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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 12:30 p.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner*

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner*

DAVID Kladney, Commissioner*

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

* Present via telephone
STAFF PRESENT:
PAMELA DUNSTON, Chief, ASCD
JENNIFER CRON-HEPLER, Parliamentarian
ANGELA FRENCH-BELL
DARREN FERNANDEZ
LATRICE FOSHEE
SEAN GOLIDAY
GERSON GOMEZ
ALFREDA GREENE
DAVID MUSSATT, Director, RPU
MARCLE NEAL
LENORE OSTROWSKY
TINALOUISE MARTIN
JUANDA SMITH

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
ALISON SOMIN
KIMBERLY TOLHURST
IRENA VIDULOVIC
INTERNS PRESENT:
MALIK BROWN, Intern, OCRE
SARAH CHILD, Intern
JESSICA DAVIS, Intern
SCOTT DAWNSON, Intern ERO
DELANEY EARLEY, Intern, MWRO
MARSHALL HATCH, Intern, MWRO*
HSIN-YUN HAN, Intern
WEISIYU JIANG, Intern
MARY KENAH, Intern
COLIN MULLER, Intern, SRO
SARAHBETH RANGIAH, Intern, OCRE
NICHOLAS REYNOLDS, Intern, OCRE
ANDRES URIARTE, Intern, OGC
AGENDA

BUSINESS MEETING

APPROVAL OF AGENDA........................................8

PROGRAM PLANNING
Statement on the Pardon of Jack Johnson . . . . 11

Discussion of proposed Concept Papers for 2017
Statutory Enforcement Report...............................17

Discussion and vote on Commission Letter regarding
guidance issued by the Department of Education's
Office for Civil Rights on transgender students and
their protection under Title IX of the Education
Amendments of 1972.............................................28

Discussion and Vote on Pride Month Resolution.....51

STATE ADVISORY COMMITTEES
Discussion and Vote Concerning Work of the Nebraska
State Advisory Committee on State-Level Immigration
Enforcement in Nebraska.................................56

Status of State Advisory Committees by the Chief of
the Regional Programs Unit.........................60

Vote on Administrative Instruction 5-9 governing
the appointments of State Advisory Committee
members....................................................66

Appointment of members to State Advisory Committees
(SACs)..........................................................76
    Nevada
    Delaware
    Vermont
    New York
    Connecticut
    Minnesota

I. Presentation by the Chair of the Illinois Advisory
Committee on Environmental Justice.................92

Staff Director's Report...............................109
    Status of USCCR Web Site Transition

ADJOURN MEETING ..................................109
PROCEEDINGS

(12:32 p.m.)

CHAIRMAN CASTRO: Calling this meeting to order. This is a meeting of the U.S. Commission on Civil Rights. It is our regular monthly meeting. The time is currently 12:32 p.m. Eastern Time. The meeting is taking place at our headquarters here in Washington, D.C. at 1331 Pennsylvania Avenue NW.

I am Marty Castro, chairman of the Commission. Commissioners who are present with me at this meeting are the vice chair, Vice Chair Timmons-Goodson; Commissioner Heriot; and Commissioner Narasaki. Commissioners Achtenberg and Kirsanow are on the phone and will soon be joined by Commissioner Kladney. Is Commissioner Kirsanow on the phone? We will certainly be joined by him shortly.

Nonetheless, we do have a quorum of Commissioners present. Is the court reporter present?

THE COURT REPORTER: I am.

CHAIRMAN CASTRO: She is. Is the staff director present?

MR. MORALES: I am present.

CHAIRMAN CASTRO: Okay. So the meeting will now come to order.
Before we move forward with the approval of the agenda, and we have some agenda amendments as well, I want to just do a couple of things.

First and foremost, I want to ask us to consider what happened recently in Orlando. The Commission, I am very proud to say, issued a unanimous and bipartisan statement in the wake of that condemning the loss of life, condemning not only the act of terror that it is, but also the act of hate that it is targeting LGBT community, LGBT Latino communities.

And what I would like for us to do before we get the formal program started is to have a moment of silence in memory of those that have been lost and who are injured as a result.

Thank you. And again, before we begin the program, there is actually a brighter side of something we would like to be able to share with all of you. Our Commission is a small but tough one, and we are very fortunate that this time of year, we get an influx of some additional support to help us meet our mission, and we have had working with us as Commissioners and our special assistants as well as other entities within the agency, other departments within the agency, a group of interns, student interns, that have been with us this summer and who are going to be with us throughout

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the course of the summer, and I just want to acknowledge their presence and the work that they've been doing for us here.

They are among the brightest minds in our law schools and our colleges, and so we want to thank them for being part of our Commission team this summer. So I am going to identify those of you that are in the audience. If you are in the audience, just stand up. I will also be identifying some that are working in our regional offices who obviously are not with us here today.

We have Sarah Child, is Sarah here? Mary Kenah; Jessica Davis; Hsin-Yun Han, also we know her as Ruby; and Weisiyu Jiang. We also have OCRE interns SarahBeth Rangiah; Nicholas Reynolds; and Malik Brown. Have I missed any of our interns?

Okay. Interning in the Office of the General Counsel is Andres -- sorry, Andre Uriarte. Is Andre here? We also have Scott Dawnson interning in the Eastern Regional Office, and while Marshall Hatch and Delaney Earley are interning in our Chicago Regional Office, we want to thank them. And we also want to thank Colin Muller, who is interning in our Atlanta Regional Office.

So let's please give them all a round of
applause and thank them for their —

(Applause.)

CHAIRMAN CASTRO: Did I lose my mic? No, there it is.

**Approval of Agenda**

Now I want to move that we approve the agenda. Is there a second?

COMMISSIONER NARASAKI: I second.

CHAIRMAN CASTRO: Okay. We're going to have a number of amendments, so are there any amendments? I know some of you are going to be raising some, and then I'll have some as well, and we'll try to deal with them as a package.

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I have an amendment to the agenda. I would ask that the replacement resolution that takes the place of the original resolution that was submitted to commemorate LGBT Pride Month be placed on the agenda, and that the motion to adopt that would also include directions to the staff director to send out an appropriate press release upon adoption of the resolution.

CHAIRMAN CASTRO: Okay. Are there other
amendments?

COMMISSIONER KLADNEY: Mr. Chairman, Dave Kladney here. I would like to amend the agenda to include the statements from Jack Johnson requesting a pardon 70 years after his death last week regarding the one year and one day prison sentence that he was sentenced to --

CHAIRMAN CASTRO: Okay.

COMMISSIONER KLADNEY: -- many years ago.

CHAIRMAN CASTRO: All right.

COMMISSIONER KLADNEY: And I was wondering Mr. Chairman if that could go further up the agenda, only because I wanted to make a mention of that.

CHAIRMAN CASTRO: All right. What we'll do is we'll take that right after we amend the agenda. That way, we can get that out of the way for you. I know you're -- you're abroad, and it will be easier for us to do that.

Then I have two amendments. One is to add the discussion and vote on letters to the federal agencies from the Commission involving the state-level immigration enforcement report from our State Advisory Committee in Nebraska, as well as adding an additional state for consideration today in our SAC package. That would be the State of Washington.
So we have four amendments. Can I get a group second on those?

COMMISSIONER NARASAKI: I second.

CHAIRMAN CASTRO: Okay. So all those in favor of the agenda as amended, signify by saying aye.

(Chorus of ayes.)

CHAIRMAN CASTRO: Okay. Any opposed?

(No audible response.)

CHAIRMAN CASTRO: Any abstentions?

COMMISSIONER HERIOT: I abstain.

CHAIRMAN CASTRO: Okay. So we have one abstention from Commissioner Heriot, let the record reflect that.

So before we get into formal program planning, then, let us deal with the Jack Johnson --

COMMISSIONER YAKI: I am sorry, Mr. Chairman. I have to recuse myself from the Nebraska issue, so I am going to have to abstain on that vote as well.

CHAIRMAN CASTRO: Okay. Please let the record reflect Commissioner Yaki also abstains. It still passes with an overwhelming majority.

Commissioner Kladney, you have the floor on the Jack Johnson statement.

COMMISSIONER KLABDNEY: Thank you, Mr.
Statement on the Pardon of Jack Johnson

COMMISSIONER Kladney: Commissioner Kirsanow and I are sponsoring the statement regarding Jack Johnson. He was the first African American heavyweight champion. He defied the Jim Crow laws and paid the price by being sentenced to prison for a year and a day. We distributed the proposed statement a couple of days ago, and I would request a vote. But before that, I would ask that my assistant, Amy Royce, read the statement into the record.

Chairman.

CHAIRMAN CASTRO: Okay. Do we have a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Any discussion?

(No audible response.)

CHAIRMAN CASTRO: Any discussion?

(No audible response.)

CHAIRMAN CASTRO: Go ahead, read it into the record.

MS. ROYCE: Seventy years ago this week, John Arthur "Jack" Johnson died in a car accident on June 10th, 1946. Mr. Johnson, the son of former slaves, rose to become boxing's heavyweight champion of the world in 1908 and was inducted into the Boxing
Hall of Fame in 1954.

An outspoken and controversial figure in his day, Mr. Johnson was initially denied the opportunity to fight for the heavyweight title because the championship was closed to African Americans. He was a fierce critic of Jim Crow laws and the prevailing enforced customs of racial segregation.

After he gained the title, white Americans began a search for a white boxer who could defeat Mr. Johnson, an effort dubbed "The Search for the Great White Hope." Jim Jeffries, an undefeated former champion, agreed to come out of retirement to fight Mr. Johnson as a result of this search. Mr. Johnson's victory in that fight sparked riots across the country, as white mobs attacked and murdered African Americans.

Racial resentment against Mr. Johnson was heightened by his relationships with white women. On October 18th, 1912, he was arrested on a charge that his relationship with a white woman, Lucille Cameron, violated the Mann Act, which prohibited interstate and foreign transportation of women and girls for immoral purposes. Ms. Cameron refused to cooperate with the prosecution, and the two married shortly thereafter.

Mr. Johnson was arrested less than a month later on charges stemming from his relationship with
a different white woman years earlier. He was convicted by an all-white jury in 1913 and sentenced to one year and one day in federal prison.

Mr. Johnson fled the country to avoid prison. He lost the heavyweight title in 1915 and returned to the United States in 1920. He turned himself over to federal authorities and served out his sentence. He never regained the championship title.

Congress has repeatedly called for the President to posthumously pardon Mr. Johnson for the racially motivated conviction he endured. Most recently, the Senate, with the concurrence of the House of Representatives, passed a resolution calling for his pardon on December 9th, 2015. Today, 70 years after his death, the U.S. Commission on Civil Rights joins the 114th Congress in requesting the President to right this century-old wrong.

As W.E.B. DuBois said, "The reason Jack Johnson was so beset by his own country, a country ironically which had only recently reaffirmed that all men were created equal, was because of his unforgivable blackness." President Obama should pardon Mr. Johnson.

CHAIRMAN CASTRO: Thank you, Amy. Any questions or any additional discussion? Commissioner
Heriot?

