consideration.

My hope is that we can use this effort to better align our goals and our mission into the future, especially given our limited resources and potential challenges in the coming years of restrictions on hiring and potential budget shortfalls that may occur, or budget changes I should say.

And so, again, I will communicate with the Chair. My hope is that we can create some sort of a working group. We've done that in a few occasions during my tenure, and it has been very successful in making sure that we have had everybody's views represented.

And so, again, I will communicate with the Chair in starting the process. I don't envision it happening immediately, but over the next few months we will start reaching out to you. My hope is that we will work with Commissioners through your special assistants and, of course, with career staff and management staff that are charged with carrying out the
mission of the Commission.

So I would appreciate any thoughts or questions you might have at this point.

VICE CHAIR TIMMONS-GOODSON: I would like to ask the Staff Director, how long does -- did it -- do you anticipate that it will take once we get our working group together?

MR. MORALES: I'm hopeful that it wouldn't take that long. Probably if we could, you know, be thoughtful and meet maybe on an every-other-month or whatever the process is, you know, adopted. My hope would be by the end of this year, into early next year, we would have a strategic plan in place that you all could look at and vote on.

This is really your -- as Commissioners, your road map, in a way, to the staff and to the public as to the direction and how we're going to measure ourselves as a Commission in our success. And so this is I think -- I really want to, like I said, engage in a thoughtful process.

I don't want to overwhelm. We have so much work we're already doing, but I think it's important enough. And I will work with the Chair in finding a process, if it makes sense, that doesn't interfere with the work that is already being done. But I think it's
important enough that we should direct some time and perhaps even some resources to making sure it's done right.

VICE CHAIR TIMMONS-GOODSON: So what I hear you saying is that we'll have a product by the end of the year, and that you don't anticipate that it will take very long to put it together once you have your working group.

MR. MORALES: Yes. Yes, ma'am. I believe that would be the case. That's my hope.

VICE CHAIR TIMMONS-GOODSON: All right.

COMMISSIONER HERIOT: I just want to make sure, when you say "the end of the year," you mean the end of the fiscal year?

MR. MORALES: No. I'm -- the calendar year.

COMMISSIONER HERIOT: Okay.

MR. MORALES: 2018. It's not due until 2018, so we have a little bit of leeway, but I don't want to jam up the staff towards the end of the fiscal year, and all of you, as we are getting ready for -- getting the statutory report out, budget, all the issues we have towards the end of fiscal year. So, no, this will be the end of the calendar year.

COMMISSIONER HERIOT: Okay. Then I would
just -- I think I've said this to you before, Mr. Staff Director, I'm not a fan of this literary genre. I don't think it works very well. I think it tends to suck up time. I know we have to do it on the end, so, you know, it's important.

Anything we have to do, we've got to do. But I would urge that we not allow ourselves to get too much in the weeds over this, and I would also urge that we not promise that we will do something that we end up not being able to do, because that looks bad.

MR. MORALES: I couldn't agree with you more. Again, I want to be -- I want this to be a thoughtful process, and I want this to be something in a document that is useful. So that's my hope, yes. Thank you.

CHAIR LHAMON: Okay. Thank you. Any more questions or discussion for the Staff Director on this topic? Commissioner Yaki.

COMMISSIONER YAKI: Oh, yes. Thank you very much. Having gone through this process twice already on the Commission, I just want to echo what the Staff Director said. This is really more -- this can be time -- a little bit time-consuming, but it is not entirely a very difficult process.

Once we get the various options before the
Commission and can discuss them, it moves pretty rapidly from there. So I think it's very doable that we can complete this process before the end of the year.

CHAIR LHAMON: Thank you. Any further discussions or questions? Great.

Discussion on OCRE Planning for 2018

Statutory Enforcement Report, Concept Papers and Briefings

CHAIR LHAMON: So, we'll turn next, again, Mr. Staff Director, to discuss the OCRE [Office of Civil Rights Evaluation] planning for the 2018 Statutory Enforcement Report and concept papers and briefings.

MR. MORALES: Thank you, Madam Chair, and Commissioners. I want to -- I just want to have a brief discussion. We've had some preliminary conversations with you and your staff about planning for 2018 Statutory Enforcement Report and the concept papers.

And even though it's February and generally we have these votes and discussions in June and July, you know, the clock is moving quickly, and I want to make sure that we get a good jump on it.

Again, we need to do some planning and work with you all, because, you know, we're unsure what our budget is going to look like next year. And so we want to, again, be thoughtful about how we approach and carry
out our mission.

So, Maureen [Rudolph] and I will get you a timeline for submission of the Statutory Enforcement Report and concept papers in the next week here or two -- week or two, as soon as we can get to it, so that you can start to think about it and start visualizing.

You know, my hope, again, is that we get this to you quickly for your planning purposes as well as for OCRE's planning purposes. And, again, I'm hoping that we can work together to get through and look through the jurisdiction -- subject matter jurisdiction questions and any other questions that might arise, so that, as a product, an end product, we have something that we can work on and get done in a timely manner.

So, again, a real brief discussion. I want to put it on your radar. I want to put you on notice that we're going to start this effort and that if you have any questions, please, I'd like to know your thoughts at this point as well.

CHAIR LHAMON: Thank you. Any questions?

COMMISSIONER HERIOT: I just want to say the same thing I said yesterday in our meeting, and that is I would very much like to see the Commission pick not only the topic for this upcoming enforcement
report, but also the one for the following year.

I think every year we have the problem of we pick a topic, it tends to take us longer than we hope it will -- you know, that happens -- and then a research plan has to be developed. And by the time we see the research plan, there are always going to be flaws in any research plan, and -- but by the time we see it, it's too late to really work hard on it because at that point, you've got to go and do the research and then, get everything ready and have that report done by the end of the fiscal year.

If we pick a topic for -- if we pick two topics, one for this upcoming year and one for the next year, we could have a bang-up research project for the one that we have taken a little longer on. And it may turn out to be our best report ever, if we can do that.

CHAIR LHAMON: Certainly support that ambition, so thank you for that. Any other discussion? Questions? Those on the phone? Hearing none, thank you very much.

MR. MORALES: Thank you.

CHAIR LHAMON: So we'll turn to the next agenda item. That is a discussion and vote on the voter suppression statement. I think to be clear about what we are discussing and voting on, I will read the
statement, so we all know what it is. And also, I noted that I had a typo in the version that I circulated, so I will correct that typo and add a title to it, so we all know what we're talking about.

The proposed statement is “the U.S. Commission Civil Rights reaffirms long-standing commitment to safeguarding the right to vote.” The statement begins, “President Trump has announced his intention to set up a Commission led by Vice President Pence to investigate vote fraud during the 2016 election.

The President has frequently repeated this claim but offered no evidence in support of it, nor has any credible source offered any evidentiary support for it. Creating a special commission in these circumstances is misleading and an unnecessary diversion of resources.

The U.S. Commission on Civil Rights is, and for 60 years has been, congressionally charged with investigating allegations relating to deprivations, quote, ‘as a result of any pattern or practice of fraud, of the right of citizens of the United States to vote and have votes counted,’ end quote.

We have taken up this charge at many times in our history when the facts and circumstances
warranted. The real danger to our electoral system at this time is the now-familiar effort to suppress the right to vote.

According to the Brennan Center for Justice, 46 bills to restrict access to registration and voting have been introduced in 21 states as of February 1. A recent study demonstrated that restrictive voting laws significantly decrease voter participation among racial and ethnic groups.

Studying unnecessary barriers to voting, exploring effective ways to register voters and making effective efforts to expand participation are key to ensuring that all voters have a say in our elections.

Multiple State Advisory Committees to the Commission are, therefore, investigating voter suppression in their states. The Kansas State Advisory Committee will release a report shortly after conducting a hearing in 2016 regarding the impact on participation of the state identification law and whether it had a disproportionate impact on the basis of race, color, age, religion, or disability.

And the Illinois State Advisory Committee is holding a hearing in March to discuss possible disparities regarding access to voting and discrimination based upon the race, national origin,
religion, sex, disability, and age of the electorate in that state.

The Commission also recently released a report on registering voters at public assistance centers and new voter registration technologies. In its 60th year, the Commission remains steadfast in our commitment to enhance voter access as a core civil rights issue that lies at the foundation of our statutory charge.

Chair Catherine E. Lhamon reiterated this commitment. Quote, 'The right to vote is fundamental to American democracy, and the Commission will continue to do all in its power to protect that right for all citizens.' End quote.

That is the text of the statement that we would discuss and then vote on. Let's begin the discussion. Commissioner.

COMMISSIONER NARASAKI: I'd like to suggest one change in the third paragraph where it refers to the Kansas State Advisory Committee. I think I know what was intended, but it's a little confusing. It says we will release a report shortly, after conducting a hearing in 2016. You know, the hearing -- do you see the problem?

CHAIR LHAMON: Yes.
COMMISSIONER NARASAKI: I would just delete the "shortly."

CHAIR LHAMON: Okay. Any other questions or discussion? Commissioner Heriot?

COMMISSIONER HERIOT: First, I plan to vote no on this statement. There is, in fact, evidence of voter fraud. It may not be as extensive as Trump believes it is, but there is evidence of it. There was a Seventh Circuit opinion just about a week ago that dealt with some voter fraud. There is evidence of felons voting in some jurisdictions. There is such evidence. There is not evidence of the extent that Trump was talking about, but the evidence does exist.

