The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 9:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair  
PATRICIA TIMMONS-GOODSON, Vice Chair  
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
PANELISTS PRESENT:

ANTHONY VARONA, Professor of Law, American University
Washington College of Law

ARNE DUNCAN, Former U.S. Secretary of Education,
Current Managing Partner of Emerson Collective

BRYAN GREENE, General Deputy Assistant Secretary, Fair
Housing & Equal Opportunity, U.S. Department of
Housing and Urban Development

BURTH LOPEZ, Staff Attorney, Mexican American Legal
Defense and Educational Fund (MALDEF)

CAROL MIASKOFF, Acting Legal Counsel, Office of Legal
Counsel, Equal Employment Opportunity Commission
(EEOC)

CRAIG E. LEEN, Acting Director and Deputy Director,
Office of Federal Contract Compliance Programs, U.S.
Department of Labor

CURTIS L. DECKER, Executive Director, National
Disability Rights Network

FATIMA GOSS GRAVES, President and CEO, National
Women's Law Center

HARVEY JOHNSON, Deputy Assistant Secretary, Resolution
Management, U.S. Department of Veterans Affairs
PANELISTS PRESENT (cont.):

JANEL GEORGE, Senior Policy Advisor, Learning Policy Institute

JOHN YANG, President and Executive Director, Asian Americans Advancing Justice (AAJC)

JOSHUA THOMPSON, Senior Attorney, Pacific Legal Foundation

KIM KENDRICK, Partner, Leftwich LLC and former Assistant Secretary for Fair Housing & Equal Opportunity, U.S. Department of Housing and Urban Development

LEON RODRIGUEZ, Former Director, Office for Civil Rights, U.S. Department of Health and Human Services, Current Partner, Seyfarth Shaw

LILIAN DORKA, Director, External Civil Rights Compliance Office, U.S. Environmental Protection Agency

MARGO SCHLANGER, Wade H. And Dores M. McCree Collegiate Professor of Law, University of Michigan Law School

R. SHEP MELNICK, Thomas P. O'Neill, Junior Professor of American Politics, Boston College
PANELISTS PRESENT (cont.):

ROBERT DRISCOLL, Member, McGlinchey Stafford and former Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice

VANITA GUPTA, President and CEO, The Leadership Conference on Civil and Human Rights

VERONICA VENTURE, Deputy Officer, Office of Civil Rights and Civil Liberties, U.S. Department of Homeland Security

STAFF PRESENT:

MARIK XAVIER-BRIER

LASHONDRA BRENSON

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

WARREN ORR

TERESA ADAMS

SARALE SEWELL

MICHELE RAMEY

BRIAN WALCH

JUANDA SMITH
COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
PROCEDINGS

(9:01 a.m.)

CHAIRMAN LHAMON: So, with that, this briefing of the U.S. Commission on Civil Rights comes to order at 9:01 a.m. on November 2, 2018, and takes place at the Commission Headquarters at 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425.

I'm Chair Catherine Lhamon. The Commissioners present at this briefing in addition to me are the Vice Chair Timmons-Goodson, Commissioner Heriot, Commissioner Kladney, and Commissioner Narasaki.

I understand that we also have some of our Commissioners on the phone. Please confirm your attendance when I say your name.

Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIR LHAMON: Thank you. Commissioner Kirsanow?

(No response)

CHAIR LHAMON: I hope he'll announce when he comes. A quorum of the Commissioners is present. Is the Court Reporter present?

COURT REPORTER: Yes.
CHAIR LHAMON: Thank you. Is the Staff Director present?

STAFF DIRECTOR MORALES: Yes.

CHAIR LHAMON: Thank you. I welcome everyone to our briefing titled Aur Rights a Reality Evaluating Federal Civil Rights Enforcement.

In today's briefing, the Commission takes up an issue that is central to Congress' charge to the Commission, which is to examine federal civil rights enforcement, and make recommendations where necessary for improvement.

We will hear from current and former federal officials and academics, advocates, and legal experts in civil rights enforcement. Testimony from this briefing will form an integral basis for the Commission's eventual report to the President, to Congress, and to the American people.

The Commission, which decided unanimously with all eight of our members voting to take up today's briefing, returns to a topic that the Commission has appropriately addressed many times over our 61-year history, going back to the first reports that the Commission issued after Congress established it in 1957.

In the Commission's first reports issued
in 1959 and 1961, a key recommendation emerged, which was to have the Federal government actively engaged in enforcing Federal civil rights law, including through a tool Congress enacted following the Commission's recommendation, which is Federal agency ability to withhold federal funds if an entity receiving funds violates nondiscrimination laws.

Each of the many times since then, when the Commission has evaluated what one of our 1970 reports termed "the Federal Civil Rights Arsenal," the Commission has examined as we do today, whether Federal civil rights agencies effectively enforce the promises Congress made to the American people when enacting Federal civil rights laws.

Consistently over time, the Commission has offered recommendations for ways our Federal government should better give effect to the core nondiscrimination principles in Federal civil rights laws, sometimes recommending new laws we have been grateful to see Congress pass, sometimes recommending corrective agency action we have been grateful to see civil rights agencies implement.

The last time the Commission issued a comprehensive report assessing civil rights enforcement efforts across Federal agencies, was in
2002 when the Commission began issuing a series of reports looking at the extent to which Federal agencies had taken up prior recommendations of the Commission and how each agency's Federal enforcement efforts were proceeding.

Today, over 15 years later, we return to a comprehensive assessment of Federal civil rights enforcement efforts. We so return because it is the job we accepted with our appointments to the Commission.

In addition, I ask my fellow Commissioners to join me specifically in this investigation, because I saw such an extraordinary volume of civil rights harms in my position as Assistant Secretary for Civil Rights at the United States Department of Education before coming to the Commission.

And what I witness now in this role at the Commission, underscores my worry about the scary precipice at which I see our nation standing now. Between satisfaction of the ideals we promise ourselves and our laws, and retreat from those core principals in too many daily experiences for too many Americans.

My experience enforcing civil rights laws and working with colleagues doing the same across
agencies, some of whom are with us today, as well as
my current life witnessing current enforcement
practices, raise questions for me about what should be
done differently and better.

I look forward to examining those
questions and my colleagues through this
investigation. At its core, our investigation examines
whether the Federal government is now meeting its
obligation to the American people to protect and
vindicate their civil rights across all issue areas
and in all walks of life, including education,
employment, housing, healthcare, immigration, and
policing among others.

We are, and I am, eager to celebrate what
works well in current Federal government practice.
And also eager to recommend improvements where our
investigation shows the Federal government can do
better.

Today's briefing features over 20
distinguished speakers, who will provide us with an
array of viewpoints, as well as the opportunity to
hear from the public.

Panel One, which is seated in front of me,
includes current and former Federal officials from the
Departments of Housing and Urban Development, Labor's

Panel Two includes current and former Federal officials from the Departments of Justice, Homeland Security, Veterans Affairs, Agriculture, and the Environmental Protection Agency.

I should correct that, the Department of Justice declined to come. So, Panel Two will not include the Department of Justice.

In note here that the Commission staff invited current officials from relevant offices in the Department of Justice, Departments of Education, Health and Human Services, Interior, Treasury, Transportation, and the Office of Management and Budget.

These offices declined to participate in today's briefing, though our staff will continue to engage with them to request relevant documents and information for our eventual report.

Panels Three and Four include advocates and academic and legal experts in civil rights enforcement from a wide range of perspectives. The day will conclude with an open public comment session, during which the Commission will hear from members of
the public who wish to present additional information to the Commission.

I thank all who join us now to focus on this critical topic. Your views help us to fulfill our mission to be the nation's eyes and ears on civil rights.

In the spirit of our Commission's bipartisanship, I pause here at Commissioner Heriot's request to offer some opening remarks.

COMMISSIONER HERIOT: Madam Chair, I decided after I looked at how long this day was going to be, that maybe, just maybe, it would be appreciated if I passed.

(Laughter.)

CHAIR LHAMON: Well, thank you Commissioner Heriot for starting us with a precedent for the day.

(Laughter.)

CHAIR LHAMON: For just a few additional points and the value of today's testimony, I am very, very grateful to each of our participants today for sharing their expertise, experience and views with the Commission.

As is appropriate, given the Congress tasked to my fellow Commissioners and me with the job to evaluate every day, the effectiveness of Federal
civil rights policy and enforcement, each of us necessarily brings strong views to that evaluation, and we have not waited for today to begin assessing what does and does not work in Federal civil rights enforcement practice.

Notwithstanding any of our individual and collective prior statements about Federal civil rights enforcement, I am confident each of us is prepared to be educated and informed by what we learn today, and to use that information to guide our evaluation now.

My experience when I worked in an enforcement role taught me that constant reevaluation of the effectiveness of our practices was and is, essential to fulfilling the trust the President and Congress placed in civil rights enforcement officials.

I was in that role, proud to reverse course when necessary to get the job done right. I am prepared to be educated today about ways that job can be done differently than I did, and then I now imagine it should be done.

I look forward to what I and my colleagues on the Commission will ultimately conclude following this investigation. And more than that, I look forward to our Nation's continued pursuit of more justice for all.
I turn us now to begin our briefing with a few housekeeping items. First, a very deep thanks to our Commission staff, who researched and brought today's briefing into being.

Sarale Sewell and Kathy Culliton-Gonzales, in addition to critical support from Teresa Adams, LaShonda Brenson, Pan Dunston, Latrice Foshee, Martha Marr, Tina Louise Martin, Mayowa Olubakinde, Warren Or, Lenore Ostrowsky, Elizabeth Paukstis, Amy Royce, Maureen Rudolph, Juanda Smith, Brian Walch, Marik Xavier-Brier, and Michelle Yorkman-Ramey for preparing and making the logistical details for today work.

We also thank our interns from last year, over the summer, and with us right now, who have continued to provide valuable assistance to our staff. And I thank the Staff Director, Mauro Morales, for his leadership.

I caution all speakers, including our Commissioners, to refrain from speaking over each other for ease of transcription and to allow for sign language translation, which is to my right.

For any individuals who might need to view the sign language translation, there are seats available in clear view to my right as well.

I ask everyone present to please silence
your phones. And not to take flash photos to minimize health risks to persons present.

As I mentioned, after the four panels and an afternoon break, we will reconvene at 5:00 p.m. for a public comment period. If you are interested in participating in the public comment period, during which each person will have up to three minutes to speak, we will be honored to hear from you.

In total, spots at the public comment period are allotted on a first come, first served, basis. If you did not already sign up for one of the first 20 spots online, you may sign up at the registration desk now.

The spots will be available until filled. If you are one of the individuals who did sign up online, please check in at the front desk so we hold your spot.

For any member of the public who would like to submit materials for our review, our public record will remain open until Monday, December 17, 2018. Materials can be submitted by mail to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425. Or by email, to enforcement@USCCR.gov.
During the briefing, each panelist will have seven minutes to speak. After each panel presentation, Commissioners will have the opportunity to ask questions within the allotted period of time, and I will recognize Commissioners who wish to speak. I will strictly enforce the time allotments given to each panelist to present his or her statement, and unless we did not receive your testimony until today, you may assume we have read your statements. So you do not need to use them to read them to us as your opening remarks. Please focus your remarks on the topic of the briefing.

I also note that we have a tight schedule with nearly two dozen experts who will speak before us today. So, I ask my fellow Commissioners to follow Commissioner Heriot's lead in being judicious in your use of time, and please be brief in asking your questions.

Panelists, please notice the system of warning lights that we have set up. When the light turns from green to yellow, that means two minutes remain. When the light turns red, panelists should conclude your statements so you do not risk my cutting you off mid-sentence.

My fellow Commissioners and I will do our
part to keep our questions and comments concise. So now we turn to our first panel of current and former Federal agency officials.

The order in which they will speak is Bryan Greene, General Deputy Assistant Secretary of the Office of Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development. Craig Leen, Acting Director and Deputy Director of the Office of Federal Contract Compliance Programs at the U.S. Department of Labor.

Carol Miaskoff, Acting Legal Counsel at the Office of Legal Counsel at the Equal Employment Opportunity Commission. Arne Duncan, with whom I had the extraordinary good fortune to work when he was U.S. Secretary of Education, and who is currently Managing Partner at the Emerson Collective.

And my former colleague, Leon Rodriguez, former Director of the Office for Civil Rights at the U.S. Department of Health and Human Services, and current Partner at Seyfarth Shaw.

Mr. Greene, please begin.

**PANEL 1 - CURRENT AND FORMER FEDERAL AGENCY OFFICIALS**

**MR. GREENE:** Thank you. The Department of Housing and Urban Development welcomes this
opportunity to provide the United States Commission on Civil Rights this overview of its current fair housing enforcement activities.

In addition to other responsibilities, HUD's Office of Fair Housing and Equal Opportunity, otherwise known as FHEO, enforces the Federal Fair Housing Act.

We enforce that law on behalf of 328 million Americans, all of whom are potential persons who may face housing related discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability.

Our work covers the entire housing market, including most sales and rental transactions, and other housing related services in both the private and government assisted housing market.

HUD's civil rights authority differs from that of many other Federal civil rights offices, in that 55 percent of our workload involves the investigation of Fair Housing Act complaints involving private market transactions. By contrast, investigations of civil rights compliance in HUD programs, constitutes 20 percent of our work.

FHEO relies entirely on salaries and expenses funding for its Fair Housing Act
investigations. How many complaints we can investigate and how fast we investigate them depends on staff resources both in FHEO and HUD's Office of General Counsel.

Today we have 460 persons, of which 253 are dedicated to Fair Housing Act investigations. And notwithstanding declining staff, on average each year for the last several years, HUD has reduced the time it takes to resolve cases.

The statute calls for resolution of cases in 100 days, when -- unless impracticable to do so. For cases filed in fiscal year 2016, the average time from filing to resolution was 247 days.

For fiscal year 2017, we reduced that to 209 days. And in fiscal year '18, the average time was 122 days.

FHEO also conducts compliance reviews of HUD programs. We are dedicating 20 percent of our staff resources to that work.

That translates into approximately 92 staff persons responsible for that work nationwide. This includes investigations of nondiscrimination among five thousand plus housing authorities, and other federally assisted entities.

