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## U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING **UNEDITED/UNOFFICIAL**

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MONDAY, NOVEMBER 13, 2017

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

PRESENT:

CATHERINE E. LHAMON, Chair

DEBO P. ADEGBILE, Commissioner\*

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner\*

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner\*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

\* *Present via telephone*

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## STAFF PRESENT :

LATRICE FOSHEE

ALFREDA GREENE

SARALE SEWELL

BRIAN WALCH

MARIK XAVIER-BRIER

MICHELE YORKMAN-RAMEY

## COMMISSIONER ASSISTANTS PRESENT :

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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

2 (1:02 p.m.)

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

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

15 COMMISSIONER YAKI: Yes.

16 CHAIR LHAMON: Terrific. Commissioner  
17 Adegbile.

18 COMMISSIONER ADEGBILE: Present.

19 CHAIR LHAMON: Terrific. Commissioner  
20 Kirsanow.

21 COMMISSIONER KIRSANOW: Here.

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

25 STAFF DIRECTOR MORALES: I am.

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**I. APPROVAL OF AGENDA**

1  
2 CHAIR LHAMON: Terrific. The meeting will  
3 now come to order. Is there a motion to approve the  
4 agenda for the business meeting?

5 COMMISSIONER HERIOT: So moved.

6 CHAIR LHAMON: Thanks. Is there a second?

7 COMMISSIONER KIRSANOW: Second.

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

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

16 CHAIR LHAMON: Terrific. Is there a  
17 second?

18 COMMISSIONER KLADNEY: I'll second.

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

21 COMMISSIONER NARASAKI: Thank you, Madam  
22 Chair. I would like to amend the agenda for the  
23 Commission to consider a statement expressing concern  
24 about labor practices at private immigration detention  
25 centers.

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1 CHAIR LHAMON: Is there a second?

2 COMMISSIONER YAKI: Second.

3 CHAIR LHAMON: Okay. Any other  
4 amendments?

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

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

12 COMMISSIONER YAKI: Second.

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

16 (Chorus of ayes.)

17 **II. BUSINESS MEETING**

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

19 **CENTERS**

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

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

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

18 The Commission calls for heightened  
19 oversight and transparency of the program and fair  
20 compensation for detainees to mitigate the growing  
21 risk of abuse. More detainees are set to enter the  
22 detention system. U.S. Immigration and Customs  
23 Enforcement recently published notices seeking  
24 information on new privately-run detention facilities  
25 that would house approximately 4,000 detainees.

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

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

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

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

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

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

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

20 In our 2015 statutory enforcement report  
21 *With Liberty and Justice For All: The State of Civil*  
22 *Rights at Immigration Detention Facilities*, the  
23 Commission investigated immigration detention centers,  
24 including those operated by private for-profit  
25 companies that have contracts with the federal

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

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

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1       swiftly to correct these documented abuses in  
2       detention centers and ensure that private facilities  
3       are held to the same standard of accountability as  
4       government facilities." [End of text of statement]

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

8               COMMISSIONER YAKI: So moved.

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

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

20              As I said, I have a number of objections,  
21       but one of them is why does it focus just on for-  
22       profit immigration detention centers? For example, in  
23       the footnotes, we cite Guevara v. I.N.S., a decision  
24       of the Fifth Circuit that actually dealt not with a  
25       private prison but with a federally-run immigration

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

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

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

21 As I said, *Guevara v. I.N.S.* is about a  
22 federally-run prison. We talk about here, for  
23 example, private detention centers have a huge  
24 financial incentive to exploit detainee labor. Yes,  
25 but so do federally-run prisons. The notion that only

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1 privately-run prisons are interested in the bottom  
2 line I think is just plain wrong. And, in fact, when  
3 we talked, I think, at length in our report on  
4 immigration detention centers two years ago, we tried  
5 to make the argument, the Commission tried to make the  
6 argument over my dissent, that food service was worse  
7 at privately-run prisons when, in fact, the evidence  
8 went the other way. And I will refer that members of  
9 the Commission to my statement in that report.