There is also evidence that the American people believe that there is a lot of voter fraud, and that's reason enough to investigate that.

I do want to, however, make an editing suggestion, even though I'm not going to be voting in favor of this, and that is in the first two sentences. The first sentence says, "Trump has announced his intention to set up a commission led by Vice President Pence to investigate voter fraud," blah, blah, blah. And then the next sentence says, "The President has frequently repeated this claim."

The trouble is, there isn't a claim in the
first sentence. It is, in fact, true that he has announced his intention to set up a commission, so that's not the right claim. So I think you need to fix the first two sentences to make it make more sense.

CHAIR LHAMON: Thank you.

COMMISSIONER HERIOT: Again, I'm going to vote no.

CHAIR LHAMON: Thank you. So taking that editorial suggestion, one fix could be, "The President has frequently repeated a claim of voter fraud but offered no evidence in support of it."

COMMISSIONER HERIOT: You'd want to use an adjective like "massive voter fraud" because there is plenty of evidence of voter fraud, not so much of the extent, at least not that I'm aware of, although I can't speak to that. But you're going to want to put something in there to make it clear that his allegation is that there are, what is it? I've forgotten the number of votes, but it's quite -- many millions.

CHAIR LHAMON: He said three. I think he has offered no evidence in support of it, but I -- but I hear your point.

COMMISSIONER HERIOT: I mean, again, I'm not signing it, so it doesn't need to be perfect for me, but --
CHAIR LHAMON: Thank you. Vice Chair?

VICE CHAIR TIMMONS–GOODSON: This isn't necessarily an editing note. But upon Commissioner Heriot talking about felons voting, what came to my mind is that a lawsuit was filed in North Carolina on behalf of a number of individuals where it had been alleged that they had illegally voted. A number of them, or at least one, but I believe it to be a number of them, were alleged to have been felons and not eligible to vote. It was investigated, and in North Carolina a convicted felon, upon completing their debt to society, their right to vote is automatically restored.

And here these poor folks went and did all they were supposed to do and initially were denied the right to vote. Of course, it was corrected because, thank God, they had the nerve to stand up and to complain.

And so, when you hear -- my modest point is that when you hear and see stories like that, true stories like that -- it does cast some doubt on this assertion that there is this large number of felons voting.

COMMISSIONER HERIOT: I'm sure there are lots of cases like that, but my point is that, this says that there is no fraud, and that's probably not true.
CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: I don't think that the statement says there is no fraud. I think that it -- but I agree with your point that that sentence needs to be fixed and needs to refer to massive fraud as opposed to no fraud at all. And I also want to note, relative to what the Vice Chair just noted, is the Secretaries of State of the various states that have been involved have all noted with pride what good elections they conducted and denied any concern over the kind of fraud that the President has been talking about.

And the National Association of Secretaries of State have also stated that they feel that the claim is without merit. And I think, importantly, the Senate Majority Leader, who is Republican, has said that he agreed -- he feels that, in fact, such a commission would not be a good use of taxpayers' money because he also believes that there was not that level of fraud. So I think it's an important statement for the commission to be making.

COMMISSIONER HERIOT: Yes. Let me just add that I believe that the Majority Leader was also concerned with the notion that voting is generally a state issue. And it wasn't so much that he thinks that
there is no voter fraud; what he thinks is that it's something that should be handled at the state level. That's a very different -- different thought.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Well, I would like to offer that the President did actually offer evidence of voter fraud by citing busloads of people from Massachusetts to New Hampshire, approximately 16,000, who apparently were able to blend in with the residents of New Hampshire, figure out where the polling places were so they could go in without being caught, and then cast their ballots and deprive him of the votes of the Granite State.

But in all seriousness, this is an issue that comes up time and again and is a -- is a smokescreen for a greater -- a greater tragedy of the American voting system, and that is what the statement intends to point out, and that is the efforts among many states and many jurisdictions to continue to suppress the votes of the poor, of minorities, of the disabled, of seniors, of the disenfranchised.

The fact is that we had a briefing on this issue in 2008. This was -- there were many people who came to this -- came to this briefing. There were many statements and examples given about how both -- Elvis
Presley had apparently risen from the dead to register to vote, and Mickey Mouse had transformed himself from a two-dimensional to a three-dimensional character to register to vote -- all in a way to confuse the issue of voter registration with the actual act of voting illegally in a way that could transform an election.

And there simply continues to be absolutely no evidence that anything like that occurs, that there is no significant illegal voting, that there is no widespread illegal voting, that if we are to, instead, look at the voter registration issue as an issue of grave concern that requires the vast allocation of resources of the American government, then we should start looking at the fact that members of the President's family are registered in multiple states as well. And no one is claiming that any of them are engaging in voter -- in illegal voting, although perhaps we should investigate that as well.

This is something that -- that continues to come up over and over again -- is brought up by people who are -- whose only goal is to ensure that the electorate is not diverse, that the voices of the poor are not heard, and that the ability of the -- of all Americans to exercise that thing which people -- and which we will talk about later today -- have fought and
died for do -- are not able to access it as freely and as openly and as easily as in other countries with far less democratic values and far less cherished freedoms than we protect here at home.

CHAIR LHAMON: Thank you. Just to correct our record, I have the statement from Senator Mitch McConnell related to voting, and what he said is, quote, "There is no evidence that it occurred in such a significant number that would have changed the Presidential election. And I don't think we ought to spend any federal money investigating that."

COMMISSIONER HERIOT: That's not inconsistent with what I said.

CHAIR LHAMON: Okay. I just want it to be clear about what --

COMMISSIONER HERIOT: I think it's true that the President's -- the numbers the President was alluding to seem rather large to me, too.

CHAIR LHAMON: Vice Chair.

VICE CHAIR TIMMONS-GOODSON: In an effort maybe to move us along, Madam Chair, would it be okay to -- for me to read that first paragraph --

CHAIR LHAMON: Yes.

VICE CHAIR TIMMONS-GOODSON: -- with --

CHAIR LHAMON: Thank you.
VICE CHAIR TIMMONS-GOODSON: President Donald Trump has announced his intention to set up a commission led by Vice President Michael Pence to investigate massive voter fraud during the 2016 election. The President has frequently asserted widespread voter fraud but offered no evidence in support of it.

And everything else would remain the same.

CHAIR LHAMON: Thank you. Commissioner Yaki.

COMMISSIONER YAKI: Yes. I have an issue with that first sentence. It says "to investigate massive voter fraud." We must put the word "alleged."

VICE CHAIR TIMMONS-GOODSON: That's reasonable.

CHAIR LHAMON: Okay. Thank you. Commissioners who are on the phone, any discussion or comments?

COMMISSIONER KIRSANOW: Madam Chair, Kirsanow here.

CHAIR LHAMON: Go ahead.

COMMISSIONER KIRSANOW: Thank you, Madam Chair. I intend to vote no also for many of the same reasons that Commissioner Heriot mentioned. First of all, with respect to the wordsmithing of this, I am not
sure that the investigation that the President or the Vice President was going to conduct was going to be limited only to massive voter fraud.

That may have been the allegation, and I concur that at this point we have no evidence of massive voter fraud of the scale talked about immediately after the election. But you don't have to have massive voter fraud for people to be disenfranchised.

There are literally thousands of elections across the country during the course of the Presidential election cycle that are decided by just a handful of votes, and it doesn't take a whole lot of quote/unquote "voter fraud" or unintentional voting to swing those elections.

As an example, my own Secretary of State here in Ohio, Jon Husted, testified that in 2014 70 separate elections were decided by one vote. All you need is one person to vote inadvertently, one person to vote fraudulently, and you have a shift in the elections. It may not be the Presidential election, but it could be something of significant magnitude.

In addition, as we know here on the Commission, because we investigated this, during the 2000 Presidential election, the Presidential election was decided by 537 votes in Florida. That's all -- 537
-- and you swing an election, and Al Gore could have been President.

But there is a considerable amount of evidence out there that voter fraud does occur, inadvertent voting occurs, illegal voting occurs. Commissioner Heriot mentioned the Seventh Circuit decision. There are scores of cases where it -- for example, 2008 Minnesota election for the Senate, 177 felons were convicted -- that doesn't mean -- that's not the entire universe of people who may have been engaged in voter fraud, but 177 felons were convicted for illegally voting in an election only decided by about 300 votes.

This has significant consequences, and I might be persuaded to sign on to this if we can get an agreement that every time some arm of the government is going to engage in an unnecessary diversion of resources, that we vote against that, hey, I may be able to sign on to this.

But this may be the first time the Commission has ever said let's not devote any resources to something within our purview, or would be opposed to an investigation. If there is voter fraud, or no voter fraud whatsoever, then we should encourage this type of investigation to completely debunk this myth
in its entirety. But that's not what is going on here. So I would encourage us to abandon this statement because it's inconsistent with the facts, and it's also inconsistent with our mission.

CHAIR LHAMON: Thank you, Commissioner Kirsanow. To be clear, recognizing that you intend to vote no on this statement, is it your recommendation that the first paragraph not reference extensive voter fraud?

COMMISSIONER KIRSANOW: I don't think that that is accurate in terms of what they said the Commission was going to do or this -- this Commission. I think the President may have said there was massive voter fraud, but I'm not sure that the Commission is charged with investigating quote/unquote "massive voter fraud" as opposed to voter fraud, period.

CHAIR LHAMON: Okay. Thank you. So I hear that as a recommendation, just to reference voter fraud. Hearing no disagreement.