FHEO administers grant programs. This
constitutes about 10 percent of our work. And this is the oversight of the Fair Housing Initiatives Program, which funds private nonprofit fair housing organizations, and the Fair Housing Assistance Program, which reimburses state and local agencies for investigations under their substantially equivalent fair housing laws. This past year, the state and local agencies receiving HUD funding, investigated 77 percent of the Fair Housing Act -- the Fair Housing complaints filed in the United States.

Our ongoing review of those agencies and the oversight we provide to them is critical for those agencies to remain viable. When they lose certification, those cases come to HUD and tax our limited resources.

We also conduct oversight of the nonprofit agencies. For both of these activities we have approximately 24 Federal employees each, who do that work.

HUD's effectiveness in carrying out our fair housing enforcement mission depends on a robust salaries and expenses budget that supports sufficient numbers of skilled investigators, travel funds, information technology support, sufficient compliant staff, and sufficient numbers of experienced fair
housing attorneys.

Even with our declining resources, we've made significant progress in reducing Fair Housing Act age case inventory in recent years. The case -- number of cases that go beyond 100 days, or that are at beyond 100 days at the start of each fiscal year, has decreased significantly over the last several years from 1607 at the start of fiscal year 2016 down to 1297 in fiscal year 2018.

One of our most powerful tools under the Fair Housing Act is our Secretary-initiated authority. This is our authority to bring cases where no individual has brought a complaint, but where the discrimination, the alleged discrimination can potentially harm a great number of people.

When budgets are tight, it's challenging for us to bring many of these cases because of our demand driven work. Yet this is a significant priority for us.

This year marks the 50th anniversary of the signing of the Fair Housing Act. Ongoing segregation in America, regular reports of sexual harassment in housing, and newly constructed properties inaccessible to people with disabilities, are just some examples that underscore that we have
not yet conquered housing discrimination.

To best direct our resources to the pressing issues today, we have prioritized our activities in the following way. One, timely, effective investigations.

Two, issuance of clear, helpful assistance on animal -- assistance animal cases. Three, combating sexual harassment in housing.

Four, meaningful, less burdensome implementation of the Fair Housing Act's Affirmatively Furthering Mandate. And five, greater oversight of our FHIP and FHAP programs.

When President Lyndon Johnson signed the Fair Housing Act into law on April 11, 1968, he said that he was signing into law the promises of a century. He also said, we have come a lot of the way, but near all of it.

Secretary Ben Carson recently said, HUD has, is now, and will continue to vigorously protect people from discrimination regardless of their color, race, national origin, sex, disability, or familial status.

There's no question there is still discrimination in our country. It's a serious problem. And we have not slowed down in identifying it and
eradicating it.

Thank you very much.

CHAIR LHAMON: Thank you Mr. Greene. Mr. Leen?

MR. LEEN: Thank you Madam Chair, members of the Commission. It's a real honor to be here today on behalf of the Department of Labor and the Office of Federal Contract Compliance Programs.

We're very excited about what we're doing at OFCCP. We have a very ambitious agenda. And I wanted to just briefly go over it with you today and then answer any questions you have. One focus of OFCCP is affirmative action programs.

A concern that we've had, that really came from a Government Accountability Office report, was that many of the federal contractors in the United States that we have jurisdiction over, may not be actually doing affirmative action programs. This was in one of the recommendations that they provided to us.

The reason being, that OFCCP can only really audit about 1 to 2 percent of contractors a year. And contractors can largely predict, to some extent, whether they will be audited.

So, the anecdotal evidence I've received,
and the GAO report that we received, both indicated a concern that many contractor establishments, and there's about 120 thousand of them in the United States, which are based on 25 thousand federal contractors that we have jurisdiction over, that there's a concern that many of them are not even doing the basic affirmative action compliance.

And they're waiting to be basically be audited or receive a scheduling letter to then put together their affirmative action program. Obviously this is a very significant concern.

And this is a way that we can really get a lot of bang for our buck, and improve equal employment opportunity in the United States. If we can get every one of those establishments to be doing an affirmative action program, and be doing outreach to all of the groups, the protected classes, that we enforce anti-discrimination laws relating to, that would make a really big impact.

So, we -- I issued a directive, the Affirmative Action Program Verification Initiative, whereby we will be working with GSA to look at a certification that they do every year, where government contractors have to certify whether they have an affirmative action program or not.
I have alerted all the federal contractors that they do have to do this certification, and that we will be looking at it.

If they check the box no or not applicable as to an affirmative action program, basically indicating that they're not in compliance, we're going to be auditing those companies.

And if they check the box yes, we'll be doing another form of audit, compliance checks, to make sure that they actually are doing those affirmative action programs.

So, that's one of our primary focuses for the next year. In addition to that, we are putting together a database so that we can eventually collect affirmative action programs from every contractor in the United States.

And we're hoping to be able to put together a program whereby we can look at those and identify likely violators. Because that's one of the - - that's really the key for OFCCP success.

Right now across administrations we have typically found discrimination about 2 percent of the audits that we do. And there are some companies that we will audit again and again, some of their establishments every year, and never find
And that's not really a great use of government resources obviously. We want to be able to identify likely violators.

So, we think that through this affirmative action program verification initiative, we will be able to do that.

The second issue I wanted to provide focus to is our focused reviews. One of the criticisms of OFCCP is that -- we have ten protections that we look at.

Those that we -- basically enforce equal employment opportunity and nondiscrimination principals as to ten protections.

They're -- so in this -- under OFCCP's regulations, government contractors cannot discriminate based on race, color, sex, religion, national origin, gender identity, sexual orientation, disability status, veteran status, and we also enforce a pay transparency requirement.

So, one of the concerns was that because of the way that we collect data under our regulations, we really are only able to do audits on two of those protections. And sometimes a couple of the other ones.

But largely based on -- we can look at sex discrimination.
discrimination and we can look at discrimination based on race. Well, you know, there's eight other protections as well.

And so, one of the ideas was to do focused reviews. And so what we will be doing is, a portion of our scheduling list going forward, and I'm hoping for like hopefully five hundred, you know, of these audits a year, will be on one of the ten protections that we focus on.

The first is going to be on disability. We're going to look at Section 503 of the Rehabilitation Act. The stats related to individuals with disabilities in this country are appalling.

You know, the labor participation rate for individuals with disabilities is about 30 percent. The unemployment rate is typically twice that of others without disabilities.

I have two children with disabilities, one who has severe autism, and I've experienced myself in trying to get accommodations for her, and therapy, how difficult it can be.

You know, and I have a hope for her that one day she'll be able to have a job, but I can see that she will likely have a very hard time.

And I'm hoping to try to improve the world
for her. So, -- and I don't say that lightly. But I feel that I've learned a lot through this experience, and so I'm very -- I feel very lucky to be in this position. But, you know, one of our principal goals there, is to tell companies look, don't be so legalistic in the way that you approach accommodation.

You should generally be granting every accommodation that's requested. Don't make someone feel like they have to be in an adversarial relationship with you, because what it does is it stops people from asking for accommodations or from self-identifying.

And that's one of the big problems we're seeing -- is that a lot of individuals with disabilities don't want to self-identify, and frankly, I understand why. Because they're worried that there's a risk.

So, we're really focusing on disability discrimination both through an awards program that's currently in notice and comment, and also through these focused reviews based on disability.

We're going to be going onsite. We're going to be interviewing their ADA coordinators. We're going to be interviewing their EEO officials.

We're going to be interviewing people with
disabilities who would like to talk to us. And we're going to be very focused on that issue.

I also want to tell you though that that doesn't mean we're going to stop what we're doing in the area of race and gender. The last two years have been two banner years for OFCCP.

Last year was our largest year in terms of settlement recoveries enforcing our anti-discrimination laws. So, we had an excellent year.

This year was our third highest year on record. I'm hoping that next year will be the highest ever. And we have a lot of plans to do that.

So, I see my time is running out. I hope that you all have questions. We're really proud of this agenda that we've put together.

We think that we can make a big impact with federal contractors. And we're hoping that that impact will then extend to companies throughout the United States.

So I will say that we're also going to be working with the EEOC. We have meetings scheduled. We have an MOU.

So anyhow, it's an honor to be here. Thank you.

CHAIR LHAMON: Thanks very much. I will say
also that Commissioner Kirsanow has joined us on the line. So, we have yet another of us on the phone.

Ms. Miaskoff?

MS. MIASKOFF: Good morning Chair Lhamon, distinguished members of the Commission, thank you for the opportunity to testify today.

As you know, the EEOC was established by Title VII of the Civil Rights Act of 1964 to enforce that landmark law's prohibition on employment discrimination based on race, color, religion, national origin, and sex.

The EEOC opened its doors on July 2, 1965. And it now has approximately two thousand employees around the country in 53 offices throughout the states.

During the years we've been in operation, we've also been given enforcement authority for a variety of other laws, including the Equal Pay Act, the Age Discrimination Employment Act, the American with Disabilities Act, and parts of the Genetic Information Nondiscrimination Act.

We have two major enforcement tools, the administrative process and litigation. In the administrative process, we investigate and we conciliate charges brought by individuals alleging
unlawful employment discrimination by private sector employers and by state or local government employers.

Anyone who wants to challenge employment discrimination under federal law, must first file an administrative charge with either the EEOC or one of the state or local civil rights agencies, many of which we work in coordination with.

The point of this scheme is to work out disputes before they go to the federal courts. In FY 17, the EEOC received approximately 300 thousand calls and requests for information from people who wanted to know about the laws we enforce and about filing charges.

As a result of that, we ultimately took in 84,254 charges of employment discrimination directly. And this does not include the number that were filed with the state and local civil rights agencies.

In FY 17 our merits resolution rate was between 13 and 14 percent. Over the years that has ranged from around 20 percent to as the lowest being about 10 percent is the range.

I don't have any FY 18 data yet across the board. But I am going to focus on harassment as an example, and I do have data from that.

In terms of litigation, we can only file
lawsuits in a very small number of the charges where we find reasonable cause to believe that there was discrimination.

And that's where our strategic enforcement plan comes into play. We have six priorities. And we follow those in deciding which cases we are going to litigate. And those include recruitment and hiring. And it includes harassment.

In FY 17 we filed 184 merits lawsuits. And we had a 91 percent success rate at the District Court level.

We also resolved over 100 lawsuits. And when we resolve cases, we really focus on changing the practices in the workplace in a creative way that hopefully will really make a difference.

So, I think a good example of all of this is the sort of case study of harassment, which obviously has been a front-burner issue in the last year.

And I think we brought to bear a variety of our tools here. So, it's a good illustration of that too.

First of all, before the MeToo movement started, when Acting Chair Lipnic took over at the EEOC, she was frankly horrified to look at our docket,
and to see the pervasiveness of harassment of all kinds, including sexual harassment in the workplace. You know, unfortunately we've been privy to a lot of the information that's sort of becoming public in the last year.

And as a result of that, Acting Chair Lipnic set up a special task force to really look in depth at prevention efforts for harassment. Because, if you look at the data, and if you look at what's going on, clearly current prevention efforts are not working.

In 2016 the task force came out with a report that really focuses on prevention, and it has some really creative ideas. For example, risk factors in workplaces.

And these are risk factors that we all have in our workplaces. But it helps leaders look at their workplace, see what the vulnerabilities are, and try to correct them.

So luckily, we put out this report, basically right before the MeToo movement started. And we ab -- we certainly used the report.

But, I also want to make the point, that doing these kind of studies, is something that we regularly do. We simply got the visibility here.
because of the timing.

And for harassment, I can actually give you some 2018 data. The beginnings of it. We'll have all of it out later this month.

It's interesting, the federal charges alleging sexual harassment increased by about 13 to 14 percent in FY 18, as compared to FY 17. Anecdotally, we've heard that the increase at the state level has been a lot more. So, we'll find out what that is soon.

We issued reasonable cause findings in 1200 charges involving harassment in '18, as compared to 970 in '17. And we settled through conciliation, 350 charges, representing a 43 percent increase.

We also filed 66 lawsuits on workplace harassment. Two-thirds of those alleging sexual harassment, the others focusing largely on racial harassment, national origin harassment. A 50 percent increase on lawsuits involving harassment.

We rolled them out largely in two big waves, in June and August, for maximum impact. We announced on one day approximately six to eight lawsuits around the country, filed by our offices.

And again, when we resolve these cases, a fair number of which we have resolved, we are focusing on equitable relief on changing practices, and not
only on getting money.

We've also rolled out what we call a respectful workplace training. And that's a result of the study that we did.

And that has been very effective. It focuses on respectful behavior at work as a predicate. And we've also rolled out policies.

CHAIR LHAMON: And I apologize. I do need to cut you off. I think that has gone on.

MS. MIASKOFF: Thank you very much.

CHAIR LHAMON: Secretary Duncan?

MR. DUNCAN: Let me tell a couple of stories. Imagine you have a daughter in high school who goes to band class and enjoys band. My daughter is one of those kids who was in band their freshman year.

But imagine she goes to band -- the band room one day, and she's raped by a fellow student. She reports that rape.

And that local school and school district, in their infinite wisdom, penalize her for lewd conduct, -- put her in an alternative school with her assailant. And so she actually spends more time every day with the young man who raped her.

You might say this is preposterous. This would never happen. This is impossible. Well, this is
actual -- this is an actual case.

One of the thousands of cases that under your leadership, Madam Chairman that came to our Office of Civil Rights. To that absolute failure of leadership at the local level.

Thankfully OCR stepped in. OCR compelled that district to provide counseling for that young girl. And she said, and I quote, "that restored my faith in humanity."

Every year we put out the Civil Rights Data Collection project. A massive amount of data. A treasure trove of data telling us all kinds of things.

Confirming things we knew. Lack of access to high quality classes for students of color across the country. But things that we had no idea of.

One of the findings that absolutely stunned me was that across the country, for preschool students, who by definition are three and four years old, thousands of students each year were being suspended and expelled from preschool.