COMMISSIONER HERIOT: I would just like to say something about this. I think that Jack Johnson's -- the case of Jack Johnson is a good example of the problems that occur when Congress passes legislation that is worded in vague ways. It becomes abused then by enforcement officers who want that law to mean what they want it to mean at the time. So I very much -- I very much endorse this statement, and I look forward to voting for it.

CHAIRMAN CASTRO: Thank you, Commissioner Heriot. Any other Commissioners wish to say anything?

COMMISSIONER YAKI: Mr. Chair, it's Commissioner Yaki.

CHAIRMAN CASTRO: Yes.

COMMISSIONER YAKI: I remember reading about Jack Johnson as a young man and seeing the movie "The Great White Hope" with James Earl Jones as a teenager, but I saw it in the context of a time when a young, brash African American boxer was also in the mix of turmoil led by government prosecution, and that was Muhammad Ali.

And I can't help but think about -- about this today without also thinking about Muhammad Ali and what he was able to do that Jack Johnson could not do,
you know, nearly 100 years -- 100 years ago, in terms of taking defiance of a law and turning it into a symbol, a symbol for -- for all African Americans, a symbol for all Americans, a symbol for a generation.

And I mourn his passing as much as I -- as much and more than thinking about how -- how much we have to do to right an injustice with a pardon for Jack Johnson. While I fully support this, I cannot help but remember with fondness and sadness and great pride the passing last week of Muhammad Ali.

CHAIRMAN CASTRO: Thank you, Commissioner Yaki. Our vice chair has something to say?

VICE CHAIR TIMMONS-GOODSON: Yes. Mr. Chairman, it was my understanding that the last sentence was to read "We strongly urge President Obama to pardon Jack Johnson." I believe that is different from what was read?

CHAIRMAN CASTRO: What is the difference? So you read the wrong version? Okay. So the correct version will end with?

VICE CHAIR TIMMONS-GOODSON: The last sentence, instead of "President Obama should," I believe now reads actually "We strongly urge President Obama to pardon -- "

CHAIRMAN CASTRO: Okay.
VICE CHAIR TIMMONS-GOODSON: " -- Jack Johnson."

CHAIRMAN CASTRO: Okay. All right. Any other -- any other comments or questions from Commissioners?

(No audible response.)

CHAIRMAN CASTRO: If not, I'm going to call the question.

Is Commissioner Kirsanow on the line yet? In case you wanted to say something, I know this was a joint effort, Commissioner Kirsanow? No? All right. He will come on later. Commissioner Heriot, how do you vote? Is that you, Commissioner Kirsanow? No? Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote yes.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Madam Vice Chair, how do
you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: And I vote yes. It passes unanimously. Thank you.

COMMISSIONER KLANDNEY: Mr. Chairman?

CHAIRMAN CASTRO: Yes sir.

COMMISSIONER KLANDNEY: Can we send this statement to the White House?

CHAIRMAN CASTRO: Yes, we can. We will have it put in letter form and signed, and then we can probably the next week maybe issue a press release along with it, okay?

COMMISSIONER KLANDNEY: Thank you very much, Mr. Chairman.

CHAIRMAN CASTRO: You're welcome. Thank you. Thank you in absentia Commissioner Kirschnow for raising the issue.

Discussion of Proposed Concept Papers for 2017

Statutory Enforcement Report

Next, I would like to move on to a discussion on the proposed concept papers for the 2017 Statutory Enforcement Report. I believe we have four
that have been submitted by Commissioners. I want to
give everyone a chance to discuss their paper. While
I don't have and I did not plan for us to vote on this
today, I thought we'd vote on it in July, but, you know,
if Commissioners are inclined today to take action, I
am sure we could do that. But initially, the thought
was, as we've done in the past, kind of get through these
reports and these proposals and have folks present
their arguments in favor of them.

So why don't we do that first, and then
we'll see where we go next? The first -- why don't we
-- Commissioner Kirsanow is not here, so I'm going to
skip his papers for now. Commissioner Heriot, you have
a proposal on the potential misuse of settlement
agreements and consent decrees in civil rights
enforcement. If you could present that?

COMMISSIONER HERIOT: Actually, my
understanding is the fix is in on this, and that this
one is not going to be voted in. If you want me to spend
time talking about it, I will, but --

CHAIRMAN CASTRO: Well, we'll see --

COMMISSIONER HERIOT: -- I had understood
that people were behind one of the other concept papers,
and we might be able to move things along more quickly
if we do that.
CHAIRMAN CASTRO: Well I wouldn't say the fix is in, but, you know, clearly there is a thought that many of us are progressives, and the Commissioner who put forward the most progressive proposal is Commissioner Achtenberg, that I know. Some of us intend to vote that way. I don't know what the numbers are going to be. But I also, as always, want to give --

COMMISSIONER HERIOT: I hereby fall on my sword --

CHAIRMAN CASTRO: -- give you the opportunity --

(Laughter.)

CHAIRMAN CASTRO: -- okay. Would -- so Commissioner Kirsanow is not here to fall on his, so I don't know how you'd like to proceed, but Commissioner Achtenberg, since you're the only other Commissioner present who has a proposal, would you please proceed with your discussion?

COMMISSIONER ACHTENBERG: I am burnishing my sword, Mr. Chairman.

I would like to propose that the Commission examine the status of women in prison, whether or not they -- they endure disparate treatment, whether that treatment results or does not result in disparate
impacts, and whether or not the Bureau of Prisons in particular would have a statutory duty of care determining the ways in which that -- the Bureau of Prisons is or is not exercising its duty of care with regard to its female prisoners, which would include -- there is a healthy amount of literature on the topic.

Although this topic is an issue of first impressions for our Commission, though our state advisory committees, I am told a few of them have considered this topic in years past. We have for the Commissioners' consideration a list of questions, although in the way these things usually unfold, certainly the staff will be adding to and detracting from the list that I have presented here.

It is therefore illustrative in that respect, although I do think any basic examination of this topic would need to include comparisons of the disciplinary measures; comparisons of healthcare to the extent that healthcare is being provided; not comparisons, but the extent to which the particular health requirements of women are being met as would be incumbent upon the Bureau of Prison as it exercises its basic duty of care; and a host of other questions as delineated in the paper.

This is -- we have hundreds of thousands
of women are incarcerated, both in the federal system and in numerous state systems, and while we don't have the resources, nor would it be appropriate, for us to examine every state system, to the extent that the staff determines that there are safe either practices that should be illuminated in this -- in this discussion, or best practices, if you will, when it comes to the recommendations section, I would propose to authorize the staff to look into those practices as appropriate.

The -- I would only add additionally, and then I'm happy to answer any questions, two things. One is that I am anticipating a slightly more expanded version of this concept paper for your consideration unless people decide they want to -- I hadn't assumed we were going to adopt it today. I thought that I would provide a more expanded version of this for people's consideration in July.

The other thing I wanted the Commission to entertain is the possibility that, if we were to adopt this paper, we might also consider doing a field hearing on the topic at an -- a site appropriately selected by the staff if this research is allowed.

CHAIRMAN CASTRO: Commissioner Achtenberg, it's the chair. I misspoke when I said we could vote today. Actually, I forgot that our Office
of General Counsel wants to review for jurisdictional
and other --

COMMISSIONER ACHTENBERG:  Sure.

CHAIRMAN CASTRO:  -- purposes these so
that we can vote on them in July, so there will not be
a vote today.  I got ahead of myself there.

COMMISSIONER ACHTENBERG:  Sure.

CHAIRMAN CASTRO:  Commissioner Narasaki?

COMMISSIONER NARASAKI:  Yes.

Commissioner Achtenberg, I am curious as to how it might
be expanded.  One of the issues that I have been asked,
that the chair and I were asked by members of Congress,
is whether we would consider looking at the -- whether
there's disparate impact in terms of how women are being
sentenced.

COMMISSIONER ACHTENBERG:  Well, let me
just say that the commission of crime and sentencing
severity, it is a whole topic unto itself.  I mean,
whereas conditions of imprisonment -- I mean, if, you
know, I mean if you thought somehow we had the resources
to entertain both -- both studies, I don't know that
this specifically does not include the question of, you
know, how many crimes do women commit and what crimes
do they commit and -- and sentencing disparities as
well.
I -- I tried to limit it. I'm not suggesting that if the Congress wants it looked at, we couldn't look at it, but that isn't currently what this is -- what this is focused on.

CHAIRMAN CASTRO: Yes, that might be a --

COMMISSIONER KLANDNEY: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Kladney, then Commissioner Heriot. Go ahead.

COMMISSIONER KLANDNEY: I believe if we add that to the statement, at least the two lines, I mean, this is part of the -- I think part of the issue that we've had because topics get so enlarged that they are very difficult to handle. This is a very statistical type of proposal, and I think limiting the subject matter to what was proposed, I mean by Commissioner Achtenberg, would lead to a much better report.

CHAIRMAN CASTRO: Thank you, Commissioner Kladney. Commissioner Heriot?

COMMISSIONER HERIOT: I concur with Commissioner Kladney that extending this -- and Commissioner Achtenberg -- would be a mistake. I think that the error that we make on the Commission year after year after year is to -- to try to take on more than we can actually digest well, that we need to always, always, always remember modesty here. And if we take
we have a modest goal, we have a fighting chance of turning out a report that is going to be worth the read when members of Congress turn to read it.

I do, however, believe that if we're going to take on the issue of whether or not women as a group as prisoners are being treated unequally, that we have to be prepared to take the evidence where it leads us. And so there are ways in which women's prisons may be superior to men's prisons, and the area of personal safety I think is the area that people usually mention in this regard.

Very often, what you hear is that in women's prisons, the array of vocational education opportunities is less extensive than what it is for men's prisons, but on the other hand, personal safety is greater. If we're going to take on all the issues comparing women's prisons to men's prisons, I think we have to take on the personal safety issue as well.

We might want to make a decision to go for just one very targeted area rather than five or six. Again, every time we take on a topic, what happens is it turns out to be bigger than we thought it would be, and we end up being much more superficial than I think we should be. If we took on simply women's prisons, vocational education, that I think would be a better
report than one that takes on a few different aspects.

CHAIRMAN CASTRO: Yes, and some can argue
things that we've heard, that safety of women prisoners
is worse because they're more often raped by guards and

COMMISSIONER HERIOT: Maybe.

CHAIRMAN CASTRO: -- and --

COMMISSIONER HERIOT: That's why it's
worth investigating.

CHAIRMAN CASTRO: Yes. So any other
comments, questions on this?

CHAIRMAN CASTRO: Okay. Go ahead. Was
that you, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I am going to
observe that I agree with Commissioner Heriot to the
extent that we need to take the evidence where it leads,
and should that be in any particular instance that
women's treatment is superior to that of men, then so
be it. This doesn't presuppose a particular

conclusion.

On the other hand, I would be most
reluctant, and I believe Commissioner Kladney as well,
as my coauthor, would be most reluctant, to limit this
only to something like the vocational programs
available to women as compared to those available to
CHAIRMAN CASTRO: Anything else on this topic?

(No audible response.)

CHAIRMAN CASTRO: If not, Commissioner Kirsanow, have you rejoined us? I understand he might have been on the wrong line?

COMMISSIONER KIRSANOW: Yes, I am here.

CHAIRMAN CASTRO: Okay. We have two concept papers that you have. I don't know if you'd like to discuss them, or, as Commissioner Heriot did, she forewent hers, but I would encourage you to discuss yours if you are willing to.