Then, in addition, just to be clear, this statement does not say that this Commission will not investigate voter fraud. This statement reaffirms the Commission's commitment to fulfill our statutory charge and makes clear that there is not a need for a separate commission because it is, in fact, our job to
investigate that issue.

COMMISSIONER HERIOT: Are we going to do it, then?

CHAIR LHAMON: Want to make sure that --

COMMISSIONER HERIOT: Voter fraud?

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASKI: As I read the statement, the point of the statement is to say that, actually, there are far more serious problems around voting than these spurious allegations of massive voter fraud, and that is the fact that we are one of the most advanced democratic countries, and yet we have poor voter turnout, we have a lot of processes that in fact work to suppress the vote of minorities and poor people and people with disabilities, that the statement is meant to say that in terms of what our charge is, to make sure that minorities and other vulnerable people are getting the full -- fully enfranchised to vote, that's where we should, as a nation, be putting our attention.

That is the point of this statement, not that we don't think we would ever investigate this, but that there are far more important things that are much more in line with our mission that needs attention.

CHAIR LHAMON: So I just want to make sure
that I have heard from all Commissioners who wish to speak on this.

Having so heard, let's move on to vote. Do I have a motion to approve the voter suppression statement, as amended?

COMMISSIONER YAKI: So moved.

CHAIR LHAMON: And is --

COMMISSIONER Kladney: Kladney here. I'll make the motion.

CHAIR LHAMON: I think you just followed Commissioner Yaki, so will you be our second, Commissioner Kladney?

COMMISSIONER Kladney: Sure.

CHAIR LHAMON: Terrific. Thank you. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I'm sorry. No.

CHAIR LHAMON: Thank you. Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Thank you. Commissioner Kladney?

COMMISSIONER Kladney: Yes.
CHAIR LHAMON: Thank you. Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes.

CHAIR LHAMON: Thank you. Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Thank you. Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: Thank you. And I vote yes.

So the motion passes, two Commissioners opposed, no Commissioner abstained, and all others were in favor.

So now we will move on to discuss the immigration executive order statement, and I will again read that statement aloud, so that we are clear what it is that we are voting on and discussing.

The statement title is the "U.S. Commission on Civil Rights expresses concern over Executive Orders promoting religious and national origin discrimination." And it begins "the U.S. Commission on Civil Rights expresses deep concern that recently issued executive orders, particularly orders 13768 and 13769, promote and endorse religious and national origin discrimination, in contravention of our nation's core anti-discrimination principles."
Executive Order 13769 sets out different treatment for persons coming to the United States from specified Muslim majority countries without any lawful justification or basis for that different treatment. By singling out seven overwhelmingly Muslim majority countries for exclusion, the executive order itself raises the specter of government endorsement of religious discrimination.

This infirmity is compounded by the executive order's prioritization of refugees who claim religious persecution so long as they belong to, quote, ‘a minority religion,’ end quote, in their home country.

Moreover, as courts have already recognized, extrinsic evidence also suggests that the executive order was motivated by prohibited bias, inconsistent with the nation's anti-discrimination principles.

Executive Order 13768 calls for denying federal funding to any, quote, ‘sanctuary jurisdiction,’ end quote, and, among other measures, requires a public weekly report of criminal actions alleged to have been committed by undocumented immigrants.

Elevating mere allegations of criminality
to a special federal reporting status, particularly when directed at any persons alleged to lack immigration status, raises national origin discrimination concerns.

The White House has announced its intention to supersede recently issued executive orders, and the Commission encourages the administration to use this new opportunity to carefully assess the serious civil rights concerns that the initial set of executive orders present, and to cure any such infirmities prior to issuance.

Chair Catherine E. Lhamon expressed her concerns, quote, ‘Government action that communicates animus rather than equity strikes against our core national ideals. This Commission calls for adherence to Constitutional principles in our national interest.’"

And that's the end of the statement.

Let's begin discussion. Hearing none, we can -- Commissioner Narasaki?

COMMISSIONER NARASAKI:  I just want to note with sadness that -- of what the results of these kind of policies engender. Just recently, two Indian Americans were shot after being told to go back to their own country in what is an apparent hate crime and an
apparent mistaken belief that they were Muslim, not that that would have been okay.

And this -- these kinds of policies which are playing to increase xenophobia and fears of people both based on religion, color, and race, I think should be disturbing to all of us.

And, you know, we, as a Commission, had recently issued a statement about freedom of religion and civil rights, and this is an area where clearly religion is being targeted. And I am particularly concerned about the tenor of these kinds of directions that we are going in.

CHAIR LHAMON: Thank you. Commissioner Yaki?

COMMISSIONER YAKI: Yes. I just wanted to echo what Commissioner Narasaki said. I have -- the history of my own family is one where the Chinese side of my family was initially denied admission into this country because of the Chinese Exclusion Act, which was still in effect at the time.

Notwithstanding the fact that my grandfather on my Chinese side was a diplomat for the government of China, the fact that he was still Chinese led people to think, well, we need to put him on the first boat out of here as quickly as possible,
notwithstanding the fact that he got stranded here because of an event called World War II.

This is something where I would just urge the President to make a statement, as did George W. Bush in the dark days after 2001. We are not in those dark days. We are in troubled times; we are in uncertain times.

It does not help us for -- to have the leader of the free world talk in ways to -- that essentially scares Americans in this country, and in a way that -- where I still have not, and if I am -- I am wrong, I will gladly be corrected -- any statement that says the word that we also want to guard against anti-Islam activity in this country as well.

I think the Southern Poverty Law Center noted that the rise of anti-Islam groups has tripled in the past year or so. And when the President finally made a statement regarding anti-Semitism earlier this week, a statement that people believed he should have made the week before when asked about it, it would have been nice, it would have been good, it would have been I think a sign of true leadership to have included in that statement at some point that we are all Americans and that anti-Semitism cannot stand, and neither can anti-Islam as well.
I think it's interesting that when you have -- that the -- no one has noted from the Administration the work that the American Islamic community has done in raising funds to restore the damaged, vandalized, Jewish cemetery in Ohio. I mean, these are important things that the leader of this country needs to do.

And this -- the executive order and the way it was rolled out and the way it was described, all the parol evidence that came out from people like Rudy Giuliani and others in how it came into being, does not reassure the American people that our borders are safe.

It only heightens fears and creates an environment for unfortunate incidents like that just the other day with the person who yelled, "Get out of our country" while carrying a gun and killing one person and seriously injuring another.

So I think that this -- this statement is well -- this Commission is well-timed. It could go far further. I think we are being tempered, rightfully so, but I think that we should be prepared to move forward stronger and harder on this issue, depending on what happens in the days ahead.

CHAIR LHAMON: Thanks. Commissioners on the telephone, two questions. One, do you have anything you'd like to say? And, two, if you don't,
could you please mute the phone, so that we don't have background.

COMMISSIONER ADEGBILE: This is Commissioner Adegbile. I have a proposed revision to the statement in what I believe is the second paragraph.

CHAIR LHAMON: Okay.

COMMISSIONER ADEGBILE: After the second occurrence of the word "religious," I would propose to add the words "and possibly national origin" before the word "discrimination."

CHAIR LHAMON: Okay. Thank you.

Commissioner Heriot?

COMMISSIONER HERIOT: First of all, I agree with Commissioner Yaki that the United States government should be careful not to fan the flames of anti-immigrant sentiment and any anti-national origin sentiment.

On the other hand, a couple of things going on here. First of all, evidently, we are going to be getting new executive orders on this topic very soon, and I don't know how different it will be, but it will be different from what was issued first.

And when I'm looking at this document, I'm seeing that a number of the legal issues here -- and I think even some factual issues -- really aren't sorted
out in a useful way at this point, so I'm wondering, why should we be issuing this when we don't even know what the executive order is going to say? Why don't we take a bit more time here?

For example, the statement, as it is currently written, talks about the -- I can't remember the number, but a number of -- seven -- seven countries are singled out. It doesn't point out that these were the same seven countries that were singled out by the Obama administration as countries of concern with regard to counterterrorism.

You know, I don't know exactly what that Obama administration document was or what effect it had, but I'm concerned that this makes it sound like the Trump administration came up with this on its own, and that's evidently not the case.

I am also concerned with how this dovetails with what we know to be ordinary law, such as taking religion into consideration. You know, we have treaties that require us to give asylum to immigrants under circumstances that require us to take into consideration religion. If a particular religious group is being persecuted in another country, we have actually got treaties that I believe place some duty on us to take that into consideration.
And yet this just seems very seat-of-the-pants the way it's written now, as if taking religion into consideration, which by the way it doesn't do. It simply points out that seven countries are going to be singled out in some way. This just doesn't seem to be sufficiently legally grounded to where we should be willing to sign it. It's too seat-of-the-pants.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: There has been in the debate over the -- these orders continuing references to the Obama policy, and the Obama policy was not about a complete ban based on national origin and religion. It was much more measured, and it was also not just these countries.

But the other thing that I want to point out is -- Commissioner Heriot, is you expressed concern because there is a new order that is being talked about, and, in fact, the statement contemplates that and seeks to influence what that order looks like, and that is within the charge of the Commission, which is to advise Congress and the President about our concerns. And so I feel actually it's very timely.

COMMISSIONER HERIOT: Well, now we're probably too late.
COMMISSIONER NARASAKI: There is strong belief that whatever is issued or about to be issued will still raise significant constitutional and other issues, so I don't think -- I think this debate is going to be going on for a while, and we will not be too late.