Not surprisingly, they were disproportionately black and brown boys. People don't like to talk about their school to prison pipeline, but it's real. For us to learn that starts at three years old and four years old, was devastating.
Two stories I want to tell about myself that I'm not proud of, but it's important that we raise brutal truths. I've been at Chicago public schools over a four-year period, we've worked very hard to increase the number of kids taking and passing AP classes.

And we track that data every single year. At big, you know, big meetings of all our top administrators, six hundred principals that start at each school year, to go through the data.

In our fourth year, we had reached the point where we had literally doubled the number of students taking and passing those AP classes. And we celebrated that.

And everybody stood up and cheered. And it was a great, great moment. But, after we had stopped clapping, I asked the auditorium, who here thinks our students are twice as smart today as they were four years ago?

And the room got real quiet. And the answer is, they're not. And for decades, we had denied opportunity. And in a district that was 90 percent minority, that was black and brown kids denied the chance to take an AP class.

Final story, I was really worried about
the school to prison pipeline. Something I always thought about.

    Early in my tenure in Chicago, I met with the Chief of Police, and said, you're arresting way too many of our students.

    And we've got good kids. They're working hard. What can we do better? And he said, let me look at the data and I'll get back to you.

    A couple of weeks I heard back. They had broken down the data. And the Police Officers' shifts, there are three time periods, there's 12:00 at night to 8:00 in the morning. There's 8:00 in the morning to 4:00 in the afternoon, and then 4:00 in the afternoon until 12:00 at night.

    What he demonstrated, was the vast majority of arrests were coming between 8:00 in the morning and 4:00 in the afternoon. Who was arresting the kids? It was our principals.

    Our principals were calling the police to come and arrest our kids in our schools. We met the enemy, and it was us.

    In all those situations, there's a lot of work to follow to change those cultures and change those norms. But, I tell those stories, Madam Chair, to say that we have to have, we desperately need a
strong federal commitment to civil rights enforcement
to do two things.

To ensure equitable education opportunity
for all students, and to protect people from harm. And
whether it's enforcement, whether it's data
transparency, whether it's telling brutal truths,
whether it's sharing best practices.

Until 2017, this is what the federal
government did in a bipartisan basis. It was a
champion of the disadvantaged, and the vulnerable, and
the powerless.

We talk a lot, and we should talk a lot
about President Johnson signing the Civil Rights Act
in 1964. But, we don't talk enough about President

In 1973 President Ford, the Rehabilitation
Act. So, this has been -- until 2017, this has been a
bipartisan effort to help and support those who don't
have access to a high quality education. Who don't
have the right to vote. Who have their skills and
abilities swept under the rug.

Once the curtain of charity closes on this
current administration, we're going to have a lot of
hard work to do at the federal level to reclaim that
rich and important legacy.
Final thing I'll say Madam Chair, just on a personal level, I want to thank you for your extraordinary leadership. You are an amazing champion. You are one of the most important civil rights leaders in the country. You made me and our team better.

And you are your -- you are the daughter of your parents. And you're equal parts born of their strong love and their struggle to have their love accepted at the state level.

And you're strengthened by their strength. But, their struggle is your struggle. And it's how you've devoted your life to this.

I can't tell you how much it means to me personally. Thank you.

CHAIR LHAMON: Thank you. Secretary Leon Rodriguez?

MR. RODRIGUEZ: Good morning Madam Chair, members of the Commission. Thank you for inviting me to be here with you today. It's wonderful to be back in this community once again.

Madam Chair, I had a very different introduction in mind. But, something that you said in your introduction struck me pretty profoundly.

Prior to serving as the Director of the
Office for Civil Rights, I was the Chief of Staff for the Civil Rights Division at the Department of Justice.

During my tenure and the entirety of then Assistant Attorney General Perez’ tenure, this body focused very intensively on one single case handled by the Department of Justice, Civil Rights Division, the civil prosecution of the new Black Panther Party and two of its members.

We were repeatedly called to present documents to this Commission. We were asked to testify before this Commission.

And at no time in my recollection did we ever decline those invitations. I am accordingly, and out of a pure sense of collegiality with those that have come after me, disappointed that our successors have declined to subject themselves to the oversight of this Commission.

And again, as a colleague, I really strongly, strongly urge them that in the future they come here. And that at the end of the day, it is their voices that are frankly, more important than mine in terms of answering the questions that undoubtedly this panel is going to be asking today.

Anybody who's served in the Department of
Health and Human Services Office for Civil Rights knows that I was particularly obsessed with one prior leader of the Office for Civil Rights. Actually if -- as Madam Chair knows, our agencies used to be one agency.

It was the Department of Health, Education, and Welfare. And the first Director of the Office for Civil Rights under President Nixon was none other than Leon than Leon Panetta, who eventually became the Secretary of Defense and CIA Director under President Obama.

And I read and reread a book co-written by then Director Panetta entitled, Bring Us Together, the Nixon Team and the Civil Rights Retreat. What this book recounts, is the story of then Director Panetta doing everything that he could to implement federal court orders requiring the integration of previously segregated schools throughout the south and other parts of the United States.

A task that his bosses in the White House preferred that he slow down, and preferred that he ignore. As a result of that tension between Secretary Panetta and the White House, he was directed to resign after only 14 months in his position.

I think all of us who serve in positions
as leaders of offices for civil rights, need to heed the example of Secretary Panetta. Whether we are Democrats or Republicans, we need to heed his example, and understand that no matter what our leaders' political positions maybe, our duty is to enforce the law.

In a meeting with school superintendents in Georgia, then Director Panetta reminded them that if you are to talk about the rule of law, then you must also be talking about civil rights compliance. Because they are one in the same thing.

I had the honor of serving as Director of OCR for three years. Our mission included the traditional civil rights authority, Title VI, the disability rights protections, the health information privacy laws, the provider conscious laws, and most recently, Section 1557 of the Affordable Care Act.

One of the breakthroughs during my time as Director was our implementation of Section 1557, which recognized for the first time, anti-discrimination protection based on gender in federally supported and federally funded healthcare programs.

And in particular, we also announced that for the first time that in that environment, discrimination based on transgender status was itself
a form of gender discrimination.

I would suggest that that presents a Leon Panetta moment to the current leaders of the civil rights apparatus of the federal government, to not roll back this vital protection.

As Director of the Office for Civil Rights, I emphasized the fact that civil rights compliance is part and parcel of the overall mission of the Department that we serve. It is a false choice to ever say that civil rights compliance and the core missions of any department in which we serve, are at odds with one another.

In fact, they are one in the same thing. And I'll give you a classic example. One of our core missions in the Office for Civil Rights at HHS was enforcing the laws requiring provisions for language access for limited English proficient persons.

And one of the things that we learned as we engaged with physicians, with professors of medicine, professors of scholars, is that when doctors and patients, when healthcare providers and patients do not communicate effectively, people die, people get inferior healthcare.

And so it's the same thing as the mission of the Department of Health and Human Services'
mission. It is to improve the health status access to social services for all Americans.

And so civil rights compliance is absolutely the engine by which to ensure that every single American is able to enjoy the benefits provided and funded by that department.

I want to conclude my remarks by saluting the men and women of all of the offices for civil rights throughout the federal department. They were there before I got there.

They were there while I was there. And many of them are still there now. And I told them, and I think this remains true, perhaps more so now, that they were my conscience.

Because they heeded what Director Panetta said. Civil rights compliance is a core element of the rule of law. And they reminded me of that every day.

Thank you.

CHAIR LHamon: Thank you very much to each of our panelists. I'm going to open for questions from my fellow Commissioners.

It looks like Commissioner Heriot, you have a question?

COMMISSIONER HERIOT: I just want to clear up any misimpression that this is the first
administration not to cooperate with this Commission.

During the Commission's investigation of the new Black Panther Party, we did not get cooperation from the Obama Administration's Department of Justice. So, this is not a new thing.

We did not get cooperation in the Cy-Pres Investigation. I too regret that we do not have representatives of all the departments that we asked for representatives from.

On the other hand, you've got to remember that for example, with the Civil Rights Division at the Department of Justice, the Senate only confirmed Eric Dreiband a few days ago.

And I think this is unprecedented not to get the President's choice for leadership at the Civil Rights Division as slowly. I'm not blaming anyone here for that.

But, you know, that's a problem. But, you know, Mr. --

MR. RODRIGUEZ: Rodriguez.

COMMISSIONER HERIOT: Rodriguez, it is not at all unprecedented for administrations not to cooperate with this Commission.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Madam Chair, I was
just kind of overcome with the events that have happened earlier this week. And I thought, if you don't mind, if we would just take a few seconds to recognize the deaths in the Synagogue in Pittsburgh and the two African Americans in Kentucky.

Many of you may not know, but the Commission did issue a statement yesterday on these two hate crimes. And I think it's an example of why civil rights is nonpartisan.

Why it is something, and we did it unanimously. Why this -- why we in fact are on the same side on these issues.

Just a few seconds.

(Moment of silence.)

CHAIR LHAMON: Sure.

COMMISSIONER NARASAKI: Thank you. So, I want to start with OFCCP. And it's not because I don't have a number of questions for everybody on the panel.

But the Chair has had us under strict instructions to try to keep as limited as possible. And I'm hoping that I'll be able to get some time around to get to everyone else.

So, I am very excited, Acting Director Leen, that you are focusing on the issue of disabilities. I very much agree that it's an area that
has a lot of work to be done.

Particularly in corporations to make sure that people with disabilities are given the full opportunity to contribute their talents. And to be able to make their way in the world.

So, I'm very excited about that. I am very interested in your approach on trying to get corporations to live up to their requirements as federal contractors to have, in fact, affirmative action plans in place, and so, look forward to your experiment. But, am very interested in understanding more.

My understanding is that with this focus under the new procedures that OFCCP sent -- will be sending out a number of letters, scheduling letters. And if the company responds that they have an affirmative action in place, then they will be taken off the schedule for a visit.

So I just want to understand if that's correct. If they self-certify that that will be enough for you.

In the past I understand that OFCCP investigations have often found that while a contractor might have a plan, they rarely had a plan that didn't have significant violations.
Because it is very technical, they're required to look at a lot of data for all races. They need to evaluate their hiring against their actual recruitment. And they need to make sure they're evaluating all job categories.

So, how do you intend to move forward? And have I completely misunderstood how this process is going to work?

MR. LEEN: Thank you very much for your question. I appreciate the opportunity to clarify that. The -- we find technical violations about 25 percent of the time.

And we find discrimination about 2 percent of the time. And you are correct that we are going to try to achieve 100 percent compliance with affirmative action programs throughout the United States.

And we will be having a compliance check process to see that companies that certify that they have an affirmative action program, actually have them.

But, just because you have one, doesn't mean we won't review you. We're still going to have our typical scheduling list.

And I'm hoping, in the last couple of years it's gone down to about a thousand or so per
list, or per year. And I'm hoping to increase that to about 3500, which would include the focused reviews and then the compliance checks we're also looking at doing.

That maybe a different subset. Because, you know, we're really dealing with two different issues. One, I want to make sure everyone -- we want to make sure that everyone has affirmative action programs in place.

That to me is basic compliance. And I feel like we can make a really big impact if let's say in the GAO report one of the concerns was that when we list a company, they typically have 30 days basically to provide us their affirmative action plan.

And when they receive -- they receive the scheduling letter, and then they're requesting an extension. And one of the -- and you know, all they really have to turn over there is the affirmative action program and certain information that they're supposed to keep and update on a yearly basis.

So, it begged the question, well if there are so many of these companies are requesting this extension, do they really have everything in place so they could just turn it over?

So, that's -- we are focusing on that.
That's something that we have to address to really ensure comprehensive compliance.

We're still going to be doing audits though. Even if you have an affirmative action program, you could still end up on the list, the 3500.

That's going to be comprised of focused reviews, and also our typical compliance evaluations, which are more comprehensive.

But, that's -- that's -- we are still going to be doing that. I want to be perfectly clear. Just because you have an affirmative action program and certify it, you could still be listed.

You -- we publish our scheduling methodology now. And we'll be publishing it going forward. Companies will be able to see how we chose them.

And they will see that we're acting fairly. And that we're applying neutral principals, which we're required to do.

And we are also publishing now the list of everyone that is being audited, so that there's clear transparency.

So, does that answer your question?

COMMISSIONER NARASAKI: That helps. Thank you. Also, and you may not have this data with you, so
feel free to tell me that you can submit it later.

How many -- you -- how many compliance investigations have been initiated since 2016? And how many of the new compliance investigations have found discrimination?

And how many damages and recoveries have been submitted for FY 2017 and '18?

MR. LEEN: I have to -- I'll have to get back to you with the specific numbers. Which I will.

COMMISSIONER NARASAKI: Um-hum.

MR. LEEN: Let me answer that generally. We have -- we've been doing about a thousand a year in the last couple of years.

I feel -- that's gone down over the course of time. So, and we used to do something like five thousand about a decade ago.

So, we're trying to -- and I think one of the ways that that happened was in the prior administration, there was -- there was a, I guess there was a decision to reduce the total amount of audits, and focus more on those that are audited.

It's something called the deep dive. You know, and which has received both positive and negative responses.

You know, so our goal, and we're going to
be actually publishing a directive on this at some point. Our goal is to take the best aspects of what's called active case management, which is really the Bush Administration approach, which had more audits.

And active case enforcement, which was sort of the Obama Administration approach, which led to less audits. By the way, both of which found discrimination about 2 percent of the time again.

To try to increase the amount of audits, but also do it in an effective way. Because we do want to continue our commitment to enforcement of anti-discrimination principles based on race and gender, including in the compensation area.

I mean, that's key. You know, we go where the numbers tell us. We're doing statistical reviews. I mean, just in case some here don't know, I'm sure you all know what we do.

But, we do regression analyses. So we get information regarding the compensation of basically everyone within these job groups at a company.

And we do a statistical regression analysis to see if there is a gap in pay that cannot be explained by one of our controlling factors, a legitimate factor -- based on race or gender.

And if we find a disparity, more than two
standard deviations, we still will go onsite. We will review that. We will send supplemental information requests. And we will enforce.

In terms of the amount of recoveries, I want to get you the exact numbers. So, I'm going to just give you a general figure. And I'm sorry I don't have the specifics.