COMMISSIONER KIRSANOW: Thank you, Mr. Chair.

I will just make it brief because my concept paper with respect to identifying and remedying discrimination against Asian Americans is one that we've previously talked about, and it's one where there has been a recent development insofar as some students have filed complaints against some Ivy League schools alleging discrimination on the basis of race in admissions and I believe some other criteria also.

I think it remains timely, and it is something that we should ask of witnesses from say OCR
and maybe Civil Rights Division as to what, if any, actions are being taken with respect to any potential -- or any complaints that have been filed. One was filed and dismissed by OCR, but the basis upon which such complaints may have been dismissed, the reasoning behind it, and/or whether or not there's any evidence of such discrimination, and also adduce evidence from universities as to the extent to which they engage in either preferences or discrimination on the basis of race.

CHAIRMAN CASTRO: Okay. Any questions for Commissioner Kirsanow on that concept paper?

(No audible response.)

CHAIRMAN CASTRO: Hearing none, would you describe your second one, Commissioner?

COMMISSIONER KIRSANOW: I will forgo that.

CHAIRMAN CASTRO: Pardon me?

COMMISSIONER HERIOT: He said he'll forgo.

CHAIRMAN CASTRO: Forgo it? Okay. So then what we will do is in July, we will vote on these papers and determine which one will be the 2017 concept paper for our Statutory Enforcement Report. In the interim, our Office of General Counsel will review them
to ensure that all jurisdictional requirements, et
cetera, are met so that the version that we do vote on
in July is perfectly within our power to explore.

Okay. Next we move on to a discussion and
vote on a letter or statement by the Commission in
support of the Department of Education's Office of
Civil Rights and the U.S. Department of Justice on
transgender students and their protections under Title
IX.

Discussion and Vote Regarding Protections for
Transgender Students under Title IX

CHAIRMAN CASTRO: I would like to make a
motion that we approve the letter, and then I would ask
for a second, and then I'll read it so that we can
discuss it.

So I make a motion that we approve. Is
there a second?

COMMISSIONER NARASAKI: I second.

CHAIRMAN CASTRO: Commissioner Narasaki
seconds. Let me read this into the record, and then
we can discuss it. Everyone has already received a
copy of this in advance, so I am not going to read the
footnotes, but you have them in front of you.

The proposed statement would read, "The
United States Commission on Civil Rights strongly
supports the joint guidance set forth by the Department of Education's Office of Civil Rights and the Department of Justice on the protections for transgender students under Title IX of the Education Amendments Act of 1972.

Title IX of the Education Amendments Act of 1972, which we will refer to heretofore as Title IX, states 'No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.'

The Department of Education's Office for Civil Rights and the Department of Justice issued guidance stating that for the purposes of Title IX and its implementing regulations, 'The Departments treat a student's gender identity as the student's sex.'

To ensure nondiscrimination on the basis of sex, transgender students must be allowed to participate in activities, use facilities, and access housing consistent with their gender identities. Under Title IX and the Family Educational Rights and Privacy Act, a school is obligated to protect transgender students' privacy related to their transgender status. Schools are required to provide
a safe and non-discriminatory environment, and, when harassment based on gender identity is discovered, 'must take prompt and effective steps to end the harassment, prevent its reoccurrence, and, as appropriate, remedy its effects.'

The guidance put forth by the Department of Education and the Department of Justice reasonably interprets sex discrimination to necessarily include gender identity discrimination for purposes of compliance with Title IX. It is the logical outgrowth of voluntary resolutions into which both the Departments -- and within to which both Departments have entered into in prior litigation. It also serves as the correct foundation for the recent decision handed down by the Fourth Circuit that the Department's interpretation of its own regulations regarding restroom access by transgender individuals should be given deference.

On April 18th, 2016, the U.S. Commission on Civil Rights, by a majority vote, strongly condemned the recent state laws and proposals targeting members of the lesbian, gay, bisexual, and transgender community for discrimination, including North Carolina's legislation forcing transgender people to use public bathrooms based on sex and not according to
their gender identities. These state laws attempting
to nullify the protections of the Equal Protection and
Due Process Clauses of the 14th Amendment to
individuals based on their gender identity jeopardizes
the dignity and physical safety of transgender people.

Today, we support the Departments' joint
guidance on this issue. Commission Chair Martin R.
Castro stated 'Transgender students have the same
rights as other students. Transgender students
present a threat to no one. These students are our
children. Our schools must not be allowed to strip
them of their dignity, and if our states fail to afford
the students their rights, it is incumbent upon the
federal government to intervene and protect those
children.'

The Commission therefore stands with the
Department of Education and the Department of Justice
as they ensure the promise of fair educational
opportunities for every student, regardless of their
gender or transgender status."

I am happy to discuss this. Any
questions? Commissioner Heriot, did you have a
question?

COMMISSIONER HERIOT: For discussion?

CHAIRMAN CASTRO: Go ahead.
COMMISSIONER HERIOT: I don't have a question.

CHAIRMAN CASTRO: Okay, go ahead, discuss.

COMMISSIONER HERIOT: I plan to vote against the motion. To put it plainly, I believe that the Department of Education is out of control on this issue. Its pronouncements are in no way tethered to actual law.

Now, the Commission is following suit, and I believe this is an example of government bureaucrats pushing their own agenda and not Title IX. The recently announced transgender guidance requires schools across the country to allow intact anatomical boys who say they psychologically identify as girls to share toilet, locker room, and shower facilities with actual girls. It also requires that girls' athletic teams allow anatomically male students under certain circumstances to participate.

Congress intended no such thing when it passed Title IX in 1972. That statute prohibits sex discrimination by federally funded schools, colleges, and universities, plain and simple. It makes an exception for separate living facilities, which was crystallized in a rule promulgated in 1975 which
explicitly authorizes separate toilet, locker room, and shower facilities based on sex: actual sex, not the sex we might desire to be, and not gender, a different concept.

To make the claim that back in the 1970s, the 92nd Congress intended, or that the American people understood, Title IX to require schools to require anatomical boys who view themselves as girls to use girls' facilities would have been viewed as absurd. Indeed, the Department of Education doesn't even claim it.

Instead, the Department's argument, insofar as it has one, is that they just noticed that a 1989 Supreme Court case, Price Waterhouse v. Hopkins, requires this result. But no, it does not. Price Waterhouse concerned a woman who allegedly had not been promoted because she was perceived as too aggressive. The Court reasoned that if a male employee with the same aggressive personality would have been promoted, then she was indeed discriminated against on account of her sex, within the meaning of Title VII.

That is fine. But let's try to apply that same line of reasoning in connection with the transgender guidance. It does not work. Suppose a school who has a student who is anatomically male but
identifies as female. Would that student be permitted to use the girls' facilities? If that student had been in fact a girl, yes, of course. But that is different from Price Waterhouse because Title IX and its implementing regulations explicitly permit schools to provide separate facilities based on sex.

More important, note that the same -- applying that same logic would also prove too much. Consider instead the case of an anatomically male student who identifies as male, that is, a masculine male, if you will, a cisgender male. It is still true that if he had been female, he would be allowed to use the girls' facilities. And yet we know that under the regulations, under the statute, separate facilities based on sex are permitted. That takes the case outside the Price Waterhouse situation.

Now note what I am not saying here. First, I am not saying that a transgender student needs to conform to anybody's expectation with regard to sex. That is what freedom is all about. But I am also not saying that Title IX requires schools to have separate facilities based on sex, and by that, again, I mean anatomic or biological sex, for locker rooms and shower purposes. They are not required to do that. The statute simply authorizes them to do so.
Given that sex discrimination was explicitly forbidden by Title IX, such an explicit authorization was necessary in order to allow the ordinary traditional separate facilities. But a school district is well within its rights to choose to have unisex facilities, or choose to have facilities based on gender rather than sex. So if they want to do it, they can.

What is inappropriate here is for the Department of Education to mandate that they must do it in a particular way. These schools are authorized under the actual Title IX, properly interpreted, to do it any number of ways, and sometimes, that is what is necessary, the kind of flexibility that you need. Sometimes in a particular school, particular school district, particular students, particular transgender students, you would want to allow that student to remain with that student's own anatomical sex group. Maybe they're not giving him a hard time. Maybe the opposite sex group would be. Maybe both groups will give that student a hard time, and the best thing to do is to provide a private facility like the faculty restroom or the faculty locker room.

But under the transgender guidance, that flexibility disappears, and instead, one size fits all.
I very much object to this. I believe it is not authorized by Title IX, and I believe that this is a case of an out-of-control executive agency usurping the role of Congress to make policy. Title IX does not allow for this.

CHAIRMAN CASTRO: The alleged evolution and change here really isn't that. I think oftentimes, we see that how we interpret something today may be different than what we interpreted it to be in the past, but this is not an idea that has just popped up in the Department of Justice, the Department of Education, or even our head, because we actually were probably ahead of those agencies in condemning the North Carolina, and other, laws when we did this in April.

But if you really look back, there is a history of the -- this issue being addressed, not only by the EEOC, I know that Commissioner Kirsanow had raised some concerns that that shouldn't apply here, but also a number of cases that have been settled by the Departments on this basis. But if you look back, there is an excellent 1995 law review article from the University of Pittsburgh Law School entitled The Central Mistake of Sex Discrimination Law is the Disaggregation of Sex from Gender.

And there, it clearly talks about the
interrelationship between gender identity and sex, and
the inappropriateness of having disaggregated it,
because they are interrelated, and they have the -- the
same -- they should be treated the same for Title IX
purposes, and that is what is happening today.

So this is not a concept that has just come
up in the Obama administration that they wanted to
pursue. This is a very thoughtful legal argument that
has been here for almost 20 years, 21 years.

COMMISSIONER HERIOT: It is a profoundly
--

CHAIRMAN CASTRO: And --

COMMISSIONER HERIOT: -- anti-democratic
argument.

CHAIRMAN CASTRO: May I finish, Commissioner? I understand you have your point of
view, and I want to respond to some of what you said,
and then you will have an opportunity to reply if you'd
like.

So what we have here is a situation in
which, unfortunately, and I'm not saying you've done
this, Commissioner, but a lot of the media discussion,
a lot of the public policy discussion around this, is
creating a sense of fear in our communities of our
transgender children, our transgender citizens and
fellow residents, a fear that is unfounded, a fear that somehow it is a danger to allow the transgender community to use the restrooms that are being required and mandated here, and that is just not true.

It hearkens back, unfortunately, to the early days of the segregation -- anti-segregation effort, when we were trying to create situations where black children and white children could use the same restroom, and there was a fear that mixing the races was going to be a threat to white women. And it's that same kind of fear that I see being created in this instance, which is not the case.

I think it is very clearly based on thoughtful legal analysis. I think the Fourth Circuit case is very reasonable in the discussion of what an agency can do when its regulations are ambiguous, and it tries to clarify those regulations, it has the right to legal deference.

And that is all we're saying here, and this is what the Department is saying, and that is why we're moving forward to make very clear that this Commission, the nation's conscience on civil rights, will support the protection of these transgender children.

Commissioner Narasaki, then Commissioner Heriot.
COMMISSIONER NARASAKI: Thank you, Mr. Chair.