COMMISSIONER HERIOT: That's why I think we should put out something that is more measured and much better researched than this.

CHAIR LHAMON: Any further discussion?

COMMISSIONER KIRSANOW: Madam Chair, Kirsanow here.

CHAIR LHAMON: Yes?

COMMISSIONER KIRSANOW: Thanks, Madam Chair. Of course, I concur with what Commissioner Heriot had to say. I would note a couple of things. One, that there have been some statements made here that religion is being targeted. And if a religion is being targeted, then whoever is doing the shooting has egregiously poor aim because what we're talking about are seven countries, and the largest Muslim majority countries are not part of this list.

Indeed, 85 to 90 percent of the foreign Muslim population is not affected whatsoever by the existing executive order. I do agree that any administration, any governmental official, should be
celebrate and temperate in their remarks not to unnecessarily cause alarm, fan any flames, but our proposed statement criticizes the order for having different treatment for persons coming to the United States from specified Muslim majority countries without any lawful justification.

Now, I understand that have been some courts that contend there is no lawful justification, but each one of those courts failed to even consider the governing statute, 8 USC 1182f, which gives the President plenary authority to make determinations just as were made in this regard.

Now, those determinations might be more circumspect. Maybe they're done in a different way than many of us would hope. But it gives the President authority, and it's quite clear. It says whenever the President finds the entry of any class of aliens against the United States would be detrimental to the interest of the United States, he may by proclamation, until such period as he may deem necessary, suspend the entry of all aliens, or any class of aliens, as immigrants or non-immigrants or impose on the entry of aliens any restrictions he may deem appropriate.

Again, that was not even touched upon by any of the court decisions, although it was raised.
But when you talk about no lawful justification, the reason why these seven countries were selected is similar to, really, a famous bank robber's response to "Why do you rob banks?" and he says, "That's where the money is."

With these seven countries, terrorist acts perpetrated throughout the world, there is a disproportionate number of those acts occurring in these countries or by individuals who come from these countries, and it's extraordinary.

We have had a Senate Subcommittee on Immigration report issued just in the last few months that shows, of the individuals convicted of terrorist attacks here in the United States, 72 came from these seven countries. And of the 20 deadliest attacks, terrorist attacks that occurred in 2015, just three of these countries are responsible for 40 percent of them -- Yemen, Iraq, and Syria.

In addition, 2,415 terrorist acts were perpetrated in Iraq, 384 in Syria, 467 in Yemen, 241 in Somalia, 432 in Libya, and it goes on and on, far exceeding the terrorist activities of any other country. There is a rational basis why the Obama administration selected these seven, and that the Trump administration confined the orders to these seven.
Maybe it should be expanded; maybe it should be slimmed down. We can have an argument about that, but there is a lawful justification for these seven, and there is a lawful justification for the underlying authority.

CHAIR LHAMON: Thank you. Commissioner Narasaki.

COMMISSIONER NARASAKI: I just want to note that one of the most -- I think one of the most civil -- important civil rights acts in the 1960s was the Immigration and Naturalization Act, which ended the bans and quotas on immigration based on race and national origin, which had severely limited immigration from places like Asia, for example, for this reason, that in this country we do not ever take the position that you are guilty because someone else from your race or national origin did something wrong. That is not who we are as Americans. That is not what has built our country. That is fundamental to our Constitution. And so I just take offense when we talk about bans because a few people from a religion or a few people from a country have done something wrong. That does not mean -- that does not condemn every single person from that country, and I just have a problem with that.

I want to speak separately to the issue of
executive orders, and with the indulgence of the Chair
just note I have an ongoing concern about the treatment
of Native Americans over the North Dakota access
pipeline. And I'm very alarmed --

CHAIR LHAMON: Can we deal with this issue
first?

COMMISSIONER NARASAKI: Can I just
finish? It will just take a second. I am alarmed by
the government actions that have been related to the
protests. I am alarmed by the decision to forego the
additional environmental studies which our earlier
statement urged them to do to ensure that Native
American water sources and ancestral lands are not
bearing a disproportionate share of the negative
environmental consequences of these risks.

And I note with pride that we sent
Commissioners to North Dakota, and that we have been
very vigilant on continuing to monitor this issue, that
we are planning to have a full report looking at the
federal obligations to the Native American community,
and I am just urging that the Commission staff and
Commissioners continue to remain vigilant on this
particular subject.

CHAIR LHAMON: Thank you. Commissioner
Heriot.
COMMISSIONER HERIOT: I just want to say that I agree with Commissioner Narasaki on what is not our country, but I'd also add that that was not the executive order either, simply an executive order that was intended to be temporary while what Trump calls extreme vetting can be put into place.

And what is extreme vetting for? It is for, in fact, you know, being able to make decisions based on individual bases rather than relying on national origin stereotypes.

CHAIR LHAMON: Thank you. I think we have now heard from all Commissioners on this topic. Unless someone says they would like to speak who is on the phone, why don't we move forward to vote. Do I have a motion to approve the immigration executive order statement, including the amendment proposed from Commissioner Adegbile?

VICE CHAIR TIMMONS-GOODSON: So moved.

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

COMMISSIONER YAKI: Second.

CHAIR LHAMON: Thank you. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Heriot?
COMMISSIONER HERIOT: I vote no.
CHAIR LHAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: I vote yes.
CHAIR LHAMON: Commissioner Kladney?
COMMISSIONER Kladney: Yes.
CHAIR LHAMON: Commissioner Adegbile?
COMMISSIONER ADEGBILE: Aye.
CHAIR LHAMON: Commissioner Yaki?
COMMISSIONER YAKI: Aye.
CHAIR LHAMON: Vice Chair?
VICE CHAIR TIMMONS-GOODSON: Yes.
CHAIR LHAMON: And I vote yes. So two Commissioners opposed, no Commissioner abstained, all others were in favor. So the motion passes.

Next, we will hear from the Staff Director for the monthly Staff Director's Report.

**B. Management and Operations**

**Staff Director's Report**

MR. MORALES: Thank you, Madam Chair. I will be very brief. You have my Staff Director's report. If you have any questions, please contact me regarding anything in the report.

I just want to mention -- I always take a moment to -- I want to thank staff for their hard work putting this meeting together and putting the panel
together as well and special assistants that were involved in this, including Jason Lagria, so I really thank everybody for that.

**Staff Changes**

**MR. MORALES:** Second, I just wanted to mention welcome to staff to the Commission. One is returning; it's Alec Deull, who has served in the past as special assistant and will --

**PARTICIPANT:** Deull.

**MR. MORALES:** Deull. Did I say Duall? Sorry. Deull. My mistake. Thank you very much, Commissioner, for correcting me. He will be Commissioner Yaki's special assistant and --

**COMMISSIONER YAKI:** He was Commissioner Achtenberg’s special assistant, too.

**MR. MORALES:** And he will be so again. Thank you. And we also have Sarale Sewell, who will -- is joining us. She will be social scientist. Go ahead and maybe wave for the Commissioners. She is a social scientist, civil rights background in housing and administration of justice.

And we have two staff that have left. One is Kimberly Tolhurst, who has left the Commission. We wish her well in her future endeavors, as well as Jennifer Hepler, who has served the Commission for many
years as well, and we wish them well in their future endeavors.

With that, I do not have anything else, Madam Chair.

CHAIR LHAMON: Thanks very much.

So we are coming up on 11:00 a.m., but I am told that it would be helpful for us to have a five-minute recess. So we will come back at 11:02 and begin the next part of our conversation. Thanks.

(Whereupon, the above-entitled matter went off the record at 10:56 a.m. and resumed at 11:02 a.m.)

CHAIR LHAMON: It's 11:02, so I'll call us back to order -- thanks, all -- for the second portion of today's meeting.

Today we mark the 75th anniversary, last Sunday, of President Roosevelt signing Executive Order 9066 authorizing the United States military forcibly to remove more than 120,000 people, principally Japanese Americans, to internment camps within the United States.

That shameful period in the American past has begun to have distressing echoes today. We in this Commission this morning have called for immediate recommitment to equal treatment for all, and on that note I do ask the staff to issue the statements that
we voted on today.

In the meantime, we are honored to have join us by telephone today Karen Korematsu, daughter of an American hero, who challenged in litigation all the way to the United States Supreme Court, and many years thereafter to a federal trial court in California, to seek and secure redress for the ways the United States wronged him and so many thousands of his peers.

We are also honored to have with us Hogan Lovells partner and Georgetown law professor Neal Katyal, who, in his prior life as Acting Solicitor General, issued the nation's apology for ethical error during the Japanese internment cases.

We will now hear some short remarks from Commissioners Narasaki and Yaki, whose families were both interned during World War II. Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you. Good morning, everyone. I want to add my thanks to our two very distinguished speakers for sharing their stories and expertise, and particularly to Karen Korematsu, because she is calling in from Hawaii. So I think it's only 6:00 in the morning there.

This is a very personal topic to me because
my commitment to civil rights is rooted in my family's history. And in part this is in honor of my mother who passed away in December.

They were teenagers, my parents, when their families were forced to leave their homes by President Franklin Roosevelt in his Executive Order 9066. Although they were both born in America, they were both sent first to race tracks, one near Seattle, the other near San Jose, and housed in horse stalls and then sent at gunpoint in trains to hastily built concentration camps in the barren regions of Idaho and Utah for the sole crime of looking like the enemy.