In FY 17 we were in the low 20 million, which was the highest year on record, is my recollection. In FY 18, we were in the mid-teens, which was the third highest year on record.

This upcoming year, we have some -- we have some big cases. We're hoping to be able to get either some substantial settlements, or go forward with enforcement.

And some of them are in enforcement right now. And they're known in the public record. We are committed to those cases.

And we think that we have a good chance in this upcoming fiscal year to have the largest year on record by a fair amount.

COMMISSIONER NARASAKI: So, along those case -- along with those big cases, the Department of Labor recently rescinded a settlement with Microsoft to resolve an investigation after a finding that the
Tech company had paid women in engineering and other unspecified tech jobs less than their male coworkers, and passed them over for promotions.

To Secretary Acosta's credit, he was concerned that the proposed settlement was not sufficient, is my guess. What is OFCCP doing now to ensure that they're fully holding these kinds of companies accountable?

MR. LEEN: Well, I need to say something before I answer the rest of the question. I cannot comment on that specific matter.

Now, the more general question of, what are we doing to ensure that that -- the settlement amounts are appropriate when we resolve matters, is we've -- we've done a couple of things.

One, we've issued a directive that's called a PDN Directive. The Preliminary Determination Notice Review. So, one critique that's been done of OFCCP is that one, that we were sort of -- we weren't that transparent of an agency.

And two, that you would get different treatment by different regions. And you know, when you come into these situations, it's often hard to assess is that correct or not?

We do look at the numbers. And we're
trying to make sure that the numbers, the stats, are
similar with the different regions.

But in terms of whether you're getting
basically treated -- being treated differently in a
review by the Southeast Region versus the Pacific
Region, my main approach was, well look, let's assume
that this is happening. What would we do if it was?

Because, you know, it's always good to do
reviews internally. And to set up appropriate
procedures.

So, what we've done, is we issued a
Preliminary Determination Notice Directive. What it
says is that companies, early in the process, we will
let them know what the disparities are that we found.

They will have an opportunity to respond
before we issue a Notice of Violation. We've
encouraged companies to actually respond. Give us a
comprehensive response.

It's good for us too in terms of use of
governmental resources. We want to know, do they have
a strong defense or not?

Or are we missing something in the way
that we're reviewing the numbers? We give them that
opportunity.

They respond. That's reviewed both by the
Region, and the national office, to ensure that we have quality control.

At that point, we would issue, if we -- we would either amend our findings based on the response and the additional information they provide, and issue the Notice of Violation.

Or, we wouldn't change it if we find that they don't have a good response. And we would issue the Notice of Violation.

Or conceivably, if they convince us they haven't been discriminating, we wouldn't issue the Notice of Violation. That hasn't happened yet.

But, the -- that third category, but it's possible. And I want companies to know that that is possible. So, they should respond.

We're trying to add a degree of due process to the administrative aspect of our cases. And then in addition to that, it allows us to see, are we -- do we have quality control in the way that we're reviewing these cases?

But we are, I want to tell you, we are committed to appropriate settlement amounts. And by appropriate settlement amounts, there's two components.

One, we expect 100 percent prospective
relief. We're not going to agree to a settlement which allows discrimination to continue.

I mean, that's -- that's a core principle. In terms of back pay, we will try to reasonably settle it, knowing that a lot of times there are a battle of experts going on. There are two different perspectives.

One of the critiques of OFCCP has been that we don't -- am I talking too much?

COMMISSIONER NARASAKI: Well, it's just that I have another question.

MR. LEEN: Oh, I'm sorry.

COMMISSIONER NARASAKI: And she's going to bang the --

CHAIR LHAMON: Do other people first.

COMMISSIONER NARASAKI: She's going to bang the gavel on me. I have just one more question on LGBT issues.

CHAIR LHAMON: No. Not yet. We'll see how others are doing. I understand Commissioner Yaki has a question. He's on the phone.

COMMISSIONER NARASAKI: Okay. We'll see. Sorry, gavel has dropped. Sorry.

MR. LEEN: I'm sorry, I didn't intend -- I just -- I have a lot to tell you. Because we're doing
a lot of things.

CHAIR LHAMON: We appreciate it.

Commissioner Yaki?

COMMISSIONER YAKI: Thank you very much. I just wanted to first mention in response to a comment by a previous Commissioner that I actually share the viewpoint of one of our panelists about the lack of response in agencies to the Commission's hearing because I do remember quite well the amount of time spent by the Department of Justice in responding to this Commission when I was on it --- I've been on it for quite a while -- with regard to the Black Panther Party investigation including the attendance for essentially the entire day of the Assistant Attorney General for Civil Rights at the time, Mr. Perez.

And I think at some point the amount of information that the Department provided to us in response to our interrogatories is a testament to their tolerance for a lot of what we were trying to do and the lack thereof of this administration in responding to what is really a non-targeted, but just very basic exploration of their duties as agencies and enforcement to our rights is, actually, in my view, quite astonishing given the fact that throughout the time when I was on the small number end of it, a 6-2
majority, with both Republican and Democratic administrations, I do not really remember at all the scope and lack of cooperation that we've seen in this hearing, especially with regard to an issue that we cannot really raise here.

But I'm going to ask someone who did, have a preexisting experience with this, to talk about -- and this goes to Secretary Duncan, because obviously when the agencies refuse to come here and Health and Human Services is considering some rather drastic revisions, at least according to the reports from inside and outside the Agency to the definition of transgender, and what impact that would have on transgender people, citizens, rather, in this country, and Secretary Duncan, in your Department, dealt with the issue with regard to access to rest rooms in public schools.

And I just would like you to comment on your view and opinion of what you believe the impact of the HHS ruling and indeed, the Department of Education's reversal of your policy as it pertains to the transgender community.

MR. DUNCAN: Sir, I think we always have to go back to sort of first principles and values. I talked about the two core things, the Department of
Education which I think fundamentally has to be, must be, a civil rights agency, has to do is to ensure everyone, everyone, the right to have a high-quality education, to allow them to fulfill their extraordinary potential.

And I would say no one ever calls the Office of Civil Rights on a good day. They call the Office of Civil Rights when every other recourse, every other chance to get relief has failed.

So Cath and I had a lot of tough meetings, a lot of tough issues. That's just the nature of this work and we embrace that. But I will say some of our toughest meetings were with transgender students and their parents. And not to be too graphic, but to hear kids talk about urinary tract infections because they can't -- they don't feel safe to go to the bathroom, to hear about the ridicule, and the pressure they felt from others.

I think that any of us would struggle at our jobs if we couldn't go to the bathroom during the day. It's hard to receive a high-quality education if you can't do that.

There's some fundamental things in terms of our students, psychological and social and emotional safety, that have to be building blocks
before we can start to talk about AP Chemistry and Physics. And we deny those opportunities when children are literally just trying to survive. We're denying them a high-quality education. So we address that. We have to address that. We have to make sure every single child in this country is safe, is cared for, and then has the ability, is free of fear and then they have the ability to talk about those higher level learning opportunities.

CHAIR LHAMON: Commissioner Kladney, do you have a question?

COMMISSIONER KLADNEY: Thank you, Madam Chair, I know I promised I wouldn't ask any and cede all my time to you. However --

CHAIR LHAMON: That's not happening.

COMMISSIONER KLADNEY: Things change.

Mr. Leen, I was wondering if you're familiar with 14(c) of the Fair Labor Standards Act, sub-minimum wage?

MR. LEEN: Yes.

COMMISSIONER KLADNEY: I've been reading the Congressional Research Report from 2005 and I was wondering how has the Department of Labor progressed in investigating those types of cases? Have they or haven't they progressed?
MR. LEEN: Well, I can't comment directly on that because that's not my area, you know, with OFCCP, so I'm here on behalf of the Department of Labor, not OFCCP, but --

COMMISSIONER KLADNEY: So you don't know.

MR. LEEN: I don't know exactly. I have talked a lot about sub-minimum wage with ODEP, the Office of Disability Employment Policy, and I know that that's an issue that's leading to a lot of discussion. I mean there's really two perspectives and we're also thinking about this issue. So any feedback would be helpful.

But on the one hand, someone like my daughter, for example, has very severe autism, may only be able to get a job with a sub-minimum wage. It is possible. That may be her only opportunity. On the other hand, and the other approach and I'm very cognizant of this because I have seen a lot of discrimination against individuals with disability. It is a segregated work environment. It's not integrated. They are being paid less and a lot of times those employees are doing full work. I mean they should be paid at least the minimum wage. So we're struggling with that issue, too. And so is OFCCP because we are still looking -- we do not want to see, obviously,
discrimination against individuals with disability and that is an encoded provision, essentially, that allows individuals with disabilities to be paid less than others. So that would be my general comment on that topic.

COMMISSIONER KLANDNEY: Thank you. Ms. Miaskoff. I'm sorry, I have a name nobody can pronounce.

MS. MIASKOFF: Don't worry about it.

COMMISSIONER KLANDNEY: So the sexual harassment guidance from your Department is 20 years old.

MS. MIASKOFF: Right.

COMMISSIONER KLANDNEY: And you updated it last year and for some reason it got sent to OMB.

MS. MIASKOFF: Right. We put out a proposed guidance in January 2017 and got public comments and it was reviewed by OMB.

COMMISSIONER KLANDNEY: Still being reviewed by OMB?

MS. MIASKOFF: Yes, it is still being reviewed, that's correct.

COMMISSIONER KLANDNEY: How long has that been?

MS. MIASKOFF: Well, there's been some back
and forth and conversation, but it's obviously been about nine months or so.

COMMISSIONER KLADNEY: How many pages is it?

MS. MIASKOFF: Well, it's about 75 or 80 pages, about 350 footnotes, but nonetheless, yes, that is a long time, I understand.

COMMISSIONER KLADNEY: And do you have any expectation of a date that it will be issued?

MS. MIASKOFF: I do not.

COMMISSIONER KLADNEY: Is there a possibility it won't be issued?

MS. MIASKOFF: I really don't know.

COMMISSIONER KLADNEY: So that it is a possibility.

MS. MIASKOFF: It's up in the air. I think it's probably a possibility, but I really don't know.

COMMISSIONER KLADNEY: Thank you.

CHAIR LHAMON: Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Thank you very much, Madam Chair.

This question is for Assistant Secretary Greene. You pointed out the power of Secretary-initiated cases in combating policies and practices that harm large numbers of people. And you pointed out
to us that tight budgets make it challenging to respond effectively to individual complaints and all of that makes sense.

I was wondering if you could tell us about how many Secretary-initiated matters have been filed that you've looked into and say a word or two, if you know, about how that compares with earlier years and perhaps prior administrations. And if you don't know that, if you could provide that information for us.

And then if you could somehow tell us why Secretary-initiated cases might not rate being someplace in the priorities that you set out for us.

CHAIR LHAMON: May I just piggy-back on that and ask you to tell us also what the difference is between a compliance review and a Secretary-initiated case?

MR. GREENE: Sure. Well, let me start with your question, Madam Chairman. Secretary-initiated cases, under the Fair Housing Act can involve any entity, any entity engaged in housing transaction, so whether it's a sale, rental, lending, advertising. Whereas, the compliance reviews are typically of government-assisted housing providers. And you could have a Secretary-initiated case which also involves a government-assisted housing provider. So it's very
broad authority.

In terms of actual numbers, I can get you actual numbers of how many we have currently. I would say it's a handful of Secretary-initiated cases. I think what's most important to stress about Secretary-initiated cases is that they are resource intensive.

And I think I speak for many of us that we want to do more efficient investigations of the individual complaints so that we have the resources to take on Secretary-initiated cases to do investigations of areas where we believe there may be discrimination, where we could make greater transformational change.

I would say in my time at the Department, Secretary-initiated cases, we've probably never had more than 20 at any given time, probably averaging somewhere in the 10 or 12 range. It all depends. And again, depending on how big the case is, if you have a handful of big cases, you know, that may be why you have a lower number at any given time than another time where you may have more, but they may not be as resource intensive. But they are, again, really based on the resources we have. I'm pleased that we are becoming more efficient in how we handle the individual cases. So I'm hoping we can take on more of this work.
CHAIR LHAMON: I have a question that I'd love for all of you to try to speak to. Several of you have spoken very compellingly about the difficulty of managing your resources as against the very broad charges that each of the agencies that lead or lead has. And a couple of you have talked about challenges and trying to make sure that you have consistent results across offices and that your offices achieve the results that you wanted to.

So I'm curious if you can speak to the importance of the federal role, the importance of consistency across the offices, and the ways that you manage consistency and end results.

And in particular, Mr. Rodriguez, you mentioned in your written testimony that you had worked with your staff when you were at HHS to include in the evaluation plans for employees a priority to work on systemic cases as well. I'm curious if you can speak to the value of going down to the level of how employees are rated, that as a mechanism, among other mechanisms for achieving the results that you want to achieve and also speaking with the federal voice to these issues.

MR. RODRIGUEZ: Yeah, I really appreciate the opportunity --
CHAIR LHAMON: I think you need to turn your microphone on so we can get the transcript.

MR. RODRIGUEZ: There we go. To address that question, my background is in law enforcement. I was a state and federal prosecutor. And core to the law enforcement mission is establishing a set of priorities for the work that you're going to do. A homicide is always more important than a turnstile jumping.

And what I found when I got to HHS OCR was that the way we rated our investigators was based purely on the volume of cases that they completed and not on the impact of the cases that were handled. And as a result, there was actually a fundamental disincentive to pursue a big case, a case with a systemic impact which struck me as undermining the core mission of the Agency, which was, in fact, not just to do justice in that particular case and it was certainly that, but then to use that case as a deterrent, as an object lesson.

And so both in terms of how we were rating our employees, but then also in terms of how we lead them and how we spoke to them, we emphasized the importance. And the results started coming. I was ultimately there just short of three years, in the
sense that we were starting to really do the kinds of
cases that I thought and that our leadership team
thought we should be doing.

CHAIR LHAMON: Ms. Miaskoff.

MS. MIASKOFF: At EEOC, we have both a
strategic plan, like everyone has to and a strategic
enforcement plan. And the strategic enforcement plan
has six priorities. To bring that into reality, we do
two things.