I had the opportunity to know and work with Congressman Patsy Mink before she passed, and, as many of you know, she was one of the leading voices that helped produce Title IX. And I could tell you without a shred of doubt in my mind that Patsy would in fact be very pleased with the interpretation of Title IX.

One of the challenges for transgendered kids is the kind of discrimination they face at schools. 82 percent of transgender youth report they feel unsafe at school. 44 percent, almost half, have been pushed or shoved or otherwise physically abused. Two-thirds have been bullied online. Two-thirds have had their property stolen or destroyed.

There is a suicide rate of transgendered youth which is 10 times the national average. Over five percent of the U.S. population has self-reported a suicide. That rate jumps to 10 to 20 percent for lesbian, gay, bisexual respondents. 41 percent of transgender, nonconforming people surveyed have considered suicide.

There is increased violence going on, as the Chair has noticed. 72 percent of the hate violence homicide victims were transgendered women in 2013.
Transgendered women were almost four times more likely to experience police violence. Transgendered women are twice as likely to experience sexual violence. We have heard extensive testimony at our hearing on the Employment Nondiscrimination Act last year about the extensiveness of employment discrimination.

So I believe that the Department of Education was well within its interpretation of the law, and I very much welcome it. I think it is an important step forward to make sure that we are protecting our transgendered kids.

CHAIRMAN CASTRO: Commissioner Heriot, you said you had something else you wanted to add?

COMMISSIONER HERIOT: I again will emphasize the same point. If you want different policy on this issue, going to Congress to get that different policy is perfectly permissible. But for an executive agency to take a statute that is very clear on its face -- it refers to sex. There is no doubt whatsoever that in 1972, when that statute passed, Congress meant sex not in the sense of gender. And in fact, the term "gender" was adopted precisely because it means something different from "sex." We use the word "sex" to refer to the biological, anatomical side of this issue, and we use "gender" to talk about the cultural
side of it so that someone who is anatomically male may nevertheless say, hey, I identify with -- with the -- the feminine side. I regard my gender as female, but my sex as male.

But that term was used in a very different way and meant to be a distinct category from sex. And for decades, we went on with that notion that gender is something different from sex. And now, suddenly, surprise, we're told it's the same. But statutes derive their authority because they are passed by a legislature. They have to be interpreted according to the understanding in a democratic sense.

Now, here, do we have even any belief that most Americans take the position the Department of Education has taken? I don't think so. In fact, if there's any indication, it tends to run in the opposite direction: that is, for example, when the Target department store announced that it was going to change its bathroom policy, over a million people signed a petition saying they objected to it.

Now I will stand behind Target's right to divide their bathrooms any way they want, and I also stand behind the right of -- right of shoppers to say, well, then I won't use that restroom, or I won't even patronize that store. Everybody's got that right,
that freedom. But the freedom that we don't have is executive agencies do not have the right to command schools to do something that is not contained in the statute.

CHAIRMAN CASTRO: Commissioner Narasaki?

COMMISSIONER NARASAKI: I would just like to note, Commissioner Heriot, that if Congress decides that in fact the EEOC has misinterpreted Title IX, they are in fact free to make that clear through legislation. As you know, we are talking about policy.

Secondly, I do not regard the level of popular opinion as a measurement of what we should be doing as a nation morally on these issues. That is the very definition --

COMMISSIONER HERIOT: If we had --

COMMISSIONER NARASAKI: -- of --

COMMISSIONER HERIOT: -- a congressional enactment --

COMMISSIONER NARASAKI: -- excuse me --

COMMISSIONER HERIOT: -- then fine --

CHAIRMAN CASTRO: Please --

COMMISSIONER NARASAKI: -- excuse me --

COMMISSIONER HERIOT: -- but we don't.

COMMISSIONER NARASAKI: Excuse me, Commissioner Heriot. I let you complete your thought.
So my concern is this: we are in fact created to protect the rights of minorities because in a democracy, in a democracy, those vulnerable minorities are often unable to protect themselves. And I would say this is very much the case with this. I hope that in fact popular opinion may catch up, but I will say there was once a time where popular opinion was against interracial marriage, was for segregation, was for the internment of my parents in detention camps, even though they were citizens. Popular opinion unfortunately does not always serve the moral and human rights imperative.

CHAIRMAN CASTRO: Any other Commissioners have any comments? Commissioner -- Madam Vice Chair, then? Who was that on the line?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIRMAN CASTRO: Okay. First the vice chair, and then you, Commissioner Kirsanow.

VICE CHAIR TIMMONS-GOODSON: Yes, Mr. Chair.

I simply want to add to the discussion the fact that the action that we're considering taking is appropriate, and it is consistent with our role as watchdog. Again, it is appropriate for us to be having this conversation.
CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman.

I concur with what Commissioner Heriot had to say, and specifically with respect to the actions of OCR being also a usurpation of the legislative powers of Congress, and also, I would note that the OCR guidance actually is discrimination.

If you think about what they propose, they are saying that the issue of gender identity determines which bathroom you use. This is incoherent when you think of Title IX and Title VII discrimination.

For example, a boy identifies as female. He has a right under Title IX to use the girls' restrooms, showers, and that would be discrimination on the basis of gender identity to then bar a boy who identifies as a male who is also using those facilities. It's all based on gender identity. That would mean, then, that this guidance promotes discrimination unless all boys were allowed to use any bathroom they wanted regardless of their gender identity, and all girls could use any bathroom or any other facilities, shower facilities, they wanted, regardless of gender identity. Otherwise, you are discriminating on the basis of gender identity.
And a final note: I would say that -- I would caution that we be careful when we ignore the rule of law because it is minorities who are most vulnerable when the government ignores the rule of law.

One other note. I am sorry. Respectfully, I would also caution against conflating racial discrimination of restrooms and this form of discrimination, if it is in fact discrimination. I think history shows that they are two significantly different concepts, both in theory and in practice.

CHAIRMAN CASTRO: At the end of the day, what this Commission over the last five-and-a-half years has attempted to do in many of the projects that we've taken on is to examine the rights and provide statements and recommendations as to how to improve the protections for our children.

The first report we did under my chairmanship was bullying based on all the protected classes, including, for the first time ever, LGBT status. We looked at the issue of immigration last year. We looked at the conditions of transgender individuals who are overwhelmingly -- the largest police force that holds those individuals in custody is Immigration Customs and Enforcement.

And we will continue to protect the rights
of our children. We will continue to protect the rights of the most vulnerable, who also include members of our transgender community. The action that the two Departments have taken, contrary to what my conservative colleagues have indicated, are thoughtful, reasoned, legally grounded interpretations of the regulations, and as Commissioner Narasaki said, if Congress wants to change it, they're up in session right now up on Capitol Hill, and they can do that.

Until such day as Congress takes action, this Commission will join the Department of Education and the Department of Justice in making clear that if you're a school district and you discriminate against transgender children in this manner, that there will be consequences, and I hope that today, my -- majority of my Commissioners join us in making that statement.

COMMISSIONER HERIOT: Can I just add one more sentence? Rule of law, you are going to miss it when it's gone.

CHAIRMAN CASTRO: The rule of law is something that conservative colleagues often raise to try to block the rights of others, whether it's in the area of immigration reform, where the rule of law is raised to keep 11 million undocumented in the shadows.
Now you want to keep transgender kids in the shadows as well? We're not going to allow that. Not under my watch.

COMMISSIONER KIRSANOW: Mr. Chair, may I speak?

CHAIRMAN CASTRO: Yes, Mr. Kirsanow.

COMMISSIONER KIRSANOW: I respectfully take umbrage at your characterization of the conservative colleagues in that we don’t keep people in the shadow. Merely because we respect and want to uphold the rule of law doesn't mean that we favor any form of discrimination or second-class status, and I think that's really an insult to those of us who have an honest and bona fide concern about all these issues, but also recognize that adherence to the rule of law is what separates America from all the other countries in the world.

And I will say again: you ignore the rule of law, you imperil the very folks you seek to protect.

CHAIRMAN CASTRO: Thank you, Commissioner.

COMMISSIONER ACHTENBERG: Mr. Chairman --

CHAIRMAN CASTRO: Let me just say, I don't intend to personally impugn you. I respect both you and Commissioner Heriot, and I am pleased we've worked
together on a number of issues. It was not meant to be a personal impugnment, but more of a policy impugnment.

But Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Mr. Chairman, I would only point out that this is not a trivial matter. The notion of one needing to claim gender identity that differs from one's anatomical sex is well-recognized in medical and psychological standards. This is not a trivial issue. It's not something to laugh about or take lightly.

These children who are experiencing this do need our protection. I am pleased that the federal government, in the form of the Department of Education, as enforced by the Department of Justice, is exercising its lawful authority to intervene in this kind of situation.

The Fourth Circuit did not believe this to be an ultra vires exercise of the legitimate authority of the Department, so to suggest that one interpretation upholds the rule of law as compared to another, I make no suggestion. We have a different -- we have a different opinion of what the law requires. But the view that is being validated by adoption of the -- the chairman's resolution is a different
interpretation of what the law requires, but it is not extra-legal. It is not an abdication of the rule of law, and that I -- that assertion is one that I do resent, not as a matter of personal insult, but, you know, I accord deference to your interpretation of law. I would be interested to enjoy the same deference.

Thank you, Mr. Chairman.

CHAIRMAN CASTRO: Thank you, Commissioner Achtenberg. Unless there's another Commissioner who hasn't yet spoken who wants to say something, I am going to call the question.

(No audible response.)

CHAIRMAN CASTRO: Okay. I am going to call the question, then.

Commission Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote no. Title IX authorizes local school districts to employ a variety of methods here. They cannot be forced to apply only one method by the Department of Justice -- the Department of Education and Justice.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?
COMMISSIONER NARASAKI: I vote yes, and I applaud the administration for moving forward.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADENEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. That's six yeses and two noes. The motion passes. Thank you.

We now move on to a discussion of the Commission's resolution commemorating Pride Month.

Commissioner Achtenberg, I will give you the floor.

**Discussion and Vote on Pride Month Resolution**

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman.

Let me begin by saying -- expressing real gratitude to every member of this Commission for the unanimous support that we offered in the wake of the
Orlando tragedy. I thought it was the Commission acting at its best.

This resolution, Mr. Chairman, I believe it will be the first time that the Commission has considered adopting a resolution in honor of LGBT Pride Month. As you can see, I will not read the resolution into the record. It is extensive, and you will forgive me the extensive nature of it, but to the extent that, as I say, it is an issue of first impression, I wanted to pass a good bit of history into the brief resolution format.

There is a lot to celebrate in that many strides forward have been made on behalf of LGBT life, and there are many challenges that the community has still to face. In the resolution, I have identified by name a number of significant figures in LGBT history whose contributions are, in my view appropriately, recognized by the United States Commission on Civil Rights, and I would on that basis respectfully request your support for the resolution.

It goes on to identify the fact that gay people were formerly discriminated against by our federal government extensively and for a very long time, and now we have reached the day, happily enough, that the federal government has become a leader in the
area of non-discrimination, including the United States military, and to the extent that the United States military, in addition to lifting the ban on open service by lesbian, gay, and bisexual servicemembers hopefully is about to be having that protection extended to transgender servicemembers. I am told that that issue is still under consideration and may be addressed in the upcoming months.