To prove his loyalty, my father volunteered for the U.S. Army and joined the famed 100th Battalion 442 Regimental Combat Team, even though his mother, also an American-born citizen, was still being held behind barbed wire.

Their photos are on that screen. My mom is standing in front of the barracks in Minidoka, Idaho, and, as you can see, my father -- I think that was from his training camp days.

Many people mistakenly think that the Japanese internment was only in response to the bombing of Pearl Harbor and our entrance into World War II because they haven't really been taught the history of
racism on the West Coast.

Racism resulted in alien land laws that prevented immigrant Chinese, Indian, Japanese, and Korean farmers from owning land, from testifying against whites, and from becoming naturalized citizens.

One of the largest mass lynchings in the U.S. history occurred in California when approximately 20 Chinese immigrants were tortured and hung. Neighborhoods were segregated by deeds that prevented sales to Orientals, Mexicans, and blacks. And schools, even in Seattle, were formally or informally racially segregated.

Just a few months ago, we heard from Sylvia Mendez, the 80-year-old plaintiff in *Mendez v. Westminster*, the landmark 1946 case that desegregated California's public schools. She and her family had moved to Westminster, California, and ended up tending the farm of the Munemitsus family, a Japanese American family who had left their farm because they were interned.

It was there that Ms. Mendez encountered racially segregated schools, which in her case ultimately led to the *Mendez* case. As it wound its way through the court system, several organizations,
including the NAACP and the Japanese American Citizens League, filed legal briefs in support of her case.

And the Munemitsus family, who had recently been released from internment and returned to their farm, allowed the Mendez family to keep some of the profits from the harvest that year in order to help fund the appeal. That case eventually led to the basis for the Brown v. Board of Education Supreme Court decision that desegregated all schools nationally.

I think our history is important to remember, both the mistakes that are made as Americans as well as how we come together and how entwined our fates are, and that we need to be vigilant in learning from the mistakes of the past, and that is why I think it's so important to be acknowledging the 75th anniversary of Executive Order 9066. And I thank the Commission for allowing us to do that.

CHAIR LHAMON: Thank you. Commissioner Yaki?

COMMISSIONER YAKI: Thank you very much. My family, at least my father's family's history, is not too different from that of Commissioner Narasaki. My father was in kindergarten essentially when he and his family were given the order to relocate to Gila River in the Arizona desert, a place that lives up to
its name with the number of Gila monsters that used to roam through the camp.

I remember this was a subject that my father for many years just would not talk about, did not talk about. I did -- I saw about it in the history books, but there was -- he would never ever bring up anything about it until one day, when he knew I had been asking a lot of questions about it, a book appeared as books would always do whenever I started getting inquisitive about a subject, on my nightstand, about the internment and many of the block wood prints that were made by people who had been incarcerated and gave a little bit about the story.

It wasn't until later when I was a teenager that I understood a little bit more when I met my uncle, Ben Murakami. And the only way it started is because I noticed that he was missing his left arm. He had a metal hook system on his left arm, and I asked him, "How did this occur?" He said, "Well, I lost it at Anzio. I lost it in World War II."

And I said, "Well, how did you do that?" He said, "Well, I volunteered while I was in prison with your father." Three members of my family were in the 442. Actually, there were five. Two did not make it. Three retired and up until I think a few years ago all
of them were still with us.

But it is -- it is a story that still, like for Commissioner Narasaki, burns at me. And what burns at me is I remember as a law student reading the Korematsu decision, and reading the language and seeing people who I held as legal icons and legal heroes all essentially joining in on an opinion that basically gave the President unfettered power in the national interest to essentially remove an entire body of people from this country, from their homes, from their schools, from their loved ones in the case of Fred Korematsu.

And what disturbs me to this day is that this decision still stands. While the great work of the coram nobis team took out the underlying convictions of Fred Korematsu and Gordon Hirabayashi, the fact remains is that you still occasionally -- occasionally, but you still see -- Korematsu cited in briefs, in opinions, in Supreme Court cases, about the President's unfettered right to act in the national interest.

And people try and say, "Well, you can cite Korematsu without dealing with the tragedy of the Japanese internment." I just don't think so.

If the underlying internment was, in and
of itself, illegal, unconstitutional, not American, how can you still rest a decision of Presidential power upon such a faulty and shaky foundation?

That's the horror and the continuing horror to me of the Korematsu decision today, that we have -- it has not been explicitly overturned and that it still stands and is cited as an example of the sweeping ability of the President to act in the quote/unquote "national interest," even at the expense of the constitutional rights of Americans.

So I just want to thank Commissioner Narasaki for organizing this today. I want to join her in commending the people who are here today, who have done yeoman's work on behalf of the cause and our community, and thank you very much.

CHAIR LHAMON: Thank you both for sharing what your families went through.

Presentation by Karen Korematsu and Neal Katyal on Executive Order 9066 and the Internment of Japanese Americans During World War II

CHAIR LHAMON: It is now my pleasure to introduce Karen Korematsu. Karen's father, Fred T. Korematsu, was arrested and convicted of violating the federal executive order. He took his case to court,
ultimately losing in the United States Supreme Court
in a low point in our constitutional history.

Forty years later, he secured
extraordinary coram nobis relief, vacating his
original conviction. Judge Marilyn Hall Patel's
decision in that case recognized that the 1982
Commission on Wartime Relocation and Internment of
Civilians quote, "Found that military necessity did not
warrant the exclusion and detention of ethnic
Japanese," end quote.

She further found that the report quote,
"Concluded that race prejudice, war hysteria, and the
failure of political leadership shaped the decision to
intern Japanese Americans."

Judge Patel went on to remind us that the
Korematsu Supreme Court decision quote, "Stands as a
cautions that in times of distress the shield of military
necessity and national security must not be used to
protect governmental actions from close scrutiny and
accountability."

It stands as a caution that in times of
international hostility and antagonisms our
institutions -- legislative, executive, and judicial
-- must be prepared to exercise their authority to
protect all citizens from the petty fears and
prejudices that are so easily aroused.

Ms. Korematsu, we are grateful to you for joining us today from your home in Hawaii so early, and we look forward to what you have to say.

MS. KOREMATSU: Good morning, and thank you, Commission, for giving me this opportunity to share with you a little bit about my father and to really bring focus to the importance of commemorating the 75th anniversary of Executive Order 9066.

Just for the record, I do not live in Honolulu. I live in San Francisco. I wish I lived here, but I'm here, actually, at the invitation of the University of Hawaii Richardson School of Law. We have had a Day of Remembrance program here yesterday, and focusing, you know, on the 75th anniversary and of the significance of Korematsu v. United States and have been here with actually three members of the coram nobis legal team that helped to reopen my father's Supreme Court case.

And then, also, I should add that I work with several -- well, I work nationally with the National Council for Social Studies and the Departments of Education across this country through the Korematsu Institute.

I am working with the Department of
Education here in Hawaii and giving an all-island teacher conference on Saturday that we're bringing in teachers from the various islands and in — continuing the further education to help teachers to teach about the lessons of the past but also bring relevancy to the importance today.

So I'll just start off by saying that my father was born in Oakland, California, so he was an American citizen. And he grew up just like any other American kid and loving to -- you know, hot dogs and spaghetti and hanging out with his buddies.

But he learned about the Constitution in high school at Castlemont in Oakland. And he thought that he had civil rights as an American citizen. That's what they -- what they learned. And so, after the bombing of Pearl Harbor -- actually, that was on Sunday, on December 7th -- he reported to work the next day, on the Monday, and he -- even though he had tried to enlist in the military, even before Pearl Harbor, he was denied because of Japanese ancestry.

He wanted to help the war effort and attended a welding school and worked in the shipyards in Oakland and was basically fired the day after Pearl Harbor because of his Japanese ancestry. So, therefore, he never could work in that type of
contribution to the war or any type of government job, as a lot of the Japanese Americans were fired from their jobs as well, I might add.

He thought, though, that as an American citizen nothing would happen to him because of his status, and he was really concerned about my grandparents, his parents, who had immigrated from Japan and were -- had started a flower business, a cut flower, a nursery business in East Oakland, in the San Francisco Bay area, and worked very hard raising four boys and creating this business and were worried about what was going to happen to them.

And then, of course, the executive order came and the exclusion orders to forcibly remove anyone of Japanese ancestry from the West Coast. But my father didn't think this was right because all due process of law was totally violated, and he had done nothing wrong. Why should he go to a prison and be in that type of situation and leave his life?

Yes, he had an Italian American girlfriend at the time, which was not my mother, she would add, because she would have never deserted my father. But that's a story in itself because she was Italian, and there was, obviously, a very -- a big rift at that time as well regarding the Italians and the Germans.
So he decided to change his draft card. I mean, what burned him up, as he said, was to be categorized as a non-alien. You know, he was an American citizen.

So, it was about 30 days after everyone had been sent to various horse trace tracks, mostly up and down the West Coast, and, as my father said when his Supreme Court case was reopened and at the coram nobis hearing, horse stalls are for horses, not for people.

And but he moved around from jail to jail and ended up in San Francisco, and it was Mr. Ernest Besig who was then the Director -- Executive Director -- of the Northern California affiliate of the ACLU, noticed in the newspaper about my father's arrest. And he had been looking for a test case and visited my father and asked my father if he would be willing to fight his case. And my father said yes, and Mr. Besig said, "Well, if need be, we'll take it all the way to the Supreme Court."