One is that when we do individual
evaluations, everyone's functions are linked into
those plans. And you have to establish what you as an
individual have done in service of those goals.

The other thing is that we have quarterly
meetings. They're not formally meetings, but
gatherings, briefings where the commissioners meet and
talk to the office directors about the kinds of cases
that they're bringing, what they're finding, what the
results are, progress on these priorities, and what
needs to be addressed and what isn't being addressed
adequately. So that's on a quarterly basis.

And we've also implemented a process where
with litigation certain percentage, I guess, of
litigation from each district actually goes to the
Commission now under -- that is under the priorities
for them to review.

On top of that, we have a whole quality assurance plan that's more managerial, but I think the strategic enforcement plan and its priorities are at the heart of everything.

MR. LEEN: You know, it's very interesting because OFCCP used to have a closed case indicator where we would -- basically we would reward performance based on closed cases. And there was a concern that it incentivized closing cases that were even strong. The problem was we removed that indicator and then our age cases greatly expanded. And when I came into the Agency I was very concerned about that. I do not like age cases.

I feel that for a number of reasons, I won't belabor it, but if you are finding discrimination, you need to fix it quickly, particularly with the turnover that exists and also that means people are living in a discriminatory framework and a lot of times companies won't fix it until you reach the final settlement. So I feel like it's very important to move cases forward.

So we're looking at adopting sort of a combined index matrix that we're working on that does still give some reward for going through a case and
closing it where you find a company that's doing the right thing, but that also rewards more the bigger cases. Because we remain committed to the large, systemic compensation cases. That's still going to be what -- we're still looking for those big cases. In fact, we're trying to do it better by focusing on likely violators. So that's in a general sense what we're trying to do.

CHAIR LHAMON: Thank you.

MR. GREENE: In the time I've been at HUD I think we've really over the many years have often had sort of a tug-of-war over the issues of volume and getting cases done on a timely basis and achieving the optimal outcomes for individuals in those cases. They are not mutually exclusive and certainly when the Fair Housing Act was passed and Congress charged us with completing cases within 100 days, the expectation was that we would get justice for people within 100 days. So I've seen many different ways of managing these metrics over the years. I actually think that currently we've probably managed to balance them best in recent years, in part by shifting how we allocate our resources. We've actually had a team effort working on our age case inventory which for the last several years has brought down that inventory and
has allowed other investigators to focus on the newer cases and ensure that those cases don't age.

We have had a number of performance measures that were focused on outcomes in tracking relief. There's only so much you can do in that area, but there, you're typically using historical data to determine what may be expected of a given region or individual investigators. But it's a balance and I think the key to all it ultimately is also having staff resources to go in and do quality assurance. That remains challenging.

And then beyond what we do at HUD, as I said in my opening statement, 77 percent of our cases are also being handled by state and local agencies and so another really important part of our mission is to do the mission oversight there because now, if you're facing discrimination, housing discrimination in the country, you're more likely to be dealing with one of about 89 different agencies. So we're trying to establish consistency in operations across them and devote staff resources to that currently. We have 24 people doing that for all of those agencies and several thousand cases.

CHAIR LHAMON: I imagine that's no easy task.
MS. MIASKOFF: I just wanted to add, just to pick up on what you've been saying. We've also seen a real uptick at the state and local agencies, very significant. And we actually have one professional full time in every office now devoted to managing that relationship and looking over those cases and doing spot checks and sufficiency reviews, etcetera.

In terms of the perennial challenge, I think, of balancing case load, you know, of reducing the backlog versus quality, I think that's sort of the hallmark of this type of work. One other thing that we have started doing is through an online portal for charging parties. We are making an effort to set up sort of gateways that people can sort of self-screen so people do a questionnaire that's not a charge, but that explores what is the basis of the unfairness that they've experienced. And they can basically see there, if they're going to state a claim under one of the EEO laws or not.

And then what we do after that is people go into an interview with one of our intake people and the results of that process has actually been a decline in the charges filed, but because of that we have more time to focus on ones that really state claims and we're seeing an increase in our rate of
merits resolutions. So we're trying to get more time
to focus on the serious cases.

MR. GREENE: If I could say that's
something that we're also looking to do, so Carol and
I will be talking more about that.

CHAIR LHAMON: That's going to go to my
next question, but I saw Secretary Duncan.

MR. DUNCAN: Three quick points. As I said
earlier, fundamentally, the Department of Education is
a civil rights office and that every policy decision
we made had to be viewed through that lens. So as you
know well, we had a team of about 5,000, but we had an
executive team of seven that helped to manage the
Department on a day-to-day and helped me make
decisions on our most difficult policy questions.

And the Office of Civil Rights, whether it
was predecessor, Russlynn Ali, or you were at that
table and we didn't want the civil rights piece to be
an afterthought or to be shoehorned in or tried to
shoehorn at the back end or papered over, but it had
to be part and parcel literally every single policy
decision we made and that advice and leadership and
counsel and push was extraordinarily helpful.

Secondly, the issue of volume versus time,
whatever, just to add one other issue that we haven't
talked about is during our time, we saw our complaints more than double, go from about 5,000 a year to 10,000. And my personal belief it wasn't that there was that much more nefarious things, more nefarious things happening across the country. I think there was a sense that our Office of Civil Rights was open for business. And that increased work load was an extraordinary strain on you and your team and we felt that in D.C., and we felt that in our regional offices across the country. We fought hard to increase the number of attorneys were trying to handle those cases in a thoughtful and fair and efficient manner.

To see the current administration actually get rid of civil rights attorneys, I think speaks -- it tells you everything you need to know about their values. And I would say budgets tell you values, not words, and when you cut staff, you're walking back those commitments by definition.

Secondly, you do have to set some priorities because the volume, again, for better or worse is large. One concrete example was our sexual harassment task force which was an administration-wide commitment. So yes, the Department of Education at the table, but DOJ, the President, the Vice President all working extraordinarily hard together, given the fact
that decade after decade, survey after survey, 20 percent of women on campus report that they're sexually harassed. That's a staggering number that again, it's easier not to talk about that, sweep it under the rug, but that reality was one that we tried to take on in a very important way.

And the final thing I'll say is that for education so many of our passions for it is our hope that the dream of public education is it can be the great equalizer, that regardless of race or socio-economic status, or ZIP Code, that if you work hard, you have a chance to do something really special in life. That's the dream of public education. And that happens often. But there are too many times when the lack of opportunity actually exacerbates the divide between the haves and the have nots and you see the children of the wealthy, the children of the privilege getting a better, having access to better teachers and better technology and better after-school programming, and so the divide in our country grows because of our unequal commitment to high quality public education.

I've been thinking a lot about it, and if you're a medical doctor, you have to take a Hippocratic Oath to do no harm. I've been wondering what's the educational equivalent to that, to do no
CHAIR LHAMON: Thank you. Several of you have spoken to the value of working across agencies and working with each other including on this panel now, and so I appreciate that.

Could you speak to what it is to work across agencies to try to achieve civil rights promises and the value or the utility of the coordinating authority from the Department of Justice in doing that work as you are today leading the work and as you've lead it.

MR. LEEN: I have something to say about that. A lot of our focus has been on working with the Women's Bureau at Labor, ODEP, the Office of Disability Employment Policy, and VETS for these focused reviews.

I'm part of the administration and what we are doing is really good stuff. I want to be clear about that. We are committed to civil rights. My agency, we are meeting with each of these other agencies and putting together a list of best practices, as well as legally-required policies that you need to have in every one of the ten areas we protect. I mentioned them before.

I met with the ACLU and I met with a lot
of groups that come in and I say here, let me know the policies that we should have. Let me talk to you about the issue of the Women's Bureau. We're working with them on parental leave. I took parental leave when I was an attorney and I've always fought, and I also had to take a flex schedule at one point because of my daughter's condition. And I pushed for that. And you know, a lot of times, I see discrimination against both men and women in this area. For women, one of the concerns that we have at some of the -- you know, at law firms and financial firms and I used to work at law firms, sometimes there's a special track for women who want to take a non-partner track. We're very concerned about that. Because you should be able --

CHAIR LHAMON: I do want to stay focused on cross agency --

MR. LEEN: Also, we worked with the Women's Bureau and we said put together a model policy for us and so we're going to be doing that with VETS. We said put together -- one thing we're concerned about is USERRA violations and also discrimination against veterans. So we asked them to put together a list of model policies that we could ask employers to adopt and then also with ODEP, we're trying to have five to ten policies that would be helpful for individuals
with disabilities. And I would like to do that across
the Government. So we're very committed to inter-
agency work and we're proud of what we're doing.

MR. GREENE: Well, most of our coordination
is directly with the Department of Justice, in part,
because the Department of Justice shares civil rights
enforcement authority under the Fair Housing Act. We
handle individual complaints. They have pattern and
practice authority.

Also, when we charge cases, parties have
an option to go before the HUD Administrative Law
Judge, or elect to go into Federal Court when the
Department of Justice handles those cases. So we have
a long-standing, very close working relationship with
the Department of Justice. We meet in person every
month, but we also are speaking all the time with them
on matters.

We also work with other agencies,
Department of Treasury and IRS on tax credit issues,
not as regularly as we do with the Department of
Justice. And then we've been working on the White
House Initiative on Asian-American and Pacific
Islanders, which has created some opportunities for
coordination with other agencies on how they're
pursuing those issues.
Where I think we all can do more and where I want to do more is in some of these areas like performance metrics and also looking at how different agencies manage resources, what information technology, several of us are doing investigations. So there's probably a lot to learn. I think we're quite busy with the day-to-day work that that kind of coordination doesn't happen as frequently as it should, but hearing some of the things other folks are doing, I'm inclined to do more of that.

CHAIR LHAMON: Thank you.

MS. MIASKOFF: I'd say EEOC has a habit of coordination and what I mean by that is obviously in our day-to-day enforcement we overlap with OFCCP. We overlap with Department of Justice. So that is an on-going collaboration.

We also, through our Office of Federal Operations, we actually oversee the whole federal EEO process and that office is always working with other agencies that way.

Finally, in my office, the Office of Legal Counsel, we have a Coordination Division. We have a group of attorneys whose full-time job is to work with other agencies and to see what's going on at the Federal Government and other work place regulations,
laws, policy, that impact the way things are done in
the work place in a way that could clash sometimes
with the civil rights laws.

And so we have a devoted group who then
reaches out to other agencies and collaborates with
them and says hey, you know, we understand the purpose
here. How can we work this together so that obviously
you meet your mandate, but do so in a way that's
supportive of civil rights.

MR. RODRIGUEZ: Am I on or no, I'm not. I
could talk about this topic all day.

In my view, the mission of the Offices for
Civil Rights has always been a very fragile and
vulnerable mission. It is only part of what the
Offices of Civil Rights do is the enforcement aspect.
You know, one case, one investigation, one resolution.
In fact, we play at the table role that Secretary
Duncan, I think, described so eloquently. We play the
guidance type role that Director Leen was describing.
We had an educational role that we play.

All of those missions are infinitely more
powerful if they are done in coordination. First of
all, the legal authorities are common. They're
interlocked one from the other. But precisely because
a lot of times the first impulse will say the thing
you're asking us to do is too hard. It is too inconvenient. It costs too much. The idea of having a coordinated and unified front led by the Department of Justice is a very, very powerful arrangement for the civil rights community in the Federal Government.

I just want to point to one area of coordination that we pursued which was common training among the Offices for Civil Rights. So we established Civil Rights Investigator Academy. A number of the smaller offices joined in with us. We sent our investigators to the National Advocacy Center at the Department of Justice. And among the things that that provided was a professional community among the civil rights investigators and so I think that's another pretty important element of coordination.

CHAIR LHAMON: Commissioner Narasaki, you had another question?

COMMISSIONER NARASAKI: Thank you. I think it's been not surprising we have people who will be testifying later from the LGBTQ community who are very concerned about changes in policies. So I wanted to ask a couple questions around that, one for HUD.

It's been noted that some of the guidelines and resources used to be available on HUD's website, for example, around LGBTQ resources have been
Can you talk about what HUD will be continuing to do? Does that signal a change in policies around protecting LGBTQ?

MR. GREENE: So the HUD programs are all individually responsible for addressing those issues. So for example, our Office of Public Housing or our homelessness programs, they're the ones who directly implement our rule with respect to LGBTQ issues. So our Office of Fair Housing we provide support, but it's not in the Fair Housing Office. So they all carry that through.

Those issues do arise in the Fair Housing Act context as well and we accept complaints with those allegations and we evaluate them on a case-by-case basis to make the evaluations, whether they violate the Fair Housing Act's prohibitions of sex discrimination.

COMMISSIONER NARASAKI: And will the guidance be updated and reloaded or is there just a different policy about putting guidance on your website?

MR. GREENE: I personally can't speak to it because my office doesn't implement the guidance. But I can assure you that we'll get you a response to
that.

COMMISSIONER NARASAKI: Great. Also, there's some numbers that we're interested in if you could just follow up later. You've talked about the ability to try to more timely close cases. It would be helpful to know how many cases were closed with findings of violations, settlements, and how does that compare with 2016. It goes to what's actually happening with those cases. That was being talked about.

So along the LGBTQ, I have one more question which is for OFCCP.

So OFCCP, you have a new -- apparently guidance around a religious exemption that we're trying to understand because I think it spoke to the fact that it was done because there were court cases, but there actually have not been any court cases that have -- pointing to Hobby Lobby which was not about actually employment.

So the LGBTQ community is concerned about whether this going to become a license to discriminate based on that kind of status, so I'm wondering how you're looking at that and how you're going to pursue that.

MR. LEEN: I want to be clear. It's not a
license to discriminate and I've been raising it in all my speeches to contractors that they need to continue enforcing the -- internally, and then we will enforce the anti-discrimination provisions related to gender identity and sexual orientation which are in our regulations and we remain committed to.

I will -- we thought, and I signed this directive, and I felt that it was necessary because of recent Supreme Court precedent. I understand that they weren't directly on employment issues, but I do think they spoke to larger principles about RFRA and there's very little case law, by the way, on OFCCP, so we often have to look to other case law to determine what is appropriate.