So I attempt to identify some of the issues that have animated the work of the community over 40 or 50 years. I have left some out but hope to include some highlights so that the first resolution adopted by our Commission on this topic might be a comprehensive one and a one that people will want to understand and learn more about, and I am happy to answer any questions that any have about what I included, what I didn't include, and I'm open to constructive suggestions from any quarter.

CHAIRMAN CASTRO: Okay. So we'll consider that your motion. Do we have a second? A second on Commissioner Achtenberg's resolution?

I will second it. Any discussion? Gail?

I am sorry, Commissioner Heriot?

COMMISSIONER HERIOT: Let me say this: there's a lot in this -- in this document that I agree
with, and I am happy to join with the Commission in observing LGBT Pride Month 2016. But there is also a lot in this document that I don't agree with, and having -- when I read it, it looked like the person who drafted it was working really hard to talk about things that they felt very strongly about, and rather than try to negotiate it to the point where I would be able to sign onto it, I thought it would be better for me just to vote no.

CHAIRMAN CASTRO: Okay.

VICE CHAIR TIMMONS-GOODSON: Mr. Chair --

CHAIRMAN CASTRO: Or abstain, less powerful --

COMMISSIONER HERIOT: I am happy to abstain as --

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: -- well.

VICE CHAIR TIMMONS-GOODSON: And that's what I was about to say.

COMMISSIONER HERIOT: Yes.

VICE CHAIR TIMMONS-GOODSON: I am going to abstain. I agree in large measure with what Commissioner Heriot has said. There is a whole lot in here that I go along with and I applaud, but there are some portions that give me concern, and for that reason,
I will be abstaining.

CHAIRMAN CASTRO: Anyone else like to comment?

(No audible response.)

CHAIRMAN CASTRO: Well, Commissioner Achtenberg, I understand the importance of this, particularly as the first Pride statement, and so I am going to very proudly support it when we vote. So any other Commissioners?

COMMISSIONER YAKI: This is Commissioner Yaki. I just want to commend Commissioner Achtenberg for her leadership for many years on these and other issues, not just in my hometown of San Francisco, but across this nation, and I join heartily in supporting this resolution.

CHAIRMAN CASTRO: Okay. I am going to call the question. I think I know Commissioner Kladney has to leave soon.

Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: For the reasons stated by Commissioner Heriot and the Vice Chair, I abstain also.
CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I abstain.

CHAIRMAN CASTRO: Commissioner Narasaki?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes. I wanted to say that I appreciate both the abstentions and the yes votes.

COMMISSIONER HERIOT: Thank you.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: I abstain.

CHAIRMAN CASTRO: And I vote yes. We have one, two, three, four -- one, two, three, four, five yeses, and three abstentions. The motion passes.

Discussion and Vote Concerning Work of the Nebraska State Advisory Committee on State-Level Immigration Enforcement in Nebraska

CHAIRMAN CASTRO: Okay. We now move on to the next item on the agenda, which is a discussion and vote on the letters to federal agencies that we will
be sending, hopefully, as a result of the work of our Nebraska State Advisory Committee on State-Level Immigration Enforcement in Nebraska. You may recall that the chair of that committee appeared before us two meetings ago and presented the findings and some concerns about issues in Nebraska, and the SAC requested that we as the Commission follow up with the various federal agencies that are involved and request their taking action as well as sharing with them the findings and recommendations of the State Advisory Committee.

You each received over the course of the last week or two the draft letters that have been prepared along those lines. I'm not going to read them into the record, but I will move that we approve these and ask for a second, and then we can have a discussion.

COMMISSIONER NARASAKI: I second, Mr. Chair.

CHAIRMAN CASTRO: Okay. Thank you, Commissioner Narasaki.

Is there any discussion on this? And I understand Commissioner Yaki, you have to recuse yourself from this, so we'll just make a note in the record that Commissioner Yaki is recused from this. Commissioner Narasaki?
COMMISSIONER NARASAKI: I just want to note my appreciation for the hard work of the Nebraska State Advisory Commission. Their report was excellent, and I think that these letters are important follow through.

The -- their mission is to advise the Commission, and our mission is to advise the President and Congress, and I feel that this -- these letters are on a very important topic, and I am pleased to support them.

CHAIRMAN CASTRO: Great. Any other comments?

(No audible response.)

CHAIRMAN CASTRO: Commissioner Heriot, are you raising your hand, or are you --

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: Playing with my hair.

CHAIRMAN CASTRO: All right, wasn't sure.

(Laughter.)

CHAIRMAN CASTRO: Any Commissioners on the phone?

Okay --

COMMISSIONER KLADNEY: Yes, Mr. Chairman.
CHAIRMAN CASTRO: Oh, go ahead Commissioner Kladney.

COMMISSIONER KLADNEY: I would -- I would just like to note for the record that I think that we verify one of these things to see exactly how it works and if it is replete with errors or not replete with errors because it has been in existence now for something like 20 years, and I know that employers -- you'd walk into the store and you say, you verify, that kind of thing, I think it would be a really good subject for our Commission.

CHAIRMAN CASTRO: That's a great idea. We will no doubt discuss that when it comes time to look at other briefings that we may be able to do in the next fiscal year.

Okay. Any other comments?

(No audible response.)

CHAIRMAN CASTRO: If not, then I will take a vote on approving the four letters to the U.S. Department of Justice Civil Rights Division, U.S. Citizenship and Immigration Services, U.S. Department of Health and Human Services Office of Civil Rights, and the U.S. Department of Education Office of Civil Rights, and also will ask that sometime next week, a press release go out on this.
Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I feel insufficiently on top of the eVerify issue to vote on this, so I am going to abstain.

CHAIRMAN CASTRO: Okay. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes, Mr. Chairman.

CHAIRMAN CASTRO: Commissioner Yaki is recusing himself. Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. We have one, two, three, four, five yeses, one recusal, one abstention, and one no, so the motion passes. The letters are approved, and we will get those out right away.
Okay. We now move on to the next item on our agenda, which is -- let me make sure -- it's the state advisory committees, right?

**Reports Concerning State Advisory Committees**

Okay. So we have first and foremost a presentation today by David Mussatt, the Chief of our Regional Programs Unit. David, would you please come to the microphone here? The floor is yours, Mr. Mussatt.

MR. MUSSATT: Good afternoon --

CHAIRMAN CASTRO: Good afternoon.

MR. MUSSATT: -- Chair Castro, Vice Chair Timmons-Goodson, and the Commissioners.

It is a pleasure to be here today, and thank you for taking the time on the agenda to allow me the opportunity to provide you a brief update on the progress of the Regional Programs Unit, which supports the work of the agency's 51 advisory committees.

As you know, Congress requires that the agency create and support the work of these committees, and over the past decade or so, as you at times noted, we have been challenged to keep advisory committees appointed, let alone to have them advise the Commission on the civil rights issues in their respective jurisdictions, as Congress intended.
But today I wanted to update you on the steps that have been taken to address these issues, steps that we plan to take, and also share some of the progress that we think we've made.

In regard to the appointments, the agency has taken, you know, three important policy steps to improve the efficiency of the appointments. The first, as you may remember, we changed the way that the committees are chartered so that the agency now files one charter for all 51 advisory committees every two years, as required under FACA, instead of filing a separate charter for each individual committee.

Second, you the Commission, as the appointing authority of the advisory committees, voted over a year ago to extend the appointment terms of advisory committee members from two years to four years. So I think both of these steps have greatly eased the administrative burden and increased our efficiency, being able to get them done.

Finally, a third thing is that the agency today, hopefully, will be taking a step to approve the new administrative instruction regarding advisory committee appointments. The implementation of this AI was unique in that the process that created it included the involvement and input of not only the Commissioners
or assistants and executive staff, but also of the Regional Programs Unit's staff itself, and I think because of this collaborative effort, I am very optimistic that some of the hurdles that held up appointments in the past will be cleared going forward.

I think it is somewhat ironic that the process of getting this AI approved, which is, you know, this began really in earnest last November at the staff director's request, may have contributed to the backlog in the number of committees that now need to be appointed. However, I am hopeful that the process and the accountability that this AI establishes make appointing of advisory committees more efficiently -- we'll be more efficient going forward.

As you can see in the monthly report submitted to you, the plan will be to have all committee nominations up for your consideration by the end of the calendar year 2016, and to then maintain the full appointment status going forward in the future. We have five or six on the agenda today, so I hope that we can keep it --

CHAIRMAN CASTRO: It's seven on the agenda.

MR. MUSSATT: Seven? I am sorry.

Now, in regards to the work advisory
committees are doing to fulfill their mission, I am pleased to report the progress is evidenced in quantitative and qualitative regards. From the quantitative perspective, the Regional Programs Unit has supported 80 advisory committee meetings this fiscal year, as of today, and we still have a full quarter of the fiscal year remaining. As a point of reference, ten years ago, all 51 advisory committees held a combined 31 open meetings.

In addition, qualitatively, these meetings have been more successful. All meetings have been truly open to the public via the public call-in numbers provided in Federal Register notices and outreach efforts, and all of these efforts have resulted in over 325 members of the public attending committee meetings this year.

The meetings have also provided the public the opportunity to comment, even when the meeting is held via conference call or web conference, and so they have also witnessed much greater committee engagement and involvement throughout the process.

In regards to reports themselves to the Commission, advisory committees have submitted seven, they've actually published seven reports this fiscal year, with at least three more scheduled to be submitted
by September 30th. Possibly more importantly than just the publication, as you voted just now in regard to the Nebraska Advisory Committee and you will hear later on today from the Illinois Advisory Committee chair, finally, these advisory committee reports have been presented to you by the chairs or other members of the respective advisory committee.

I know that the advisory committee members appreciate you providing them this opportunity, and they are particularly pleased to know that some of the advice that they provided to you has been implemented through your follow-up actions, like you did today. But even in instances where you may not agree with the advice of the advisory committees, the advisory committees themselves fulfill their mission by you simply hearing and deliberating on the recommendations, so thank you again for making these efforts to support the work of advisory committees.

If you have any other questions, I would be happy to answer them for you.

CHAIRMAN CASTRO: Any questions for Mr. Mussatt?

(No audible response.)

CHAIRMAN CASTRO: Hearing none, thank you for the report and the work you outlined, and I
appreciate it. Thank you.

Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes, so I just want to really commend David and the rest of the regional staff. Commissioners are very aware that it is understaffed, and we appreciate the fact that everyone is trying to do more with less, but we are committed to try to garner additional resources to help ease the load that you currently face, so I just really want to appreciate everyone's efforts.

MR. MUSSATT: Thank you, we appreciate that.

Vote on Administrative Instruction 5-9 Governing the Appointments of State Advisory Committee Members

CHAIRMAN CASTRO: Thanks. We now move on to the AI that was foreshadowed in the last presentation. We've been through our colleagues working quite diligently on coming up with a process by which we can move these state advisory committee packages more effectively and efficiently, and I am hopeful that what we've come up with will do just that. So I don't know who wants to make the presentation on this. Would you like to do that, Commissioner Narasaki, make the motion, and then explain your amendment? Or not?
COMMISSIONER NARASAKI: Do you want to make a motion on the whole amendment --

CHAIRMAN CASTRO: Okay, so I will move -- sounds fine. I will move that we approve the proposed Administrative Instruction 5-9 governing the appointments of state advisory committee members. Is there a second?