And my father had great hope because he thought for sure by the time the case did reach the Supreme Court they would see it was unconstitutional, and so he was then sent -- after his bail hearing -- sent over to the Presidio -- we're not sure which jail he was in in there, but then sent over to Tan Fran.
Everyone had to live there about three or four months before they were sent to the permanent Japanese American incarceration camps across this country.

And when he was -- went there, the community men got together, the Japanese community men, to decide whether or not my father should continue fighting his case. And they didn't invite him, but they decided that he shouldn't.

So my father was really vilified from day one. He -- no one wanted anything to do with him because they thought that some harm might come to them if they associated with my father, and then they told him that they didn't think that my father should continue fighting.

But my father was very determined, until the -- throughout the entire war, even when they were sent over to Topaz, Utah, which was the camp that the Bay area people mostly went to, and no one wanted anything to do with him. And, actually, we were ostracized by the Japanese American community and really were not part of it until my father's Supreme Court case was reopened in 1983.

And but he -- my parents met and married in Detroit, Michigan. My mother was born in South Carolina and Caucasian, so I am identified to myself
as HAPA, so I'm half Japanese and half Caucasian, so finally I have an identity.

But I learned about my father's Supreme Court case in high school. So as Commissioner Yaki intimated, people really didn't talk about the Japanese American incarceration, and that was not unusual. The whole -- the entire community really didn't want to. They -- it was too painful. They wanted to get on with their lives and prove that they were good American citizens.

And so, through a book report that my friend gave in high school I learned about my father's Supreme Court case, and I had never heard about that before. I never even had heard about the Japanese American incarceration. And I went home and confronted my mother and she said yes, and I got the standard answer, "Well, wait until your father gets home and you can ask him."

And he worked long hours. Not only did he have housing discrimination, but he had employment discrimination. And by the time he got home, he simply told me that it happened a long time ago, and what he did he felt was right and the government was wrong. It was that clear and simple.

He just really lived by his principles of
right and wrong. And, actually, we never really talked about his case, because I could see the pain in his eyes, until it was reopened in 1983.

Now, during that time, he would get telephone calls from law students mostly wanting to have interviews, but he didn't want to do that. It was just, as I said, too painful. And then Professor Peter Irons had sent a letter to say that he was writing a book, and my father thought, well, here we go again.

But Professor Irons was persistent and called my father, and at that time everybody's telephone was listed in the phone book, and arranged a meeting. And so, Professor Irons met with my father and had this big, huge, thick file. And, unfortunately, I wasn't there -- quite home yet. I was traveling, and my mother went to go pick me up from the airport.

And so, when I walked -- we walked in the door, my father had a tape recorder, Peter had a tape recorder, and had almost finished their meeting, and it was just amazing to find these documents that really -- that proved that there was no military necessity for the Japanese Americans to be forcibly removed from their homes.

I should say that Professor Irons was doing
research to write a book about actually the Supreme Court cases during World War II. And because the Freedom of Information Act had gone into effect in 1967, he had started doing research.

But the file that he found, or the box I should say, was in Immigration and Naturalization Department, not in kind of your typical other citizenship type of departments, and he hooked up with Iko Hersick Yoshanaga, who was a researcher at the time doing some work for the Wartime Relocation Authority Commission. They were doing some hearings sanctioned by President Carter.

And he -- and then he helped to create the coram nobis legal team. Coram nobis is a little-known procedure meaning in Latin -- or from the Latin "an error has been made before us" or, as Judge Patel said, "An error has been made before the court." And because my father had served his probation sentence, as did Gordon Hirabayashi and Min Yasui, these cases were opened up and -- at the same time in three different cities, San Francisco for my father, Gordon was in Seattle, Washington, and Min was in Portland, Oregon.

And through this time when the coram nobis case hearing was heard on November 10, 1983, and you heard Judge Marilyn Hall Patel's decision, it --
clearly, it was shown that there was government misconduct that, at the time of my father's Supreme Court case, and Mr. Katyal can probably better talk about this, but the documents were found that by -- the Department of Justice had basically destroyed evidence, altered evidence, withheld evidence that was to be presented to the Supreme Court.

And so after my father's conviction was vacated, he could have very well said, "Well, you know, Japanese American community, I don't want anything to do with you because you didn't want anything to do with me," but he wasn't like that. And he helped with the redress and reparations movement, and my parents lobbied in Washington, D.C., that ultimately resulted in the Civil Liberties Act of 1988 that was signed by President Reagan.

And I might -- I wanted to add in the beginning that when President Roosevelt issued this Executive Order 9066, he was a Democrat, and that's something to be noted. And I've learned since then that that was a hastily put together executive order.

But my father kept crisscrossing the United States and educating because he didn't want something like the Japanese American incarceration to happen again. He was always worried because the
Supreme Court records still -- still stands.

And I -- besides helping with the redress and reparations movement, that is probably why he received the Presidential Medal of Freedom from President Clinton in 1998, and still continued to speak out about six months before he passed away. And at that time, he gave me that charge to carry on with education and telling his story, and to make sure that these lessons are learned. But, obviously, it seems that we still have a long ways to go.

And through the Korematsu Institute, we -- that's what we really promote and people are seeking our help. Teachers are just beside themselves trying to figure out how to teach the relevancy of what is happening now.

And, I don't know if all of you saw the Google Doodle on January 30th of Fred Korematsu, but we were very excited when we knew that was going to happen, or my brother and I did. He worked to work make sure that that was live on January 30th.

But my father also has days created in his name. Fred Korematsu Day of Civil Liberties in the Constitution was first created in California, signed by Governor Schwarzenegger in 2010. The first day officially was January 30, 2011.
And the point being is to focus on our civil liberties and the Constitution, and it's a day that is in perpetuity. It's not a holiday. We're working on it, and I thought originally that was okay. But then people don't realize what the day and the significance is, and we also in Hawaii have a day that's named after him, as well as the Commonwealth of Virginia and Florida, and several governors and legislatures have recognized the day through legislation and -- or through resolution, I should say, and proclamation.

So, my father represents all Asian Americans -- the MASA community, the Muslim and Arab and Sikh and South Asian communities, and all those that are underserved that are still fighting for our civil liberties and the Constitution in this country.

And if my father were here, he would say to you to remember to stand up for what is right. And when you see something wrong, protest but not with violence. Otherwise, they won't listen to you. But don't be afraid to give up.

Thank you.

CHAIR LHAMON: Ms. Korematsu, thank you so much. I hope you will stay on the phone with us, so that we can ask some questions and follow up after.

Next, I'd like to introduce Neal Katyal.
Mr. Katyal is currently a partner at the law firm of Hogan Lovells where he focuses on appellate and complex litigation, and he is the former Acting Solicitor General of the United States.

Mr. Katyal has argued 32 cases before the United States Supreme Court, including 30 in the last eight years, and he has more arguments scheduled for this current term.

In 2011, as Acting Solicitor General, Mr. Katyal issued the Department of Justice confession of error regarding ethical mistakes made by the then-Solicitor General during the Japanese internment cases, including withholding evidence from the court that undermined the rationale behind internment.

Mr. Katyal also is the Paul Sanders Professor at Georgetown University where he focuses on constitutional law, criminal law, and intellectual property. He is a graduate of Dartmouth College, and he was my classmate at Yale Law School.

Welcome, Mr. Katyal. We are grateful that you are here with us in person.

MR. KATYAL: Thank you. It's a real privilege to be here with all of you, and particularly you, Chair. In law school, as you heard, we were together.
CHAIR LHAMON: No discussions.

(Laughter.)

MR. KATYAL: Most of it will remain off the record, but I will say, if there were a vote as to not just who would be most likely to succeed, but who would be most likely to do well as a lawyer and good for the world, it would have been you.

I am grateful to talk about this part of our history, this sad part of our history. And, you know, our history as a country, as a nation, begins with the founding of the Constitution and James Madison and Federalist 51 saying men aren't going to be angels, using his anachronistic word at the time, and government is necessary, and checks and balances are necessary.

And so, the three branches of government were created for that reason, and the courts, of course, will always play a role in that, but so, too, will commissions like this, something Madison couldn't have anticipated, but are essential to providing also part of that check and balance.

My story begins I think where Commissioner Yaki was talking about. He said, how could our legal heroes, great justices of the Supreme Court, do something like this? Have these decisions that ratify
the forced internment on the basis of nothing more than
the color of one's skin? How did that happen?

And I set out to try and figure that out
five years ago when I was running the Solicitor
General's Office. Solicitor General is the top
courtroom lawyer for the government. Most of the work
focuses on the Supreme Court and, as you may know, the
Supreme Court are in this respect like schoolchildren.
They have summers off, so they don't have any -- they
don't hear any cases. And, as a result, the Solicitor
General also has an easier time in the summer, so each
summer I would have a project.

And my project for that summer was to
answer Commissioner Yaki's question, try and
understand, what did the court do and why? And the
answer has a lot to do not with what the court thought
but, rather, what the court was told by the government's
top lawyer, by the Solicitor General. That's what I
found.

And so, you've heard a little bit about the
story of Karen -- that Karen Korematsu just told about
her hero dad, Fred Korematsu. Let me start the story
with a different person, Gordon Hirabayashi.

So Gordon is 18 years old. He is a student
at the University of Washington in Seattle, and he
learns of this executive order and believes it's unconstitutional. And so he goes out and violates it. He violates the curfew and the movement restrictions and goes and turns himself into the FBI.