I felt that the guidance that was in our FAQs related to the religious exemption was too narrow and there was an Attorney General's memorandum which said that and my understanding of this area of law and I am a lawyer, although I'm not acting as a lawyer, I'm acting as a director, but it's very important to me that we follow the law in this area. And the way I view it was that I believe the exemption had been interpreted so narrowly that basically it would say that a company can favor in employment those of the same religion, nominal religion, and it didn't look at...
beliefs and conduct. It looked at whether you were of the same religion.

My understanding, and I understand it's subject to debate, but based on the guidance I received including from our Solicitor's Office, was that it is broader than that. And I needed to make sure that our guidance was correct. In addition to that, religious freedom is in the First Amendment. It is a basic right in this country, and it is something that also has to be considered. And one thing I did meet with the ACLU on this issue. They came and met with me. And I told them -- you know we issued an FAQ very soon after the regulation that says that we remain committed to all ten of our protections and that this is not a license to discriminate on those grounds. But it is equally as important that compliance officers know that if they do get a request -- we don't have a lot of religious organizations that are Government contractors, but we have some. And we would like to have more, because we want all companies to feel like they can participate in procurement and they will not be discriminated against.

But I told them, you know, if you get a religious exemption request, this is basically what the Directive says, they have to be treated with
respect. It will be provided to the National Office. We will share it with our regional and national solicitors and the position that we've taken is if the law requires that we grant the exemption, we will. And if it doesn't, we won't. There's no policy aspect to that.

I understand that the law in this area is not entirely clear. It's still developing and there's different ways you look at the law and I understand that. But that's the general approach and I stand by that.

CHAIR LHAMON: Commissioner Kirsanow has a question?

COMMISSIONER NARASAKI: Thank you.

MR. LEEN: You're welcome.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes, thank you, Madam Chair. I just had two quick comments given the length of this hearing.

First, just wanted to express my amazement that Commissioner Kladney's spends time reading the Congressional Record, especially going back to 2005. I want to commend him for that.

COMMISSIONER KIRSANOW: I appreciate that.

COMMISSIONER KIRSANOW: Well, due
diligence, wow.

In addition to that, I want to thank the witnesses for coming. As several have said we've had some difficulties in getting witnesses to come, so I appreciate these witnesses coming. It's not unusual.

In the past, we've had in other investigations and one of those in particular, we had an administration that failed to answer 18 separate interrogatories, provide witness statements for 12 key witnesses, refused to respond to 22 requests for production of documents, failed to provide requested emails, refused to provide certain attorneys from testifying, failed to provide draft pleadings and invoked specious privileges, refused to provide privileged logs, so this is an ongoing problem. And thanks to those who have responded.

Thank you, Madam Chair.

CHAIR LHAMON: Thank you. Vice Chair, you'll be our last question. We're overtime now.

VICE CHAIR TIMMONS-GOODSON: Oh, alright now. I'll move very quickly. As you've been told what we're trying to do is to examine what should be done or what can be done differently so as to enhance civil rights in this country.

Secretary Duncan, I was intrigued by your
statement to the effect that during your time at the Department of Education that you sought to bring a civil rights lens to all policy decisions and that just seemed like such a no brainer. I just figured that's the way everybody was doing it, but apparently not.

And so my question was what kind of -- as we've discussed budgets and short falls and all that, what kind of cost would -- financial cost would you put on that effort and whether that might be something that can be done or should be done that is not going to run us a whole lot of money.

MR. DUNCAN: Well, to be clear that effort of just trying to make sure the Office of Civil Rights and leadership was in every policy conversation. That costs zero dollars. That's free. That's just making a commitment.

There's a larger issue of when you have a volume of complaints, do we have enough staff to resolve those and that's a budgetary and we asked every year for increased resources to do that. Again, it's extraordinarily disheartening to me to see this current administration cutting those resources, dismantling that, walking away from that. But to have thoughtful, smart policy makers at the table whose
life work is to protect civil rights and to enhance them, there's no dollar figure for that. It's free.

VICE CHAIR TIMMONS-GOODSON: Thank you.

CHAIR LHAMON: With that, I thank each of our panelists. I will saw that it's very likely that our Commission staff will have follow up questions for you and I hope that you will commit to answering them and sharing information.

I echo Commissioner Kirsanow's thanks to those of you who are current officials for coming and for those of you who have been relieved of your current obligation to come for coming also. So thank you very much and we look forward to being able to continue conversation.

We'll take a break now just until 10:50 so that we can stay on track for the rest of the day and we'll convene our next panel then.

(Whereupon, the above-entitled matter went off the record at 10:44 a.m. and resumed at 10:51 a.m.)

CHAIR LHAMON: Okay, we'll come back to order now, as it is now 10:51. We're a little bit tardy.
CHAIR LHAMON: We're going to proceed with our second panel of current and former federal agency officials. In the order in which they will speak, our panelists are Lilian Dorka, now Director of the External Civil Rights Compliance Office at the U.S. Environmental Protection Agency and who was my colleague at the Office for Civil Rights at the Department of Education; then Harvey Johnson, Deputy Assistant Secretary of Resolution Management at the U.S. Department of Veterans Affairs; Winona Lake-Scott, Acting Deputy Assistant Secretary for Civil Rights at the U.S. Department of Agriculture; Veronica Venture, Deputy Officer for Civil Rights and Civil Liberties at the U.S. Department of Homeland Security; and Robert Driscoll, Former Deputy Assistant Attorney General at the Civil Rights Division at the U.S. Department of Justice and current member at McGlinchey Stafford.

Ms. Dorka, please begin.

MS. DORKA: Good morning, Commissioners and fellow panelists. My name is Lilian Dorka and I am the Director of EPA's External Civil Rights Compliance Office and I thank you for the privilege of appearing before you today to tell our story and to tell you how far we've come so that we can ensure that we can
effectively accomplish the mission of EPA, the
protection of human health and the environment, to
make sure that that is available for all persons in
the United States, regardless of race, color, national
origin, disability, sex, or age.

During the last three years we've made
significant strides in achieving our external civil
rights mission. We've managed a docket that, by all
intents and purposes, was pretty much over-aged, going
from a total caseload of over 60 cases in 2016 to 25
as of today. Also, we continue to think creatively
about how to proactively engage with our EPA
recipients to ensure that they understand their legal
responsibilities and empower them with the tools they
need to strengthen the effectiveness of their own
nondiscrimination programs and, in addition, we
continue to work on engaging effectively with
communities so that they also understand their rights
and how our office can address their concerns.

Finally, over the last three years we have
dedicated very specific and focused resources to make
sure that we strengthen our own staff within our Civil
Rights Office to make sure they have the knowledge,
skills, and abilities they need in order to accomplish
their challenging mission -- our challenging mission.
Like many other federal Civil Rights Offices, my colleagues, our job is to advance the mission of our agency through the enforcement of civil rights and, in our case, to protect the human health and the environment for all persons in the United States and we do this, primarily, through complaint investigations but also through proactive reviews and technical assistance, community engagement, and policy formulation.

To meet our mission, we identified three key strategic priorities: the enhancement of our strategic docket management, the development of a proactive compliance program, and the strengthening of our office's workforce to promote a high-performing organization.

Improving the strategic docket management of our office is critical. That accountability measure was critical because we had carried such a large over-aged case docket. So while continuing to receive new complaints, we absolutely had to address this. We issued a Case Resolution Manual, the first of its kind for external civil rights at EPA, within the last three years. We also issued a strategic plan for external civil rights at EPA, which had not been done in many years. And we issued a compliance toolkit that
explains the relevant civil rights legal standards and how they apply in the environmental context. These documents together help EPA recipients, as well as EPA staff and the public at large, understand how ECRCO undertakes its civil rights mission, including how it processes and investigates civil rights complaints.

Most importantly, we focused our resources on reducing our complaint dockets of unresolved and over-aged cases, both for those that were pending that still had to undergo jurisdictional review to determine whether we could accept them for investigation and also for those that we had accepted for investigation and were under investigation.

At the beginning of FY2016, 47 complaints were pending jurisdictional reviews, many of them were over-aged -- most of them. We issued nine jurisdictional decisions that year. In 2018, by contrast, we began the year with 29 cases with overdue jurisdictional decisions and presently we only have four.

Proactive compliance programs are also extremely important in terms of achieving our mission. They help to complement and to reinforce even the same basic principles and investigative procedures that we carry out in our pending investigations. We are very
cognizant of the fact that we had a big over-aged caseload and we take that very seriously. We put in place the tools that we needed to effectively resolve them.

At one point, actually at the beginning of FY2017, we had 61 pending cases and during that year alone we received an addition 24. Currently, we have a total of 25 pending cases.

We used and have honed our ability to use the tools for informal resolution, how to craft an informal resolution agreement, for example, but also we are prepared to investigate fully and issue letters of finding, if need be.

We have also, rather than initiate new cases through compliance reviews, given the number of cases we had pending, done some very, very interesting proactive endeavors. We looked at all of the cases that we had under investigation and the new cases that we were receiving and we instituted within those cases, we included a review -- even though it wasn't raised in the complaint -- a review of that recipient's foundational nondiscrimination program to ensure they had in place the grievance procedures, the coordinator, all of the notices, et cetera, and, in addition, that they were ensuring access for persons
with limited English proficiency, persons with disabilities. We felt very strongly that without those foundational programs in place we really couldn't go much further. We had to address these issues in those cases. So essentially, we opened many compliance reviews through the investigation and resolution of all of our pending complaints.

In addition, we launched a Cooperative Federalism Initiative and have scheduled our first meeting with all of the states in our Region I Office. We're going to go region by region to train states in a non-adversarial way to provide them proactive technical assistance and make sure they understand the importance and the relevance of having these nondiscrimination programs. And we feel very strongly about that, too, and we believe that this Cooperative Federalism Initiative that we've instituted will actually prove very beneficial as those states go forward to better address their own nondiscrimination needs.

CHAIR LHAMON: Thanks very much.

MS. DORKA: Thank you.

CHAIR LHAMON: Mr. Johnson.

MR. JOHNSON: Good morning Madam Chair, members of the Commission, distinguished guest, and
colleagues. Thank you for this opportunity to appear
before the Commission and tell the story on behalf of
the Veterans Affairs.

The Department is very proud of its
mission to serve America's veterans, their families,
and their survivors with both dignity and compassion.
VA employees and representatives are the veterans'
principle advocate for ensuring that they receive
medical care, benefits, social support, and lasting
memorials.

Now Madam Chair, before I go further, I
was prepared to read my opening statement but, based
on your opening remarks, I am going to go off script
and just tell you what's on my mind and what we are
doing in the Department of Veterans Affairs --

CHAIR LHAMON: Thanks.

MR. JOHNSON: -- with regards to this.

By background, the VA has three primary
administrations: Veterans Health, Veterans Benefits,
and the National Cemetery Administration. They serve
as force multipliers for our mission because they,
too, have practitioners in the field in the area of
EEO, harassment prevention, disability, awareness, et

cetera.

So I believe the data tells the narrative.
And when you look at the data, where I have seen exponential growth is in the area of disability reasonable accommodation. So that is one area of critical focus for my office in the new year.

The other thing I would like to look at is all of our programs. When I look at the product lines for the Office of Resolution Management and also Diversity and Inclusion, which both fall under me, we've got a number of product lines. It's making sure that all of our handbooks, all of our policies, and that we have toolkits -- and I call them toolkits -- and that's so that the force multipliers in the field have the regulations, the equipment, the tools they need to help us enforce compliance all across the enterprise. We do have facilities -- as most people know we have more 350,000 employees and we have facilities across the enterprise. And we want to make sure that anybody that comes to our facilities is treated with civility.

One of the areas that I'm looking at closely is intersectionality. This is a term that I started discussing with millennials because they first brought it to my attention. And one of them said, and this is something that just sticks with me, don't put us in a class. And she happened to be a minority
female. And she said, instead, understand my journey. Understand my mindset because it may be different from other minority classes. Her particular journey was unique to her.

So as we start to go forward, one area for me is diversity of thinking. It's great that we do training, and I'll talk about that, but we have training going on constantly, especially civil treatment of others training. But the other we have to do is diversity of thinking so that when you leave that training, it is constantly present and aware in those facilities that we have diversity of thinking.

The other thing that I look at is harassing behavior. We heard from a member of the EEOC on the earlier panel. Well I, too, was very struck and impressed by the Commission's Task Force on Harassment. We adopted the It's On Us Campaign and we are you know we have taken that on fully to include the civil treatment of others training.

The other thing I look at is unconscious bias because I think, to a degree, we all have it. You know it's the affinity, the like me bias. I would like to treat people from Philadelphia, my hometown, a certain way because we have an affinity or a connection. I don't mean to discriminate from anybody.
that's not from there, however, I have to recognize that certain affinity biases are present and sometimes, again, it's unconscious, sometimes conscious. So we make sure that we train actively on conscious and unconscious bias.

Understanding civil behavior -- I think if you look at harassment and you start to ask yourself who is a harasser -- that's important -- who is somebody who is acting less than civil and getting in that mindset because it doesn't happen the moment they come to a VA facility. Sometimes this training happens throughout their young childhood years, throughout their college years, throughout their professional environment. Then they come into the environment and then we get to train them and we have to correct that behavior when they come to our facilities.

Last year, we had 87 external complaints. These are folks that are not VA employees that came to our facilities and had a civil rights violation or infraction. My goal is to deal with those swiftly.

I was told a story by one of my harassment professionals who has a kindergartener who was being harassed. And then I said, what did you do about it? And she said, I went and met with the principal. I said, was that a quick meeting? She said, yes; as soon
as I alerted the principal I got in to meet with him.

    I said, then what happened? And she said
we had a discussion with the alleged harasser, and
their parents, and the principal and, at the end, it
stopped. And I said, tell me what you enjoyed about --
tell me what you liked most about that experience. And
she said, first of all, we got in quickly. Second of
all, they listened and it stopped and there is
mechanisms in place, should it start again.

    So I can learn a lot from that experience.
We all can learn a lot from that experience; so for
me, timely and resolute investigations, timeliness of
our process, and also just ensuring the compliance.