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

25 CHAIR LHAMON: Thank you. Commissioner

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1 Narasaki?

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

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

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

11 CHAIR LHAMON: Commissioner Heriot?

12 COMMISSIONER HERIOT: I just wanted to  
13 point out, as Kevin Landy, assistant director for  
14 ICE's Office of Detention and Policy Planning, said  
15 about privately-run detention facilities, that, in  
16 fact it wasn't that privately-run detention facilities  
17 have more violations of policy than federally-run  
18 ones. He, rather, said that the problems with  
19 immigration detention facilities tend to be those that  
20 are dedicated to immigration detention, as opposed to  
21 multi-purpose, part prison, part jail, part  
22 immigration detention center. That's where you get  
23 the problems. It's not a difference between public  
24 and private, it's a difference between centers. Is it  
25 100 percent immigrants or is it partly used for

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1 convicted criminals, partly used for arrestees?

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

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

19 COMMISSIONER HERIOT: I have a hard time  
20 predicting what it would be like. Well, it would be  
21 more limited, yes. This just picks on privately-run  
22 detention centers, and, if you want to maintain the  
23 focus there, then, no, I'd be against that.

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

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

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

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

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

COMMISSIONER NARASAKI: I think one of the issues that I try to raise is, in fact, it may not be

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1 voluntary, that, in fact, there are reports and people  
2 have complained that, in fact, they're being coerced.

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

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

19 COMMISSIONER KIRSANOW: Madam Chair,  
20 Kirsanow here.

21 CHAIR LHAMON: Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: Yes, I have a  
23 question just out of curiosity. Do we know, Karen, do  
24 you know how many of these detainees participate in  
25 the program or what percentage of those detainees

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1 participate in this program?

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

8 COMMISSIONER KLADNEY: I think a class  
9 action is ordered where there's a complaint on file  
10 and that the action affects numerous people within the  
11 system, and it doesn't say anything as to what exactly  
12 is going on or not going on. It's just a certifying a  
13 class.

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

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

25 COMMISSIONER NARASAKI: I'm open to the

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1 amendment of adding, Howard's phrase, federally-run  
2 centers wherever we say for-profit, as well, except  
3 for where it talks about transparency because it's  
4 just the case that, in fact, there's less  
5 transparency.

6 COMMISSIONER HERIOT: That's probably  
7 going to run into some trouble here. You know,  
8 changing it off the cuff here without having looked at  
9 each sentence where it's mentioned. I'm happy to re-  
10 address this in December and, you know, if it turns  
11 out -- we'll agree on at least something. It will  
12 always be, like, you know, you write your statement  
13 and I do agree with Commissioner Narasaki on X, Y, and  
14 Z.

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

18 **DISCUSSION AND VOTE ON THE STATEMENT OF SENTENCING**  
19 **REFORM LEGISLATION**

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

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1 here all day.

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

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

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1 addressing longstanding inequity.

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

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

23 The cornerstone of these policies were the  
24 harsh sentencing and mandatory minimums propagated  
25 under the so-called war on drugs. The application of

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1 harsher penalties and mandatory minimum sentences  
2 historically falls hardest on communities of color.  
3 Although facially race neutral, these policies have  
4 been applied in a racially disparate manner, raising  
5 concerns regarding legitimacy and fairness of our  
6 nation's criminal justice system.

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

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

21 A bipartisan consensus in Congress passed  
22 the Fair Sentencing Act in 2010, reducing disparities  
23 between mandatory minimum sentences for different  
24 drugs, in part "because the public had come to  
25 understand sentences embodying the 100 to 1 ratio as

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1 reflecting unjustified race-based differences." These  
2 changes should be made retroactive as the Sentencing  
3 Reform and Corrections Act of 2017 proposes in order  
4 to reduce excessive punishments for those already  
5 sentenced.