And the FBI says, "You're -- it's a first-time offense, don't worry about it, just go home." And he says, "No, no, no. You don't understand. I am" -- his version of religion was a Japanese version of Quakerism -- and he said, "My duty is to resist an unjust law. This is an unjust law. Arrest me because I have broken the law."

The FBI says, "Okay. If you want to be arrested, I'll arrest you." So he's arrested and goes to trial, and he defends himself at trial saying this is an unconstitutional law. He says, "Yes, I did it, and it's unconstitutional." And he loses in the trial court.

And he is being sentenced and the judge says, "Well, Mr. Hirabayashi, I've got good news and bad news." Okay. Mr. Hirabayashi says, "What's the good news?" "Well, the good news is, basically, you've -- I don't have any money to sentence you. You know, the closest prison camp is 1,000 miles away." Or, sorry, that's what he says was the bad news. The closest prison camp is 1,000 miles away.
And he says, "The good news is I don't have any money to get you down there. We're fighting a war, and this -- and we don't have the resources to spend to -- for you to serve your 60-day sentence."

Gordon says, "Don't worry. I'll figure out a way to get there." And he says, "No, you don't understand. I can't get you there." He says, "I'll get there myself." Gordon goes and hitchhikes the 1,000 miles to Tucson to serve his sentence.

He gets -- the camp is about 30 miles outside of Tucson, and he gets there late at night after hitchhiking, and he shows up and the warden -- goes to the warden and says, "I'm Gordon Hirabayashi, here to serve my sentence," and Gordon -- and the warden says, "I don't know who you are. I've got no paperwork. Just go home. Don't worry about it."

And then Gordon goes through the whole thing again. "I'm a Quaker, you know, I have to serve my sentence. It's my obligation." And so on. And the warden says, "Well, come back tomorrow." He comes back tomorrow and he figures out who he is and he serves his sentence.

That's the kind of man that Gordon was, and it reminded me so much of what Karen said about her dear father, you know, not someone who said the way to change
things is to take up revolution or arms or work outside of the system, but try within the system, make your case. That's what he did.

And so, Gordon's case gets to -- goes up to the Supreme Court first before the Korematsu case. And this is where the story gets remarkable and sad.

So the Solicitor General at the time is a guy named Charles Fahy. He had a distinguished career. He was Solicitor General for five years and then served as a distinguished judge on the D.C. Circuit for 30 years, our nation's second-highest court. I don't mean to judge him, but I do mean to tell you this story because it is grave -- grave errors that were committed by him and his office.

So then, like now, the Solicitor General doesn't himself write the briefs, rather, you have an assistant who is assigned to do the drafting. So the assistant in this case is a guy named Edward Ennis who is in the Alien Enemy Control Unit. He formerly was in the Solicitor General's Office, but now he is there.

And he starts looking into it, and he discovers that he is supposed to defend what happened to Hirabayashi, but he learns about this report by the Office of Naval Intelligence, by a guy named Kenneth Ringle.
Now, the Office of Naval Intelligence is in charge of counterintelligence and operations on soil, on U.S. soil, and who is our enemy, and so on. And the Ringle report says that only a tiny percentage at most of Japanese Americans are potentially disloyal, and that those that were were almost all known to the government, and anyone else could be treated -- detained on an individual basis instead of en masse interning 120,000 or so Japanese Americans.

And this report, the Ringle report, concludes, quote, "The entire Japanese problem has been magnified out of its true proportions largely because of the physical characteristics of the people. And J. Edgar Hoover, who is no fan of civil liberties, agrees with this, that we don't need to have the internment of all of these people."

So Ringle reads the report and writes a letter to Charles Fahy, and we have this now because of Peter Irons' work. And the letter says to Solicitor General Fahy, quote, "We must consider most carefully what our obligation of the court is. I think we should consider very carefully whether we do not have a duty to advise the court of the existence of the Ringle memo and the fact that this represents the view of the Office of Naval Intelligence. It occurs to me that any other
course of conduct might approximate the suppression of
evidence." The suppression of evidence.

What does Fahy do? Nothing. Nothing. He doesn't tell the court about Ringle. Instead, he
tells his deputy, Deputy Rowe, to add more stuff to the
brief about how the Japanese Americans are disloyal.
There are 15 pages in the brief to the Supreme Court
-- the most solemn thing you do as Solicitor General
is write briefs to the Supreme Court, speak on behalf
of the United States -- and the United States' solemn
brief to the court says that Japanese Americans
couldn't be trusted, and the evidence was things like
they have schools to teach the Japanese language to
their children, which evidently the court -- the brief
argued were fronts for Japanese nationalist
indoctrination, and things like that.

And so, in 1943, in June, the court
unanimously upheld Hirabayashi's conviction, finding
the military, quote, "Had reasonable ground for
believing the threat is real." Reasonable ground for
believing the threat is real. And I understand we
blame our heroes for -- on the court for, how did they
do that? But they're generalist judges; they didn't
know. They weren't told what happened, what the true
motivations were for this policy.
And then, of course, you have what Mr. Irons -- Professor Irons -- discovered with respect to Korematsu because that case comes up the next year, and then it gets even worse. The main report to justify this Japanese internment was written by General John DeWitt, and the DeWitt report's big smoking gun -- evidently that the Japanese Americans couldn't be trusted was this claim that Japanese Americans were going and signaling -- they were going to the shoreline off the Pacific coast and signaling to supposedly Japanese subs off the coast all sorts of stuff about troop movements and critical infrastructure, and the like. And so that's the rationale of the final report by DeWitt.

Only problem -- FBI and FCC had investigated this for years and found zero evidence that this was occurring. So there's another guy -- so we've heard about Edward Ennis. There is another guy named John Burling, and Burling comes from a legendary family, Covington & Burling, the law firm here, Burling, and that was his father. And Burling is assigned to look into -- and write the draft of the brief, and Burling realizes, hey, in light of the FBI and FCC, we can't justify the Japanese internment on the basis of this final report.
So, Burling writes a letter to Fahy saying the Justice Department had quote "substantially incontrovertible evidence" that general justifications for internment -- General DeWitt's justifications for internment -- were wrong, and that in all probability General DeWitt knew that when he wrote the final report.

So, Burling, when drafting the brief, does what any government lawyer should do, he repudiates the final report, says, this isn't something we can rely on. So, you know, that's your obligation, to tell the court in a forthright way what is true and what isn't true.

And, then like now, whenever you write a draft brief, you have to circulate it around to all of the impacted agencies, and so this was circulated. The draft was circulated to the War Department, now the Defense Department, and they hit the roof and said, "We're in a war. How can you undermine our generals and our Army, and so on. That is a terrible thing to do."

And they get to Fahy, and Fahy says, "Yeah. We can't repudiate the final report. We've got to double down on this."

So what does Burling do? Well, Burling
gets together with Ennis and does something remarkable. I have never seen it in government. Normally, in government, when you don't like something that a superior makes of a decision, you go above their head to their top person, the Attorney General or something.

Here they actually went down in the Department. They went from the Solicitor General, the number three person, to the head of the Criminal Division, Herbert Wechsler, who was like the number eight person or something of the Department.

But Wechsler was a towering figure, Columbia law professor, who wrote the model penal code, all sorts of stuff. They lay this out for him, and Ennis -- excuse me, Wechsler says, "Yeah. We have an ethical obligation. We can't write a brief to the Supreme Court based on the final report. We have to say something."

So, then there is a whole long compromise, and here is what Wechsler finally says. "We are going to write this footnote. The final report of General DeWitt is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place thereto. We specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the
court to take judicial notice, and we rely upon the final report only to the extent it relates to such facts."

I have just read to you this footnote. If you know what it means, you're ahead of me. I have read this now probably 400 times. I still don't know what it means. Okay?

But this happens in government. So whenever, whenever there is a conflict between agencies and you're writing a brief, and the Commerce Department wants one thing, and the EPA [Environmental Protection Agency] wants something else, there is always someone who says, "Oh, let's just paper over it. Let's just write a footnote that kind of genuflects to both sides."

And that works in a lot of government documents -- committee documents, or whatever. You might have some experience with that. It does not work in a brief to the U.S. Supreme Court. Why? Because there is this pesky thing called an oral argument afterwards. And if you write something like that in a brief, you can be sure that some Justice is going to ask you about that.

And this is when I really blame Fahy, because he goes and stands up to argue the Korematsu case, and one of the Justices says, "What are you
talking -- what does this footnote mean? Are you
backing off on the final report?"

Here is the quote from Fahy at oral
argument to the Supreme Court: "There is nothing in
the brief of the government which is any different in
this respect from the position it has always maintained
since the Hirabayashi case, that not only the military
judgment of the general but the judgment of the
government of the United States has always been in
justification of the measures taken, and no person in
any responsible position has ever taken a contrary
position, and the government does not do so now.
Nothing in its brief can be validly used to the
contrary."

No one took this. No person. That's what
Fahy said. That's after Ennis, after Burling, after
the FCC, after Hoover, after the FBI. That's what --
after Ringle, that's what he told the Supreme Court.

And so, Commissioner Yaki, our hero, six
to three in that decision voted for the government,
again saying the military's rationale was substantial
and justified.

And there is, of course -- and I'll
conclude in a minute -- there is, of course, a happier
ending to this because Peter Irons -- relatively
happier ending. Peter Irons does discover these documents and these coram nobis petitions are filed, and ultimately, they are -- these convictions are overturned.