    And that's what this is really about
today, it is compliance and follow-up that it's
actually happening in our facilities. We did not have
a finding of discrimination of those 87 that I talked
about within our facility. These are external
complaints.

    Thank you. Thank you for listening to me.

CHAIR LHAMON: Thank you. Ms. Scott.

MS. LAKE SCOTT: Thank you, Chairwoman
Lhamon and Commissioners for the opportunity to share
with you a few insights into civil rights enforcement
activities at the United States Department of
Agriculture, hereinafter, USDA.

I'm here today representing the Office of the Assistant Secretary for Civil Rights, where I currently serve as Acting Deputy Assistant Secretary. My office has 116 employees and, together, we provide departmental-level leadership, coordination, and direction for USDA's Equal Employment Opportunity and Civil Rights programs, including matters related to enforcement and compliance in program delivery. My remarks today focus on activities related to departmental-level oversight of civil rights compliance in USDA's federally assisted and conducted programs.

USDA is committed to enforcing laws, executive orders, and regulations that safeguard the civil rights of our employees and customers. Those of you who may have read Secretary Sonny Perdue's Civil Rights Policy on USDA.gov may notice the Secretary integrated his motto in USDA's Civil Rights Policy, that of do right and feed everyone, which is not intended just to be a hollow creed. This pledge is at the heart of our work, which includes our commitment to protecting the civil rights of all USDA employees and customers.

Doing right means treating all people
equally, regardless of race, religion, gender, national origin, or any other protected status. We are all part of the same human family, imbued with dignity and worthy of respect. Every USDA employee is expected to foster a workplace free from discrimination, harassment, and retaliation so everyone can reach his or her potential.

Our workplace will be a model for proper enforcement of civil rights protections, not only because it's the law but because it's the right thing to do.

Now feeding everyone means it doesn't matter what you look like or where you come from, USDA programs are for you. Hunger has no color, has no creed. Whether we are responding to disasters with food aid, cultivating sustainable agriculture programs overseas, or improving school meals here at home, at USDA we know food has the power to unite.

In addition to continuing to enforce compliance with all existing civil rights laws, regulations, and executive orders, Secretary Purdue directed the strengthening of civil rights management functions at USDA. Under Secretary Purdue's leadership, the Department has taken several significant steps to promote accountability by
reducing bureaucratic barriers to civil rights. These efforts have resulted in more efficient operations and additional efforts are underway to strengthen civil rights management functions across the Department.

The Secretary's eight priorities to ensure integrity, consistency, and fairness are: 1) elevating the reporting structure of civil rights functions to the mission area level; 2) strengthening the role of my office in providing supervision to the mission area civil rights functions; 3) implementing a timely, fair, transparent, and consistent approach to addressing all complaints; 4) directing effective robust and compliant mandatory civil rights training; 5) monitoring and evaluating the implementation of reasonable accommodations throughout the Department; 6) collaborating with our Office of Human Resources on appropriate issues that affect civil rights; 7) is determining optimum staffing levels to implement civil rights functions Department-wide; and 8) empowering the mission areas and the staff offices to implement civil rights mandates.

Currently, my office is in the process of collaborating with the mission areas and the staff offices to incorporate meaningful strategies and measures into a civil rights strategic plan in support
of the Secretary's eight priorities.

With regard to enforcement activities, my office has 36 employees ensuring compliance with civil rights statutes, executive orders, and regulations through our core enforcement functions, such as complaint processing, civil rights impact analyses, compliance reviews, and training. And I will briefly address each of those.

Let me start by describing how we process program complaints. If a USDA customer believes he or she has experienced discrimination when obtaining services from USDA or participating in a USDA program or a program that receives financial assistance from our Department, they may file a complaint with our Department. Between fiscal years 2016 and 2018, the number of civil rights complaints filed by USDA customers decreased from 364 to 271. During this time frame, we saw consistency in the top five bases cited in these complaints. Disability was cited in 32 percent of the claims; race, 25 percent; age, 20 percent; color, 12 percent; and sex, 11 percent of the claims.

During this same period, my office decreased the number of days to process program complaints from 450 to 292, which represents an
increase in timeliness of 65 percent. Consistent with best practices for complaint processing in the federal government, our process has three stages. The first is the intake stage. The second stage is the investigation. And the third is the adjudication stage.

If after the complaint is accepted, we inform the customer in the agency identified that the issues will be investigated, then it then goes to the agency to prepare a written statement.

As you know complaint processing activities are a reactive function and I would like to briefly describe some of our proactive measures. We do a civil rights impact analyses on regulations that are put out by the Department. During fiscal year 2017, we received over 56 civil rights impact analyses and worked collaboratively with our agencies to ensure they did not adversely impact protected groups.

We conduct compliance reviews, also, to evaluate civil rights policies, procedures, and practices within USDA. In FY17, we evaluated 19 compliance reviews conducted by the agencies, issued four orders of relief, and four settlement and conciliation agreements. We also conduct training in compliance for our civil rights staff.

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In addition, our office --

CHAIR LHAMON: Ms. Scott, I need to stop you there but thank you very much.

MS. LAKE SCOTT: Okay, thank you.

CHAIR LHAMON: Ms. Venture.

MS. VENTURE: Good morning, Madam Chair, Commissioners, and colleagues. My name is Veronica Venture and I am the Deputy Officer for Civil Rights and Civil Liberties at the Department of Homeland Security. So for expediency, we will say CRCL.

So one of the things that is -- or you may or may not know how unique the DHS' Civil Rights Office is. Partly, we were established by the Homeland Security Act as a separate entity. So that is a little different than my colleagues' offices. So our mission is four-fold. Firstly, we provide guidance to the Secretary in terms of policies or practices that may affect civil rights and civil liberties. The second piece of that, we engage with the public. So we have a Community Engagement Section that their job is to go on the road and tell most of the communities that are underserved but we are starting to branch out to any community in terms of what the policies are that are at DHS and how they affect the public in terms -- and what the effect is on the public. So we serve as
liaison for DHS to the public, as well as the public back to DHS.

The third piece of that, in terms of the public, we investigate complaints brought by the public into the programs and policies that may affect them at DHS. And the fourth is more traditional, which is the EEO and diversity programs.

So that's just setting the stage for our office. So some of what we do is similar to other EEO and civil rights offices in that we have the equal employment opportunity and diversity functions. So we address EEO complaints. We do the anti-harassment, which is, of course, the hot topic of the day. We have that particular program under my office as well. We do the federal final AC decisions for all of DHS. So that is a centralized function in my office.

So we handle complaints of discrimination and also do the adjudication of that as well. So for instance last year we, in terms of my office, the Complaints Management Adjudication Section, we got about 12,307 complaints into the system -- I'm sorry -- 1,200, not 12,000 -- 1,237 complaints and we closed 1,247 complaints for the year.

So we are also unique in that we do, besides doing the workforce, contractors to ensure
compliance with the EEO and other laws, we do talk
about what we do externally I think is the bigger
issue for us at the moment. We definitely have some
work in terms of our Immigration Section, our FEMA
emergency benefits and disaster, and things like that.

So we have two different -- two other
programs. We have our Programs Branch and we have our
Compliance Branch. In our compliance work, we accept
and investigate complaints from the public, from
Congress, from detainees, from non-governmental
organizations, other avenues such as the issues that
you see in the press. Our investigations are internal
to the component and we look at addressing complaints
on a broader level. So we are not looking for
individual redress in these complaints but mostly
policy-making and practice-making.

So our work is typically not remedial, so
with the only exception of Section 504 of the Rehab
Act. So we actually seek redress for individuals in
the 504 complaints but, otherwise, we are looking
again for broader policy changes and practice changes
around the components.

So of course in CRCL we processed 4,201
pieces of incoming correspondence from the public.
That means we opened 743 complaints from the public
and closed 749 complaints during the investigative process in our external complaints process. Usually, we give the Department of -- DHS's OIG the right of first refusal for any complaints that would come in. So then they turn them back to us for investigation. Sometimes they keep them. For instance, there was a letter from Congress that had asked us to look into what loosely termed the travel ban back in January of 2017. The Office of the Inspector General gave us a piece of that complaint. So they did the initial investigation and then we did the piece that was relevant to civil rights and civil liberties.

So our programs work, which is a little different, is more the policy piece of our office. We deal with compliance with Title VI of the Civil Rights Act, disaster preparedness, recovery, particularly modes of addressing policy areas, community engagement, our training, and state and local Homeland Security partners and that's where we do a lot of the external work as well.

So our Community Engagement Program is we are in 18 cities around the country. So quarterly or somewhat, sometimes three or four times a year, our folks travel on the road to engage with communities about issues that are affecting them in terms of DHS.
So we hear -- we engage with our federal partners. So usually, the U.S. Attorney is there, state and local law enforcement, DHS, other entities as well, to explore information, to build a trust of the communities, and to explore community-based solutions to Homeland Security issues. So we promote respect for the rule of law in terms of civil rights and civil liberties.

We also issue a report to Congress, which is on our website are available to the public, detailing what our priorities and activities were for each fiscal year. So our annual report provides us a vehicle to update the public on the results of our closed compliance investigations and accepted recommendations.

So I know two of the questions that were posed were talking priorities and pressing issues. So we are in line with the Secretary's priorities. But some of the things that we are focusing on this year, we do classified and unclassified intelligence projects, so projects we work with the intelligence community on those. We are using the use of social media and biometric data in intelligence, vetting, and law enforcement, one of the big areas of concern for us, and investigations, of course, into family
separation and family reunification. So we have a large complaint going on about that right now.

We deal with family detention and IS detention of other vulnerable populations, treatment of unaccompanied children and CBP custody, and the processing of asylum seekers by CBP.

We talk about the appropriate standards for search, transportation, and detention of detainees, general detention standards, for example prevention of sexual assault and abuse under the PREA, the Prison Rape Elimination Act. That is part of our area as well.

We ensure language access in Department activities, specifically, development of a DHS language access plan. We deal with access to programs and activities for individuals with disabilities encountered and served by DHS components, particularly during FEMA emergencies, to ensure that individuals with disabilities in the public are getting the same access to the services that FEMA provides in an emergency situation.

I have a lot more but I am sure we'll save that for questions.

CHAIR LHAMON: Thanks very much.

Mr. Driscoll.
MR. DRISCOLL: Thank you. Thanks to the Chair and the Commissioners for the invitation today to discuss the topic Are Rights a Reality? Evaluating Federal Civil Rights Enforcement.

I'm Bob Driscoll. I'm a partner in private practice here in Washington, formerly of the Civil Rights Division of the Department of Justice years ago. I am probably unique among the panel in that I do not have to vet my opinion with anybody, other than possibly my wife and children who frequently, whenever I make such appearances like this, ask me, quote, did you embarrass the family, which tells you something about their views sometimes don't exactly jive with mine.

So I wanted to talk about this topic a little broadly and then I would be happy to -- you know hopefully, we will have a robust discussion.

I think a lot of Americans and the popular media fail to be precise when they are discussing federal civil rights enforcement. The term civil rights, in kind of the broader political context, can be used as a shorthand for race relations, kind of progressive politics, immigrants' rights. And there is some intersection with all of those issues. It's important to remember, and I think the panels today
have done a great job of this, that federal civil rights enforcement is a law enforcement function, not necessarily any kind of partisan catchphrase. And so even though it receives a lot more attention in a lot of ways, federal civil rights enforcement, is no different than tax, environmental, or federal contracting as a body of law. There is a set of statutes. There is a constitution. There are specific texts that govern what enforcers do. It's not a blank slate upon which federal civil rights attorneys are free to pursue their own political preferences or particularize a vision of justice.

Now, that's not to say it's as dry as tax because, to be sure, those of us who have represented the United States in enforcing civil rights take pride in the moral underpinnings of many of the civil rights statutes and any struggle that led to their passage. So I think if you take the long view, and you have to take a long enough view, it truly does appear, in the words of MLK, that the arc of history does bend toward justice. And it's the dedicated federal attorneys, like my fellow panelists who've spent their careers in the trenches enforcing civil rights, can take credit for doing their part to transform the aspirational and philosophical kind of political words of our leaders.
into reality.

    And to take an example, former Senator Tom Harkin, now retired, and Majority Leader Bob Dole, who was actually a law partner of mine for a while, you know they were the primary architects of the ADA in 1990. But it's the Disability Rights Section of Civil Rights, the Offices of Civil Rights of all the various cabinet agencies that are kind of the unheralded masons and laborers that turned that blueprint into a reality. The ADA is nothing but words on a page to a wheelchair-bound citizen until the curb cuts come to her neighborhood, in particular.

    And so it is seemingly routine, something that is as routine as ADA enforcement won't pop up if we Google civil rights and look for the hot issue of the day. That is key civil rights work. It is often anonymous, sometimes tedious but that creates the new reality that helps integrate the differently abled citizens we have into society as the drafters of the statute envisioned.

    Before turning to more controversial topics, because I have the opportunity so why not, or talking about Kate Bakers, or transgender bathrooms, or things that create controversy today, it is important to recognize that some of the most important
work, civil rights work that is done in the country has nothing to do with our political differences but, rather, rule of law that tries to make our intellectual agreements, statutory promises, and constitutional convictions a reality for all of us.

Consider the Fair Housing Act. Again, some people view it as dry. You know this law prohibits sexual harassment by landlords, property managers, and others that have interaction with residents of public housing and other places. Recent stated publicity by the Civil Rights Division has driven a big increase in enforcement and complaints increased significantly, from my understanding. And that kind of success doesn't gain that much traction in the media because for, I think, the good reason that society is generally in agreement that sexual harassment isn't a good thing and that landlords who sexually harass their tenants for rent or other reasons should be punished. And so it doesn't diminish the importance of that work that it's not what is in the headlines today if one Googles civil rights.

Similarly, successes in human trafficking, rights of developmentally disabled people, service persons, veterans rights go unheralded not because the enforcement isn't happening, necessarily, but because
no one disagrees that enforcement should happen, unlike some other more controversial topics. And that's a good thing.

Finally, you know consider white nationalists in Charlottesville, or the anti-Semite recently in Pittsburgh, or abuse of police officers in Springfield, I was just looking at a case that the Division filed the other day, our national consensus that these cases should be brought means that there is little reason for publicity, beyond the initial pressure. I mean in a way, as awful as Charlottesville is, in a way it is something good to see that the reaction is like well of course, those guys will be indicted. I haven't heard anybody argue that those indictments are improper. But again, that means it won't necessarily get media attention.