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

15 Reductions in mandatory minimums, by  
16 contrast, allow for proportional and fair sentencing  
17 in more cases, reducing these negative effects. Chair  
18 Catherine Lhamon said, "The sentencing reduction  
19 provisions in this legislation are necessary to hue  
20 closer to the fair administration of justice in our  
21 country and ensure that the criminal justice system  
22 does not more harshly judge marginalized communities  
23 without basis. I urge Congress to take swift action  
24 to correct these injustices." [End of text of  
25 statement]

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

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

9           COMMISSIONER KLADNEY: I move.

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

12          COMMISSIONER HERIOT: Sorry. I'm going to  
13 vote no on this one, though I'm happy that, given that  
14 the bill is 168 pages long, that you did quote from  
15 that footnote number one so we have on the record that  
16 this is not the Commission supporting the entire bill.

17          I assume that most of us have not looked that closely  
18 at the entire bill but, rather, just Sections 101,  
19 102, 103, and 105.

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

25          And I want to point out, however, since

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1 there's a little bit of going back and forth in this  
2 draft, you know, sometimes it talks about applying  
3 laws in a racially disparate manner, sometimes it  
4 talks about racially disparate treatment, sometimes it  
5 talks about racial disparities. I'm not sure, you  
6 know, when we're talking about disparate treatment and  
7 when we're talking about disparate impact.

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

20 Another thing that bothers me about the  
21 way this is done is that it's in very conclusive  
22 language. Rather than arguing the point, it just  
23 assumes that it's right. The sentence that it moves  
24 sentencing levels down in many cases so that low-level  
25 crimes are adequately, but not excessively, punished.

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1 Well, what's adequate is in the eye of the beholder,  
2 and we haven't argued what's adequate here. We just  
3 asserted that it's adequate. And if enacted, it would  
4 help reduce outsized U.S. prison population without  
5 jeopardizing public safety. You know, it's a trade-  
6 off, and to just assert that, I think, is not an  
7 appropriate way to argue.

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

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

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

5                   CHAIR LHAMON: Well, they are connected,  
6 but the other language doesn't refer to racially  
7 disparate treatment because that's not what's being  
8 discussed in the other context. So I think that it is  
9 --

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

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

23                  COMMISSIONER ADEGBILE: Madam Chair, this  
24 is Commissioner Adegbile.

25                  CHAIR LHAMON: Commissioner Adegbile, go

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1 ahead.

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

7 COMMISSIONER HERIOT: Disparity between  
8 what and what?

9 COMMISSIONER ADEGBILE: So crack cocaine  
10 used to be, crack cocaine penalties used to be charged  
11 at a much heavier level than powder cocaine. And then  
12 with the bill in 2010, they were reduced under  
13 President Obama, but it's not clear to me that they're  
14 reasonably close, as you said, but maybe I'm missing  
15 something.

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

20 COMMISSIONER ADEGBILE: Okay. We can  
21 clarify.

22 COMMISSIONER KLADNEY: If I could respond  
23 to a couple of points made by Commissioner Heriot. I  
24 think the bill, when it speaks about adequate  
25 sentencing, or when the statement speaks about

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1 adequate sentences, it refers to the bill itself,  
2 which reduces sentences and also allows judges a  
3 little more discretion in making sentences, as opposed  
4 to the chart that they go by now.

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

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

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

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

25 COMMISSIONER HERIOT: It hasn't passed

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1 yet.

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

4 CHAIR LHAMON: Commissioner Narasaki?

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

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

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

18 CHAIR LHAMON: Okay. Any further  
19 commentary about this statement? Okay. Unless  
20 there's further discussion, I'll call the question and  
21 take a roll call vote. Commissioner Adegbile, how do  
22 you vote?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Heriot?

25 COMMISSIONER HERIOT: No.

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1 CHAIR LHAMON: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: No.

3 CHAIR LHAMON: Commissioner Kladney?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Narasaki?

6 COMMISSIONER NARASAKI: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: Aye.

9 CHAIR LHAMON: And I vote yes. The motion  
10 passes. Two Commissioners opposed, no Commissioner  
11 abstained. All others were in favor.