VICE CHAIR TIMMONS-GOODSON: I will second it, Mr. Chair.

CHAIRMAN CASTRO: Okay. Any discussion?

COMMISSIONER NARASAKI: Yes, Mr. Chair. I would like to move an amendment, but before I do, I really want to acknowledge and thank the staff who have worked hard, as well as the bipartisan effort of the working group, to deal with complicated issues for which there are no perfect answers, and I think that we for the most part hit a happy center area.

There's two things that I want to address. One is in discussing this with staff, we realized that the draft did not make it clear enough what we would do in terms of affecting the current appointees to the SACs, and so that there was a need for a grandfather clause. And my staff has provided each of you with what we've proposed there.

So it is two parts. One is that advisory
committee members who are currently serving two-year
terms or have not yet been appointed to a four-year term
may be reappointed, but serve no more than whatever the
maximum is that we set for term limits. The second is
for those advisory committee members who we've already
authorized to serve a four-year term, regardless of how
many terms they have served, they may be appointed to
serve an additional four-year term, so that there is
more certainty. And for both, there is a potential
waiver if there's sufficient basis for extending the
appointment beyond that additional term.

The other area, which is a more substantive
disagreement, is currently the draft contains a term
limit of 12 years, so three four-year terms, and what
I am proposing is a term limit of eight. What we are
trying to address is the fact that under the old
two-year terms, we had a ten-year term limit.
Obviously, four does not go into ten, so we had to decide
whether we were going for eight or for twelve.

Normally, I would agree with staff in terms
of concern about additional burdens in terms of having
to come up with the slate every eight years as opposed
to twelve, but I believe that the two changes that David
talked about in terms of moving from a two- to four-year
term, and also the change of reducing the minimum
required for a SAC, hopefully ameliorates trying to go
to an eight-year term.

The reason that I would like to see an
eight-year term is because while it is more work to try
to recruit new people, I believe it is important to kind
of refresh the state advisory commissions to allow for
new voices and perspectives. The staff have done a
great job. One of the issues I was raising when I got
on a couple years ago is I hope to see more from the
younger millennial generation put onto these advisory
councils, and by and large, I think staff have really
worked hard to do that.

But I do think it is important to continue
this generational renewal because I believe that the
younger generation does see race and gender and LGBT
status and many of these other issues differently than
perhaps those in my generation.

The second is I believe that the
demographics in our states are changing rapidly, and
it is important to make sure that we're drawing from
these new voices coming into the states, and when there
is a twelve-year term, it's very hard to tell someone
who is doing a pretty good job and wants to stay that
you want to turn them off, and I feel that eight years
is a reasonable time in order to try to make sure that
we are able to continue to bring on new people who are reflecting the demographics of that state.

Now, I am sympathetic to the fact that some states do have smaller populations, and they have far less robust civil and human rights infrastructure to draw upon. We also look for political balance, and in some states, they're either very red or very blue, and that might also be -- make it difficult for the staff to make sure that the slates are balanced.

There is a waiver potential. Again, if you make the case that you really want to be able to have the twelve years, it may be difficult for you to have improvement, and it may be that someone has been serving well and taking the leadership on the report, for example, that that would be recognized.

I do know that staff are a little bit concerned that it's not well-defined what those conditions are, and I believe that is something that we could return to to work on and clarify in the future. But I am hopeful that the other Commissioners will support my amendment.

VICE CHAIR TIMMONS-GOODSON: Mr. Chair, I am --

CHAIRMAN CASTRO: Yes.

VICE CHAIR TIMMONS-GOODSON: -- willing
to withdraw my second if you are accepting, that
Commissioner Narasaki's suggestion, as a friendly
amendment.

CHAIRMAN CASTRO: Yes, I am considering it
a friendly amendment, so we can accept it.

VICE CHAIR TIMMONS-GOODSON: All right.
And in that case, I will then second.

CHAIRMAN CASTRO: Okay. Any discussion?
Any Commissioners?

COMMISSIONER ACHTENBERG: Mr. Chairman, I
have one question.

CHAIRMAN CASTRO: Yes, Commissioner
Achtenberg?

COMMISSIONER ACHTENBERG: Have we already
resolved the issue of no presumption in favor of the
appointment? Has that issue already been resolved?

COMMISSIONER NARASAKI: That's in the
language that we're going to provide when we talk about
what the amendment would be.

COMMISSIONER ACHTENBERG: Okay. Okay.
Thank you very much. Yes, that is what I thought.
Okay.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: On the eight years
versus twelve years, you know, our terms as
Commissioners are six years, and it is very, very ordinary for people to be reappointed. A number of people on this Commission right now have been reappointed.

I actually would favor the twelve years. For a number of years now, we have had just an awful time keeping all 51 of the state advisory committees chartered at any one time. We have a smaller staff today than we did a few years back, and it gets harder and harder.

And as Commissioner Narasaki has pointed out, we've done some things to remedy that, so I think it will get a little better. But the truth is it was like beyond terrible there for a while, and I am not blaming the staff for this because I think this is a resource issue. But 51 state advisory committees, and we had very, very few of them going for a while, and even when we have them chartered, we get even fewer reports.

We need to put massively, massively more of our efforts into getting reports out, and as little as possible into just the basic mechanics of keeping the SACs chartered. And I fear that going down to eight years is just a step in the wrong direction. I think that twelve years is simply better, that very often,
you will get somebody, in their first term, they may not take much of a leadership term at all in the SAC. The second year, they may, you know, try a little bit -- in the second term, they may try. But the third one, they might really be ready to do something that is worthwhile.

So I would definitely go for the twelve years rather than the ten.

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: I agree Commissioner Heriot with what you said. I too am more inclined to go with the twelve years. I proposed what Commissioner Narasaki has essentially said as a way to compromise because we can still get to the twelve. I understood that there was strong opposition, or rather strong opposition, to twelve, and so --

COMMISSIONER HERIOT: I had understood that among the people that actually work in the regional offices, that they much preferred the twelve. Is that right or wrong? I mean, Mr. Mussatt --

VICE CHAIR TIMMONS-GOODSON: We are told there was a split.

COMMISSIONER HERIOT: Could you speak to that?

MR. MUSSATT: There were some staff who
strongly felt for twelve. There were some staff that favored eight. I think as a whole, they favored twelve. I didn't poll them, but it was somewhat split, but there were definitely some people strongly in favor of twelve, and basically, I think when we were working through it, most people just didn't have a preference strong enough to, you know, actually have a debate over whether eight or twelve, so we never actually had a debate about it, but it's always secure with twelve because the stronger voices went twelve, so that was probably --

COMMISSIONER HERIOT: Do we really want to put this as a friendly amendment? Are we going to vote separately on it?

CHAIRMAN CASTRO: No, I consider it friendly, because ultimately -- here is why I think it's friendly, because the grandfather clause issue, we could have easily suggested that -- there could have been other permutations of it so that you don't -- let me put it this way. People who are currently serving, who have already been serving, they are being grandfathered in so that they have -- so the folks that you're saying may hit their stride after eight years, hopefully it's not going to take eight years for someone to hit their stride on a SAC.
But let's say, you know, that it takes a little more than three or four or five years. There's going to be some people who are going to be serving on these SACs, conceivably, as we've grandfathered them in, for 20-something years. So there is a cushion there for people who have already been serving for some time to continue to serve because we're not going to kick in the eight years until someone has begun to serve their first four-year term, as opposed to those who have been serving and maybe reappointed previously under the two-year term scenario. So I consider it friendly as a result of that.

Anything else?

(No audible response.)

CHAIRMAN CASTRO: If not, I am going to call the question. We are going to vote on the AI as amended.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I pass.

CHAIRMAN CASTRO: I'll come back to you.

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Narasaki,
how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

(No audible response.)

CHAIRMAN CASTRO: He may have already left. Okay.

Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: I vote yes. Commissioner Heriot, let's make it unanimous, how about it?

COMMISSIONER HERIOT: Yes, I am going to vote yes --

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: -- but I would prefer the twelve years.

(Laughter.)

CHAIRMAN CASTRO: Okay, so the motion
passes unanimously. Thank you.

Now we move on to -- let's see. We're going to hopefully pass a few SAC packages, right? And then we're going to hear from our Illinois SAC chair after that.

Appointment of members to State Advisory Committees (SACs)

CHAIRMAN CASTRO: So first and foremost, let me make a motion that the Commission appoints the following individuals to the Connecticut State Advisory Committee based upon the recommendation of our staff director: Abdul-Karim Kashif; Alok S. Bhatt; Christine Corgel; John Herrington; Meghann LaFountain; David McGuire; Melanie Rausch; John Tanski; Olivia White; Avery Gaddis; Douglas Glanville; Leslie Navarrette; Stephanie Storms; Susan Tolliver; and Michael Werner.

Pursuant to this motion, the Commission reappoints David McGuire as chair of the Connecticut State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: Second.
CHAIRMAN CASTRO: Okay. Any discussion?

(No audible response.)

CHAIRMAN CASTRO: Moving forward, Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I am going to vote no on this one. I don't think it's balanced according to viewpoint.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney I am assuming is off? Okay.

Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. It's one, two, three, four, five yeses, and two noes. The
motion passes.

I now make a motion that the Commission appoint the following individuals to the Delaware State Advisory Committee based upon the recommendation of our staff director: Lydia S. Cox; Susan M. Dixon; Michael D. Fleming; Joel E. Friedlander; Enid D. Wallace-Simms; Leland B. Ware; Bradley L. Baldia; Santino Ceccotti; Alicia Clark; Carlos J. Cotto; Patrick C. Donahue; Patricia S. Downing; Shannon B. Griffin; Aaron C. Kupchik.

Pursuant to this motion, the Commission appoints Lisa B. Goodman as chair of the Delaware State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Is there a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIRMAN CASTRO: Thank you, Madam Vice Chair. Any comments, questions?

(No audible response.)

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: This one is even worse on ideological balance, so I vote no.
CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: That sounds like a no.

Okay. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. One, two, three, four, five yeses, and two noes. The package passes.

I will now make a motion that the Commission appoint the following individuals to the Minnesota State Advisory Committee based upon the recommendation of our staff director: Robert K. Vischer; Robert Lee Battle; Ryan M. Check; Kenneth O. Doyle; Philip A. Duran; Kirk O. Kolbo; Nekima V. Levy-Pounds; Teresa J. Nelson; Craig D. Taylor;
Nyagatare Valens; Jacqueline Marie Beaulieu; Matthew A. Dobratz; Leticia Guadarrama; Denise H. Huynh.

Pursuant to this motion, the Commission appoints Velma J. Korbel as chair of the Minnesota State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIRMAN CASTRO: Thank you, Madam Vice Chair. Any comments, questions?

(No audible response.)

CHAIRMAN CASTRO: Okay. I will call the question. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Same on this one as the previous, no.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?
COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner -- Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. It's one, two, three, four, five yeses, and two noes. The package passes.