And I was thinking about that story as I heard Commissioner Narasaki talk about her family. Mother interned, father serving the military who is interning her mother. And, Commissioner Yaki told a similar story about the man with the hook.

And, Karen Korematsu right now is at the University of Hawaii Richardson School of Law, which is the first place I spoke about this after my service as Solicitor General to a group of Japanese Americans, a couple hundred people there, and I told this story. It was a speech and I told the story of the confession of error in more detail.

And, there was question and answer session, and one of the most remarkable things happened in that, and I hadn't understood this. Someone stood up and said, "You know, my father served at the same time as I was being interned. He served the country that was interning me." And then all of a sudden, hands went up all through the room. There were dozens of people who had this exact story.

And I don't pretend our country is perfect,
but in that room on that day it sure felt pretty perfect. It was incredibly moving to see those families and still revere this country after what had been done to them.

So the decisions, as Commissioner Yaki was saying, still stand. They're anachronistic, but they're still there. But there are also other stories besides those decisions, the stories of brave people like Ennis and Burling, who stood up and tried to do what's right.

And those voices of dissent were right, and the government was absolutely wrong. Thank you.

CHAIR LHAMON: Wow. Thank you for sharing that history, the reasons for your apology, your courage in pushing toward the apology, and thank you for being here with us alongside Karen Korematsu for this day.

I want to make space for my fellow Commissioners for questions and for comments, both to you and to Karen on the phone. Commissioner Yaki.

COMMISSIONER YAKI: I just wanted to add one thing. I forgot to mention that my family members -- it was not only Ben Morakami but Tom Okino and Hiro Nishikubi who fought and came back with the 442.

But I also wanted to say that in the -- in the area that you just talked about, sir, the -- my
father, despite having grown up in the camps, despite having -- when he was released, having to basically engage in a fight every day at school from people who believe that he was part of the people who were killing their fathers in the Pacific theater, he ironically joined the United States Foreign Service and became, at the time, the highest-ranking Asian American career Foreign Service Officer in the American government, served his country faithfully and well for 30 years, and still occasionally is called back in the duty, whether he likes it or not, by various administrations to serve his country again.

But I have always -- it has always been remarkable to me, knowing what happened to him, that he had the courage and the ability and almost in some ways the amnesia, I call it, to be the voice and defend this country's values and principles when they did not defend his.

CHAIR LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER ADEGBILE: Madam Chair, this is Adegbile.

CHAIR LHAMON: Okay. Go ahead. Thank you.

COMMISSIONER ADEGBILE: I have a quick
question for Mr. Katyal. Mr. Katyal, could you explain to us what step it is that you took in light of the history that you have shared with us, just a succinct version, of what you did to try and make things right, to the extent that you could, in your service as Acting Solicitor General?

MR. KATYAL: Yes. Well, nobody could make this one right. We can only do a little bit, but the little bit I could do was, I mean, the Solicitor General has a practice called confessions of error when there is a pending case before the U.S. Supreme Court, and the Solicitor General believes that the position that the government has taken before is wrong.

It's usually used in criminal cases in which some U.S. Attorney somewhere is defending a position that the Solicitor General thinks is wrong and someone shouldn't be imprisoned on the basis of that legal theory.

It only applies to pending cases, and so there wasn't an opportunity to issue a true confession of error in this case because these aren't cases anymore. These are matters, really, of history, and nothing else. And so -- but, nonetheless -- there was a way to speak out and to use the same ethos of the Office of the Solicitor General of a confession of error to
try and say this was something that was gravely wrong.

And so that's what I did, is I used that mechanism -- not formally -- because a formal mechanism would trigger a filing to the U.S. Supreme Court, and it has to be a real case in order to do that.

But the same kind of idea, the concepts, the values behind that, which is that the Justice Department doesn't have to win all of its cases, it's supposed to do justice. Those are the words that are inscribed in the Attorney General's Conference Room, that the United States wins when its citizens win and have their day in court, not when the government always wins on one side of the versus line in a case caption. And so that's what I did.

COMMISSIONER ADEGBILE: Thank you.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you, Madam Chair. I would like to ask both of our guests to talk about how this history connects to what we are looking at now. We just had a very vigorous debate over adopting a statement on the President's recent executive orders around refugees and other immigrants coming from certain countries.

MR. KATYAL: Well, maybe -- I should just disclose I represent the State of Hawaii in those
challenges, so I have a certain perspective on this. But I do think there are a couple of things that are really important.

One is the same arguments that were made in Korematsu and Hirabayashi by the government, that the President, in the time of national security, can't do wrong, that their actions are unreviewable, are the same ones the Trump administration is making.

I mean, they have their spokesperson come out and say the President's actions are, quote, "unreviewable." What a terrible idea. It's so contrary to what Madison thought in Federalist 51. I can't think of a more dangerous idea. I can't think of a more dangerous thing than to have a President who says -- who calls a judge who disagrees with him "so-called." You know, this is not politics. You know, I would feel exactly the same way if a Democrat did that.

That is not -- I don't know of any President that I can think of in our lifetimes who has done anything like this. That, to me, is a real threat to national security. Our national security depends on our soft power, our values, our checks and balances, our ability to say nobody is perfect, no one in this room is perfect. Madison -- men are not angels. That's why we need checks and balances.
So it hearkens back to that history, and then there are elements to that executive order which hearken back to the history about religious and racial discrimination as well. And so I think the stories need to be told.

You know, the Archives says “past” -- National Archives Building says, "Past is prologue." And, I think, Justice Black, in his dissent in Korematsu said, you know, we need -- this decision is terrible because it's going to lie around like a loaded weapon for some President to pick up some time.

And you already hear the calls of it. You already hear people in the Trump Administration and commentators, you know, talking about reviving this stuff.

And, I was involved in the Guantanamo litigation against President Bush a few years ago, and I have a lot of debates with my Republican friends, including public debates, and one of their most common things they would say is, "Look, yeah, we've done stuff at Guantanamo, we've done stuff about waterboarding, whatever, but we never did what that Democratic President did, FDR, interning 120,000 Japanese Americans on the basis of their skin color."

And my answer was, "Yes, that's true. You
know, it's a low bar, but, you know, it's true that you cleared the low bar." That bar might be getting set lower and lower now.

CHAIR LHAMON: Ms. Korematsu, did --

MS. KOREMATSU: As Mr. Katyal was talking about the dissenting opinion of Jackson, and my father's case as a loaded weapon, I mean, that is certainly pretty evident now.

And also, to point out that Justice Murphy as a -- in his decision said, racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life.

And, I think that's -- and the point being also that in my father's Supreme Court case, it wasn't a unanimous decision, that the three dissenting opinions are really relevant today; unfortunately, but true, and why I encourage people to look at those because, how -- I mean, they could all be -- almost be said -- or it could be said now, and how did those three Justices have that wisdom to see through all of that evidence, even though a lot of it was false obviously and come to those conclusions.

You know, even what struck me was when I was looking at some of the citizenship's rights and responsibilities on their -- U.S. citizenship rights
and responsibilities on their website -- it says, citizenship is the common thread that connects all Americans. We are a nation bound not by race or religion, but by the shared values of freedom, liberty, and equality. And, I think that's what we all need to remember and to remind ourselves and to remind other people, because the demonization of a group of people because of race or religion happened in 1942, and it is happening now.

And, ultimately, the Executive Order 9066 was found to be -- to be wrong and what is -- what is happening now. And, so, we all need to stand up for our citizens and non-citizens, because that is what America is about.

And, my father had never given up hope that someday he would be able to reopen his Supreme Court case. He waited for almost 40 years, and that says something about how one person can make a difference. And we all can do that by stepping up and being, you know, civically engaged and also making sure that -- that our civil rights are not violated.

You know, being here in Honolulu, it reminded me that Justice Antonin Scalia was here in -- well, in 2014, so almost, three years ago. And one of the law students had asked about my father's Supreme
Court case, and he says, well, of course, he thought that Korematsu was wrong. But then he said, quote, "And I think we have repudiated it in a later case. But you are kidding yourself if you think the same thing will not happen again regarding the Japanese American, you know, internment or incarceration," since we are trying to change those euphemisms.

And, so even a Supreme Court Justice of recent pointed that out. So that's the caution that Korematsu v. United States brings today. It's -- Mr. Katyal can address this probably better than I can. I mean, it's still on the Supreme Court record. It has been discredited. You know, can it -- is it still considered good laws, and people don't think so.

But, as was pointed out, I mean, my father's Supreme Court case has been cited two or three times a week in newspaper articles since Thanksgiving. And so what does that mean? And, we all need to be vigilant in making sure that civil rights for all is really upheld.

CHAIR LHAMON: Thank you. I thank that is probably our ideal note for ending this conversation. I know that Mr. Katyal has a hard stop two minutes ago, so I thank both of you for coming to speak to us today, for sharing your experiences and your thoughts, and for
inspiring us to continue our commitment to civil rights moving forward.

Also, thank Commissioner Narasaki and the Staff Director for bringing refreshments for us. They are behind you in the room. Mr. Katyal, if you have time just before sneaking out, please join us.

**III. ADJOURN MEETING**

CHAIR LHAMON: And there is nothing further. I hereby adjourn this meeting at 12:02.

Thank you.

(Applause.)

(Whereupon, the above-entitled matter went off the record at 12:02 p.m.)