12 **A. STATE ADVISORY COMMITTEES**

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

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

15 CHAIR LHAMON: So today's agenda gives us  
16 two interim Advisory Committee chairs to nominate.  
17 I'll begin with the Idaho Advisory Committee. I move  
18 that the Commission appoint Shaakirrah Sanders as  
19 chair of the Idaho Advisory Committee. If the motion  
20 passes, the Commission will authorize the staff  
21 director to execute the appropriate paperwork for the  
22 appointment. Do I have a second for this motion?

23 COMMISSIONER KLADNEY: Second.

24 CHAIR LHAMON: Thank you. Any discussion?

25 Okay. We'll call the question and take a roll call

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1 vote. Commissioner Adegbile, how do you vote?

2 COMMISSIONER ADEGBILE: Aye.

3 CHAIR LHAMON: Commissioner Heriot?

4 COMMISSIONER HERIOT: Aye.

5 CHAIR LHAMON: Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Yes.

7 CHAIR LHAMON: Commissioner Kladney?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIR LHAMON: Commissioner Narasaki?

10 COMMISSIONER NARASAKI: Yes.

11 CHAIR LHAMON: Commissioner Yaki?

12 COMMISSIONER YAKI: Aye.

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

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

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

17 CHAIR LHAMON: I now move that the  
18 Commission appoint Alexes Harris as chair of the  
19 Washington Advisory Committee. If the motion passes,  
20 the Commission will authorize the staff director to  
21 execute the appropriate paperwork for the appointment.

22 Do I have a second for this motion?

23 COMMISSIONER NARASAKI: Second.

24 CHAIR LHAMON: Thank you. Any discussion?

25 I'll call the question and take a roll call vote.

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1 Commissioner Adegbile, how do you vote?

2 COMMISSIONER ADEGBILE: Aye.

3 CHAIR LHAMON: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIR LHAMON: Commissioner Heriot?

6 COMMISSIONER HERIOT: Yes.

7 CHAIR LHAMON: Commissioner Kladney?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIR LHAMON: Commissioner Narasaki?

10 COMMISSIONER NARASAKI: Yes.

11 CHAIR LHAMON: Commissioner Yaki?

12 COMMISSIONER YAKI: Aye.

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

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

23 **B. MANAGEMENT AND OPERATIONS**

24 **STAFF DIRECTOR'S REPORT**

25 STAFF DIRECTOR MORALES: Thank you, Madam

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1 Chair. I'll not go into any specific detail. I'm  
2 always available to answer any questions the  
3 commissioners may have about the report.

4 I would like to mention a couple of  
5 things. One, I want to commend the hard work the  
6 staff has been doing to prepare reports, hold the  
7 briefings, and prepare for today's business meeting.  
8 In particular, I want to acknowledge staff work that  
9 they've been doing to close out the fiscal year,  
10 including the finalization of our annual audit and the  
11 performance accountability report (PAR) that is due  
12 this week.

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

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

21 CHAIR LHAMON: Thank you.

22 COMMISSIONER YAKI: I have a question.

23 CHAIR LHAMON: Commissioner Yaki?

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

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

11                   CHAIR LHAMON: This is a student --

12                   COMMISSIONER YAKI: Okay. So --

13                   CHAIR LHAMON: -- I will say that I  
14 understand that that exhibit will be amazing and not  
15 want to miss it.

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

21                   STAFF DIRECTOR MORALES: Yes, that is  
22 correct.

23                   COMMISSIONER YAKI: And what time would  
24 that period commence?

25                   CHAIR LHAMON: At 12:30.

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1 COMMISSIONER YAKI: When are we allowed  
2 in?

3 STAFF DIRECTOR MORALES: 12:30, sir.

4 COMMISSIONER YAKI: Okay, thank you.

5 CHAIR LHAMON: Thank you. Commissioner  
6 Narasaki?

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

21 **III. ADJOURN MEETING**

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

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

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