I next make a motion that the Commission appoint the following individuals to the Nevada State Advisory Committee based upon the recommendation of our staff director: Bob Beers; Kathleen Bergquist; Sondra Cosgrove; Carol Del Carlo; Debra Feemster; David Fott; Emma Guzman; Kara Jenkins; Kay Kindred; Theresa Navarro; John Ponder; Matthew Saltzman; Ed Williams.

Pursuant to this motion, the Commission appoints Wendell Blaylock as chair of the Nevada State Advisory Committee. These members will serve as
uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Do I have a second?

COMMISSIONER NARASAKI: I second.

CHAIRMAN CASTRO: Thank you, Commissioner Narasaki. Any discussion?

(No audible response.)

CHAIRMAN CASTRO: If not, I'll call the question. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I think this is the best of the bunch when it comes to ideological balance, so I vote yes.

CHAIRMAN CASTRO: Okay. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Guess not. Okay.

(Laughter.)

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: There's just no

--

(Simultaneous speaking)

(Laughter.)

CHAIRMAN CASTRO: Commissioner Narasaki,
how do you vote?

COMMISSIONER NARASAKI: I was just going to say there is no pleasing Commissioner Kirsanow today.

CHAIRMAN CASTRO: Not today.

(Laughter.)

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes. Yes.

CHAIRMAN CASTRO: Okay. Thank you.

Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Well, since Commissioner Heriot said it was ideologically well-balanced in her view --

COMMISSIONER HERIOT: I didn't say that. I said it was the best of the bunch.

COMMISSIONER YAKI: I mean, I've got deep suspicions on voting yes, but in the end, because Commissioner Kirsanow voted no, I'm going to vote aye.

(Laughter.)

CHAIRMAN CASTRO: Okay. Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes, so we
have six yeses and one no. The package passes.

I am now going to make a motion that the Commission appoint the following individuals to the New York State Advisory Committee based upon the recommendation of our staff director: Iris Y. Chen; Roy Cosme; Sandra L. Dunn; Roderick M. Hills; Gertrud Lenzer; Robert L. Paquette; Alex S. Vitale; Thomas R. Wahl, Jr.; Earl S. Ward; Peter W. Wood; Bryanne A. Hamill; Julian G. Ku; Vivian S. Louie; Johnny Perez; Steven B. Raga; Kevin Thomas; and Alexandra Korry.

Pursuant to this motion, the Commission appoints Alexandra Korry as chair of the New York State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Do I have a second?

COMMISSIONER NARASAKI: I second, Mr. Chair.

CHAIRMAN CASTRO: Thank you, Commissioner Narasaki. Any questions, comments?

(No audible response.)

CHAIRMAN CASTRO: We will move the question. Commissioner Heriot, how do you vote?

(Pause.)
CHAIRMAN CASTRO: How do you vote?

COMMISSIONER HERIOT: I pass.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: Come back to me.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Okay. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote? I am sorry, I forgot he's out.

Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: I vote yes. Commissioner Heriot?

COMMISSIONER HERIOT: I vote no on the same basis that I voted no on the others.

CHAIRMAN CASTRO: Okay. So we have five
yeses and two noes, so the motion passes.

I am now going to make a motion that we appoint the following individuals to the Washington State Advisory Committee based upon the recommendation of our staff director -- did I miss Vermont? Okay, sorry.

Oh yes, there it is. So make that -- let me start over.

I now make a motion that the Commission appoint the following individuals to the Vermont State Advisory Committee based upon the recommendation of our staff director: John Bloomer; Luther Brown; Natasha Chang; Ellen Fallon; Wanda Heading-Grant; Leslie Holman; Cassandra LaRae-Perez; Thomas Little; Phayvanh Luekhamhan; Terrance Martin; Tuipate Mubiay; Curtiss Read, Jr.; Eric Sakai; Rubi Simon; Rosario de Swanson; Dianne B. Snelling.

Pursuant to this motion, the Commission appoints Dianne B. Snelling as chair of the Vermont State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Do I have a second?

COMMISSIONER NARASAKI: I second.
CHAIRMAN CASTRO: Thank you, Commissioner Narasaki. Any questions?

(No audible response.)

CHAIRMAN CASTRO: I will call the question. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: You know, this is a hard one. I think there's an ideological balance problem here, but it's also true that Vermont is a really small state, and it is hard to come up with everything that you might want, so I am going to vote yes in a fit of good cheer.

CHAIRMAN CASTRO: Great.

COMMISSIONER KIRSANOW: Commissioner Heriot feels the Bern.

(Laughter.)

CHAIRMAN CASTRO: She feels the Verm --

COMMISSIONER HERIOT: That was the whole country --

CHAIRMAN CASTRO: -- the Verm, the Vermont, right?

Commissioner Kirsanow, how do you feel -- I mean, how do you vote?

(Laughter.)

COMMISSIONER KIRSANOW: I am cheerless.

No.
(Laughter.)

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Cheerfully, yes.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes, so that is six yeses and -- no, is -- yes, six yeses and one no. The package passes.

Now I get to go on to Washington State. I am going to make a motion that the Commission appoint the following individuals to the Washington State Advisory Committee based upon the recommendation of our staff director: Joel Ard; Tony Benegas; Luzviminda Carpenter; Alexes Harris; Joseph Honick; Amy Huang; Roxanne Husmann; Alberto Isiordia; Xyanthe Neider; David Nice; Layne Pavey; Diana Perez; and Paul Guppy.

Pursuant to this motion, the Commission
appoints Paul Guppy as chair of the Washington State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIRMAN CASTRO: Thank you, Madam Vice Chair. Any comments?

(No audible response.)

CHAIRMAN CASTRO: If none, I will call the question. Commissioner Heriot?

COMMISSIONER HERIOT: Pass.

CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Narasaki?

COMMISSIONER NARASAKI: I pass.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Just -- just to join the crowd, I will pass.

CHAIRMAN CASTRO: Okay. Commissioner -- I mean, I am sorry, Madam Vice Chair, how do you vote?
VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. So let me go back to the passers. Commissioner Heriot?

COMMISSIONER HERIOT: The problem on this one I don't think is so much the ideological balance, but I am going to have to vote no anyway. There are other problems with this set that I think are beyond repair.

CHAIRMAN CASTRO: Okay. Commissioner Narasaki?

COMMISSIONER NARASAKI: It's my home state, and I enthusiastically vote yes.

CHAIRMAN CASTRO: Okay. Commissioner Yaki?

COMMISSIONER YAKI: To honor Commissioner Narasaki's home state, I will vote aye.

CHAIRMAN CASTRO: Okay. So we have three, four, five yeses, and two noes. The motion passes. Thank you.

So that was seven SACs today. Great. Thank you, everybody. Appreciate getting those moving again.

We now move on to a presentation by Juan Carlos Linares, who is the chair of the Illinois State Advisory Committee. Juan Carlos has done an amazing
job in the Illinois Advisory Committee's hearing recently on the issue of environmental justice, and he is a very well-known and well-respected leader in Chicago and Illinois, and we are pleased to have him as the chair of our advisory committee in Illinois, and I am pleased to welcome him today to present to us on the recently released Environmental Justice Report. Mr. Chairman?

Presentation by the Chair of the Illinois Advisory Committee on Environmental Justice

MR. LINARES: Thank you so much, Chairman. I appreciate you and the Commission allowing us time to present our report.

So -- and we are also -- we are also aware that the Commission is putting together its own report, which we hope to provide information on and guidance from our side in Illinois as well.

That said, if I can briefly summarize some of these findings, what we -- the study area that we looked at was specifically limited to areas in Chicago, including the Little Village and Tilton neighborhoods and the southeast side of Chicago as well. And we also looked at Waukegan, Illinois, which is on the northern side of Illinois, near the Wisconsin border.

That said, the laws that we looked to in
terms of the nexus to civil rights include the Title VI of the Civil Rights Act and the regulations from the Environmental Protection Agency as well as the executive order from the President's office, 12898, which requires federal agencies to the greatest extent practicable and permitted by law to make achieving environmental justice part of its mission.

So those are the laws that we used as a nexus here and the geographies as well. I do want to say that we took a neutral posture at the direction of the subcommittee leading this -- this report. We did invite academic experts, legal professionals, government officials from all levels, individual community members as well, including experts in renewable energy. I also want to mention that we did invite industry as well, so none showed up to the panel hearings. We did receive some letters, specifically from a group called KCBX Terminals, which sent letters with regards to control of contamination as well as their own decision to cease operations in Chicago, and those letters are found in the record.

So without further ado, I would like to present the findings very briefly. There are seven of them, and then I'll go into a few recommendations. The first findings that we found were that industrially
produced toxic waste and air pollutants are disproportionately concentrated in our jurisdictions around communities of color, particularly black, Latino, and American Indian populations, and these products of toxic waste or toxins contribute to a number of chronic health issues, including asthma, cancer, lung disease, and heart disease.

So we heard from academics and experts in this area that gave us information surrounding those issues. Those increased risks also extend to a radius of several, perhaps hundreds, of miles surrounding a pollution site. We also found that an intersection between race and poverty compounds the health impact of environmental pollution, particularly in communities of color.

In addition, current housing segregation in our jurisdiction amplifies this burden of toxic industrial waste on communities of color. And lastly, this contamination of industrial waste disrupts the cultural, recreation, and economic activity in these areas.

A second finding then was that even though we have strong environmental protection laws in our jurisdiction, without proper enforcement, these laws fail the communities who depend upon them. So again,
another way of saying it, despite the existing laws, environmental standards are not being upheld for everyone in Illinois.

So while community involvement of course is critical, we find that community-based advocacy is not sufficient to adequately address the health impacts. So by way of example, in Chicago, residents organized for well over a decade before the closure of a local coal-fired power facility in the neighborhoods. So it takes a long time for community-based advocates to see any impacts.

With regards to the CAGs, or community advocacy groups established by the EPA, we find that industry representation may be disproportionately influencing investigations or decisions because of industry funding, and in Illinois, we also find that there are some industrial facilities -- this was a surprise to us -- there are some industrial facilities that have been operating without permits for many years. So -- and of course community members and advocates have limited legal recourse to oppose those operations when they don't have permits in place.

We also found that, similarly, with regards to the community advocacy groups who find that financial contributions from the industry such as power
companies to the public officials in our jurisdiction may impede enforcement efforts in that regard as well.

There is also, we found, a lack of coordination between regulators charged with ensuring the land, air, and water purity, and this may create a failure of -- the impedement of these enforcement efforts may create a failure of regulators to consider the cumulative impact of multiple sources of contamination on a single community, so we see this in these communities where we're working with regulators, but that lack of coordination makes it difficult to see enforcement efforts.

To name one, for example, cases filed with our own Illinois Attorney General's Office in the environmental justice arena have remained pending without resolution for a number of years. So again, another constraint on the -- the enforcement of regulation.

A third finding then is that under the EPA's Office of Civil Rights, even with the authority to withdraw funding from programs that have the effect of discrimination, these laws are -- largely lack political support from our local jurisdiction in terms of enforcement, as I mentioned before, and in fact, the laws themselves content-wise, disparate impact itself
regarding environmental risks are very limited and narrowly defined. They do not include odors, noise, smoke, traffic, or other hazards that we could see being environmental risks, but are not defined as such under EPA regulation.

Moreover, the -- in Illinois, the environmental justice program here is one of the strongest in the U.S., we found, but there are long delays in case processing and attempts to mediate cases rather than actually investigate them.

We -- a fourth finding, then, we heard from experts, you know, environmental experts and health experts, are that small particulate matter in the air, regardless of the makeup of the particulate, poses a very significant threat to human health, particularly to children under 18 and to the elderly over 64, and the -- the areas that we held hearings on that I mentioned, the Little Village, Tilton neighborhoods, southeast side of Chicago, have large populations of children and older individuals as well.

Diesel emissions are also, we found, considered sources of pollution, and we see this particularly in these neighborhoods that have large industrial economic bases. We also found, though we were largely basing our study on Chicago, that Chicago
and East St. Louis to the south have failed to meet -- have high concentrations of particulate matter and have failed to meet one or more federal air quality standards.

Older plants, which emit some of these particulates, continue to operate without controls that are required of new facilities, so this poses a constraint to us being able to -- to see positive health attributes in those communities.

A fifth and related finding that we found is that there's insufficient data to accurately assess air quality in many of these high-risk areas in the first place. So the data itself is aggregated by region, which is not helpful when we're looking at either census tracts or neighborhoods, particularly the ones that we studied.

And there in fact are few monitors, under the Clean Air Act, there are very few monitors in Chicago compared to other major cities in the area, even if we -- our monitors comply with the minimum standards, there are fewer than other similar cities around the country.

In Waukegan itself, again, a city near the Wisconsin border that is just north of Chicago, now, there's insufficient data there due to mishandling.
So we saw that even the regulators and the data collectors are not necessarily probably using best practices, because the data had not been sufficiently collected.

There's also data to show that high concentrations of fine particulate matter exist within 1,000 feet of our roadways, and again, because of the industrial nature of these majority minority neighborhoods, we are finding that the particulate matter data is higher. And largely, we did find that the EPA is currently looking at new technologies to collect additional air data quality.

A sixth finding, then, was very surprising to me personally, was that communities impacted by industrial contamination may not even benefit economically from the allegedly offending industries, particularly in Chicago/Waukegan, even though the economic benefits are often used to justify the disparate environmental and health impact in low-income communities of color. These economic issues -- also, the health -- the detriment to health and those effects on economy, whether it's hospital visits or lost, you know, days off of work to attend to children, those actually outweigh any gains from economic benefits to those communities.
Another example of this in terms of economics is the electricity that's pumped out of these coal facilities don't actually even serve Illinois. The electricity is sent out of state, so again, it's not an actual economic benefit to our specific areas here in Illinois.

And the industrial facilities themselves, when they close, as we saw both in the Tilton and Little Village neighborhoods with two facilities that recently closed there, the facilities themselves are not required to decontaminate their own sites after the operations cease, so this we found was devastating for the economically disadvantaged communities who want to see renewal of those sites, but can't necessarily do that themselves. And in fact, studies show, we found, that it takes 9-30 years to decontaminate any site, so 9 years on the low end, that's already a decade. 30 years on the higher end, that's already a major loss of economic activity of that site.

And then our last finding, then, is that solar energy, clean energy alternatives are available, but not always so in disadvantaged communities even though these new technologies actually provide economic benefit through retraining of home builders, electricians, and other skilled tradespeople, and the
grants and rebates available to homeowners might not always be available in the most disadvantaged communities because of lack of homeownership or the type of rental housing that is available there.

So to summarize, a few recommendations for you, the Commission, and again, we really appreciate from the Illinois State Advisory Board the opportunity to present these recommendations. We have just a few, which I will summarize.

As part of your Statutory Enforcement Report, we'd like for you to consider other sources of environmental-justice-related issues, not just the coal disposal piece, which I believe you're working on, but also other sources of land and water contamination like petroleum coke, polychlorinated biphenyl, and lead contamination as we see in Michigan particularly amongst those things that are studied, in addition to air quality as well and high exposure from diesel emissions, and lastly, looking to just the cumulative effects, not just the simple standardized studies, but looking at cumulative effects.

We would also like to see a complete legal review of federal law. So again, not all agencies are working together, but let's look at the laws themselves. Just a few I'll name are the Toxic
Substance Control Act, the Safe Drinking Water Act, and
the Clean Air Act as well.

Another -- on that note, another recommendation we would like to make is to look at the
Superfund sites and how they're designated, specifically, how Superfund sites are specifically
designated by the EPA and looking at the definitions and processing there.

Congress should -- we're also looking to make a recommendation that Congress should allocate
financial resources on -- specifically on studying environmental justice under all these categories that
I just mentioned.

And then lastly, we have some specific recommendations we'd like to make for you in your report
as recommendations to the EPA specifically. So to start with, to prevent some undue influence, we'd like
to see agencies prohibiting direct industry contributions to the community advisory groups, so we feel that from the findings we had, there is the possibility or even likelihood that industry contributions could influence community advisory groups in a way -- away from environmental justice, and secondly, that the agencies should limit the number of industry representatives as well so as to not unduly
influence community advisory groups towards -- unduly towards industry itself.

The -- we also want to see that the agencies should prohibit state partners or any of those recipients of EPA funds from allowing industrial facilities in their jurisdiction to operate without the appropriate permits. This was something almost egregious that we found here in Illinois, that facilities do operate without permits, and that should just not be allowed to happen or to continue to happen.

The agencies should increase coordination as well, the EPA between its different Bureaus of Land, Air, Water, and others, and then its Office of Civil Rights should conduct a study of the placement of air quality monitoring equipment by its Air Data Division. Data is very important to us, as we saw in our own findings. Without the full picture of data, or very accurate or granular data, we -- we really can't move forward on the environmental justice issue and remedying some of these things that we saw.

I would like to add one personally with regard to renewable energy, since we had some great testimony in that area in terms of looking to either renew, add, or enhance incentives for renewable energy sources, particularly in disadvantaged communities.
So that is the substance of our report. I do want to make one other comment as well. We are very appreciative that you the Commission gave us information to go forward on our report on environmental justice. I am -- I was made aware this was the first time the Illinois Advisory Committee had followed the lead issue of the U.S. Commission. One request we have is a bit more of lead time. We were a new cohort this time up. I think we bonded well during this presentation. I think to the chairman's point, it was well done by our committee members, but it was very much accelerated in terms of its timing, more so than any other report, I believe, that has been put out there.

So a little bit -- we would love to work with the Commission in the future again on another issue, perhaps, and more lead time would very much be appreciated. So with that, once again, we -- I will speak on behalf of the committee for the State of Illinois, that we appreciate your timing in allowing us to present our report, and I am open to any questions that you should have.

CHAIRMAN CASTRO: Thank you, Mr. Chairman, for your presentation, for the report, and for the recommendations. Certainly, we'll include the
relevant information that you have shared with us as
part of our analysis. Part of the reason we're in such
a tight time frame and that we've asked you as well as
North Carolina, who participated, to increase your time
period is that we have a very specific statutory
deadline on this kind of report because it is our
Statutory Enforcement Report, so we have to get it done
and to the President and Congress no later than
September 30th, so that is why all of our -- all of our
deadlines and all of our staff are moving quickly on
this, but we do appreciate that and do look forward to
collaborations on other issues.

And I'm going to actually ask Gerson Gomez
who is here, our media person, do we know -- I don't
know if you all know, but the Illinois Advisory
Committee had some Hollywood presence when they did
their hearing. America Ferrera from -- well, she is
from different shows, but she was there as part of the
Year of Living Dangerously, which is a national
geographic TV series, and they're looking at the coal
ash issue. So she was there, and they actually taped
a number of -- of the panels. Do we know when that is
coming out, Gerson?

MR. GOMEZ: I don't recall --

CHAIRMAN CASTRO: Okay.
MR. GOMEZ: -- September?

CHAIRMAN CASTRO: September? Okay. So we'll keep you posted on that as well because I'm sure you all will want to see that, as we will. But I'll open it up to any other Commissioners who want to make a statement or ask a question. Commissioner Narasaki?

COMMISSIONER NARASAKI: I just wanted to add our thanks to the Illinois SAC as well as the North Carolina because it was particularly important, because of budget constraints, we weren't able to do the field hearing we hoped to do in Alabama, and I think it is very important to get this very localized view.

And also, I just want to commend Illinois because this was really a spectacularly well-written report, and I for one support many of the recommendations and look forward to seeing them in our final report.

CHAIRMAN CASTRO: Any other Commissioners? Madam Vice Chair? Anyone on the phone?

(No audible response.)

CHAIRMAN CASTRO: If not, again, Mr. Chairman, thank you for your work. Please convey our thanks to all the other members of the Illinois SAC, and I will see you when I get back home. Take care.

MR. LINARES: Thank you, Mr. Chairman, for
the opportunity.

CHAIRMAN CASTRO: Thank you. Bye.

Now I turn it over to the staff director for his reports. Mr. Staff Director?

Staff Director's Report

MR. MORALES: Yes, thank you, Mr. Chairman. In the interest of brevity, I will keep my comments real brief here.

You have the staff director's report, of course, which you can review, and if you have any questions, you can contact me. What I would like to do at this time is just thank staff in particular for some briefing material they provided this morning, and I would like to thank John Ratcliffe, Maureen Rudolph, and David Mussatt for some material they created that was very helpful to the Commissioners this morning.

In addition, I just want to again thank staff, the working group that was created to work on AI 5-9. Without their help -- you know, they worked on it, and they worked on it diligently, and they worked on it on a regular basis. They really helped us move the ball forward, to use a sports analogy, and it really made a big difference here, and I really want to thank David Mussatt again, Sheryl Cozart, Alison Somin, and Maureen Rudolph for the work they did and how they
collaborated together in doing that.

And lastly, I just want to call to your attention, I sent an email out to all the Commissioners about the situation with our agency website, and I just want to real briefly say -- make some public comments about it.

Over six weeks ago now, GPO, the Government Printing Office, informed us that they will no longer host our website. Staff has informed me that they're in the process of working on website mitigation, that they have selected a new provider, website host, and the steps that they have taken are that the ownership of the website has been transferred from the Government Printing Office to the Commission.

Staff is negotiating an extension with GPO past the June 30th deadline they initially gave us to give us a little more breathing room. All files as of June 10th, 2016 were transferred from GPO to our agency. Staff has created a test website with the new server to host the files until the final mitigation -- migration, I am sorry, is scheduled, and our hope is this will cut down the amount of downtime for potential new website postings.

The website host -- and the staff has uploaded some files to the test site, and they're
currently working on that. And the progress of the migration of the website of course is ongoing and being monitored by the staff.

And finally, you know, I just wanted to share with the Commissioners and -- and everyone that, you know, staff is working hard to mitigate the impact of the migration from GPO hosting our website to the new -- the new host, and these things are always, you know, fraught, and there's always some, you know, potential challenges to that, but I really appreciate the work that they're doing on that, and I just wanted to let the Commissioners know that as well.

So with that, sir, that's all I have.

CHAIRMAN CASTRO: Okay. Thank you.

There being nothing else, I am hereby calling this meeting adjourned at 2:39 p.m. Eastern Time. Thank you, everyone. Until next month.

(Whereupon, the above-entitled matter went off the record at 2:39 p.m.)