I know we currently have a Republican President and a Conservative Attorney General, a situation which I am very familiar, having served under President George W. Bush and Attorney General John Ashcroft and thus, there is controversy and disagreement at a policy level among the civil rights community.

As I have alluded to previously, conservatives, including conservative civil rights
lawyers, such as myself, tend to feel bound by statutory and constitutional text. As such, advocacy groups and others that want, in the absence of statutory authority, to advance certain issues -- I'll just pick transgender rights, since it's the one that's on my mind lately, are sometimes disappointed. I'm sure there's a member of this panel or members of the group today who are disappointed with some of the current federal civil rights enforces.

So these disagreements, in my mind, highlight the distinction between civil rights enforcement, the topic of today's panel, and civil rights policy. Federal civil rights enforcers do not write with a free hand.

I recall back in the early 2000s, when I was responding to congressional inquiries as a Deputy Assistant Attorney General about whether the Civil Rights Division would respond to cases of violence against gay students in public schools under interpretation of Title IX that we, as a Department, ended up not advancing because we did not think it was proper legally. And I responded to Congress that the Division would happily bring such cases if Congress would give us the authority to do so but that we currently didn't have it.
And you compare now, there's obviously a conservative President -- or a Republican President and a conservative Attorney General, let me put it that way, and the DOJ is prosecuting hate crimes based on sexual orientation. I looked it up today. They indicted I think six or eight people for sexual orientation-based hate crimes. Why? Passage of the 2009 Matthew Shepard Act explicitly covers such crimes.

So it's fair, I think, for advocates who want to see changes to beat up an administration or challenge an administration to get those changes through. I don't think it's fair to criticize the civil rights enforcers, who are simply enforcing the statutes and the regulations they've been dealt.

And that's it. I'll submit the last two paragraphs for the record.

CHAIR LHAMON: Thanks very much. I will now open the panel for questions from my fellow commissioners.

Well, I will jump in, since they are not jumping in. A challenge that I read in your statements and heard from your testimony this morning is how to do the job that is very broad in its scope in the jurisdiction of your offices with sometimes very small
staffs. Ms. Dorka, you have 11 or 12 people, depending on whether all your positions are filled in your office and an extraordinarily large charge. And I think that's certainly also true for the Department of Agriculture, the VA, and except with respect to Section 504, Ms. Venture, your office doesn't have enforcement responsibility at all. It has advisory responsibility.

MS. VENTURE: So we do in the EEO realm, the same way that the other components or other agencies do.

CHAIR LHAMON: Thank you for the correction. This briefing is focused on external enforcement. So for our purposes, except in that area, you don't.

And so I am curious if you can speak to us about how it is that you manage such a large jurisdictional charge with small staffs and whether you are prioritizing, how it is that you go about ensuring that you satisfy the issues that Congress has assigned to your offices.

Ms. Dorka.

MS. DORKA: I'll go for it.

It is a challenge and it is also a challenge not only to address all of the cases, but to
address them in a timely manner. And for us, it is particularly a challenge because, unlike your former office, my former office, we actually have within our regulations very specific timeframes.

CHAIR LHAMON: Yes.

MS. DORKA: So we must resolve cases within 180 days. We must make jurisdictional decisions within 20 days. And yes, that is challenging, which is why you have to I think address that challenge through a number of ways -- training and development of staff. We cannot afford to have any staff member onboard who doesn't know the regulations through and through, that doesn't understand the Case Resolution Manual and how to take a complaint from Step A through Step Z.

So we've really, really put a big, big focus on that. We did competency assessments for each employee. They assessed themselves. Their supervisors assessed them. We came up with a framework that defines the competencies that each person should have at their grade level and for their position, and we have challenges ourselves to do better. So everyone now has in place an individual development plan that focuses on their areas of strengths and also on the areas of development that need more focus. And they are all very different but that's good. You want a
staff with diverse gifts, and knowledge, and skills. And then, of course, you know you find other creative ways to effectuate your resolutions. It was my feeling we weren't taking enough advantage of the case resolution, the informal resolution of cases through our ADR process, which we fund through our office -- our Agency has an ADR office that we go through. And we have formal mediators and they assist the parties in developing very strong settlement agreements between the parties.

Nor were we taking full advantage of the informal resolution process; how to do that effectively and how to craft informal resolution agreements in a way that they will produce real results for communities, and also to present that to recipients as win-win and how they can show their leadership in bringing communities together.

Our Acting Administrator, Andrew Wheeler, is extremely big on the concept of risk communication. And having been involved with a lot of these cases, I really feel, that sometimes there is just a fundamental lack of communication between recipients and communities. And bringing folks together to really talk about commonalities but also to work out how they can produce better results is critical.
So I think we've come at it from a number of different directions.

CHAIR LHAMON: Thank you.

Ms. Venture.

MS. VENTURE: So again, a little different for DHS. For instance, we got over 4,000 complaints in from or allegations in from the general public. So we have to prioritize how we work it. We do not have the resources to actually investigate 4,000 allegations. So we put everything into our database and we put it into what we call an information lair. So for instance, if we see a recurring theme and we do trend analysis with that information lair.

So a perfect example is family separation. We got over 3,000 complaints of family separation. We weren't going to open 3,000 complaints. So we are looking through the database to see where the pockets of cases. We took a representational sample, for instance, if the person is saying I'm coming with my child, or it's an unaccompanied child, or whatever category it was. So of the 3,000, we took 23 complaints and opened that as the investigation. That is representative of the whole. So that's one way that we actually are using our resources properly.

So when we're doing the investigation,
again, we are making recommendations say to CBP or to
ICE about their practices and their policies. Are we
seeing violations of civil rights and civil liberties
laws or what we're looking at and we make the
recommendations. For instance, in ICE, particularly,
we make our conditions about medical care. We use
subject matter experts that come with us on on-site
visits to ICE detention facilities and look into
conditions of detention generally. Sometimes we have -
right now we have a juvenile expert that comes with
us to deal with unaccompanied children in detention,
for instance.

So we are using the resources as wisely as
we can but, in the sense of we can't do everything, we
just have to be a little bit more representational
about the complaints that we're looking into.

CHAIR LHAMON: Thank you.

Mr. Johnson.

MR. JOHNSON: I would say, overall, the
fiscal health of my office is healthy and I say that
because the external complaints resides under the
Office of Resolution Management. The Office of
Resolution Management has 296 employees. I just hired
a new external complaints manager. We brought him
onboard, I should say, last week and I met with him.
That office, while it is small in itself, is able to leverage when there is a surge in activity from the headquarters office, the Office of Resolution Management.

I have received great support. In an era of budget cuts, my budget has actually not been cut and it has actually grown last year and it is scheduled to grow next year, based on a sound business case that we built using data science to show here is what I need in order to properly execute a civil rights program, whether it be internal or external.

The other thing, again I will say, is that we use a Diversity and Inclusion Council and in that council, we have representative from across the enterprise. And again, as I mentioned in my opening statement, they serve as force multipliers to help us because they have got subject matter experts, practitioners, etcetera.

So I think, again for us, while it's a small office, it's part of a larger office that we leverage resources from.

Thank you.

CHAIR LHAMON: Thank you.

Ms. Scott.

MS. LAKE SCOTT: In March of 2018,
Secretary Purdue rolled out his One USDA Reorganization Process that relates to civil rights. And I indicated before that he had elevated civil rights to a mission area function. There are nine mission areas within civil rights. Some of those have program or external responsibilities and they also have civil rights offices. They will now have one civil rights director in each of those nine mission areas.

So while the Office of the Assistant Secretary for Civil Rights only has 37 employees who deal with the external or compliance-related functions, each of those mission areas will liaise with our office and we have oversight and a coordination role to ensure that they comply with the civil rights laws.

So no civil rights staff lost their jobs in the reorganization. It's just mainly focusing to make sure that people who do civil rights do it 100 percent of the time.

CHAIR LHAMON: Thank you very much.

Mr. Driscoll, I was really taken with a piece that you write in the National Review in November 2016 that laid out what an affirmative civil rights agenda could be in the Trump administration.
MR. DRISCOLL: Right.

CHAIR LHAMON: I'm curious if it's your view that this administration successfully promulgates an affirmative civil rights agenda and if so, what the features are.

MR. DRISCOLL: I'll think back to what I wrote. I don't have it all memorized. Occasionally, I dash one of those off over a weekend.

CHAIR LHAMON: It is very compelling.

MR. DRISCOLL: I think some of the policy recommendations you know have not come to fruition and they were kind of a little bit pie in the sky anyway for this administration. I think I proposed kind of a modified type of situation I would have been supportive of. I thought that could have been an area the administration could have reached out on with the LGBT riots.

I do think they've done in large part what I think one needs to do in a Republican administration, where some of the more what the community view as cutting edge issues are not pressed, with the exception of religion, which you know depending on one's view. They've done a lot of nuts and bolts kind of things, you know driving in the housing section and some other things. I think one
thing a Republican administration should be able to do is you're not going to spend litigation resources pushing the envelope bringing so-called high-impact cases, you should be able to enforce mightily the kind of core statutory functions you have.

So in my mind, from what I've seen they've done that. I haven't been monitoring it week to week but in the conversations I've had with them, they are doing that.

I think they are policing. That's a longer term issue. I tend to agree with their approach. I think that policing, unfortunately, gets bogged down in politics and people talk about cases opened versus you know and the real question is: What's effective? And I haven't really seen a long-term study of what has been the effect of some of the decrees over the long-term. You know going all the way back to Pittsburgh, some of the first ones, which ones have been more effective and why because I think we could all pull out examples of ones that where decrees haven't been particularly effective. They've been expensive and you've ended up with increased crime and they even increased civil rights violations. And in some places it's worked well where I think there has been a more collaborative approach. I think that kind
of study needs to be done as well.

But I think overall I think they've been -- I think the religion cases, to me, are a good thing. I think they are following through on the commitment of the President and I think that there is -- you know society is grappling with how to balance this intersection of religious liberties guaranteed by the First Amendment with state and federal statutory protections for all people. And I think they're pushing that and not everyone will agree with it but I think it will be good to get some resolution on that from the courts.

CHAIR LHAMON: Thank you.

Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Madam Chair. I'm going to start with Ms. Venture at the Department of Homeland Security.

You articulated how unique the Office of Civil Rights and Civil Liberties are in terms of you're more -- some of your more advisory capacities. I'm wondering was CRCL consulted in advance of the administration when they were formulating its policies on separations of families at the border. I understand -- well, let me just ask that question first.

MS. VENTURE: So no, partly because it came
down very quickly from the White House. So you know across DHS, there was not a lot of time for anyone to really dig into it before it was put into place, no.

COMMISSIONER NARASAKI: And the Muslim ban?

MS. VENTURE: Same thing. These are outside even from DHS, these were policies that were pushed out from the White House and said do it.

COMMISSIONER NARASAKI: And the more recent, very recent position on trying to strip citizenship from children born in the United States.

MS. VENTURE: Same conditions.

COMMISSIONER NARASAKI: So did CRCL receive -- my understanding is there was a memorandum regarding the Zero Tolerance Program. Did CRCL receive that memo through regular channels before the Secretary saw it?

MS. VENTURE: No, we would not have done that.

COMMISSIONER NARASAKI: Okay. If CRCL has given recommendations on family separation, what were those recommendations and what has been their response?

MS. VENTURE: So that's still an ongoing investigation so I wouldn't -- I'm not at liberty to talk about the actual recommendations at this moment.
COMMISSIONER NARASAKI: As you know, the Commission is looking at the issue of detention of women and children in this situation. So I'm sure we'll be having further discussions, hopefully, on this.

There are reports that the administration is considering new policies for responding to immigrants arriving at the southern border. Has your office been consulted on these new policies?

MS. VENTURE: No.

COMMISSIONER NARASAKI: Okay, let's see.

There have been several exposes over the years on the frequent and severe violations of use of force and other civil rights/civil liberties issues by members of the Border Patrol. They are notoriously difficult to hold accountable. I understand that there was a pilot project to audit the CBP-run prisons and detention centers to ensure compliance with the Prison Rape Elimination Act. Is that the case?

MS. VENTURE: So they don't have detention centers. They have hold rooms because it's only 72 hours.

COMMISSIONER NARASAKI: Right.

MS. VENTURE: But yes, that is the case.

COMMISSIONER NARASAKI: And my
understanding that the pilot did not end well because DHS -- CBP did not allow interviews of the Border Patrol agents, the line of agents without union representation there.

MS. VENTURE: So the pilot, actually, was placed on hold and it's going to restart again I think in December. I can't recall. So there were some issues initially with, yes, the agents on the ground not realizing what was coming down from their headquarters' offices. So we met with them. The staff at CRCL met with them and went through here's what actually PREA says we need to do; and here are the standards, and here is the tool, the auditors' tools that are being used. And so we have resolved that problem but they will commence again, the pilot.

COMMISSIONER NARASAKI: That's good to hear.

So are there structural challenges in terms of the ability of CRCL to mandate responses from the component parts of DHS? It feels like -- I know that the men and women of CRCL are very sincerely trying to press their mission but it feels like maybe there are some structural challenges.

MS. VENTURE: There are in the sense that we do not have the ability to enforce. We make
recommendations to say CBP or ICE. So I was talking to
staffers on the Hill about their looking into possibly
giving CRCL the ability to enforce more strongly, if
these are not recommendations; these are here is what
it's going to be. And so of course that means a
legislative fix.

But it has been challenging to say look,
you know we're telling you right now there's an issue,
and there is a problem, and we need to fix it. So we
are trying to work as we do honing our negotiation
skills in terms of gathering information.

COMMISSIONER NARASAKI: And how does your
office interact with DHS Inspector General's Office?
My understanding is their office has said that it has
limited resources to investigate the hundreds of civil
liberties and detainee abuse claims that have been
filed and that in 2017, almost of them were marked
closed/not converted, which I am told means that
virtually no investigation into the complaint took
place or was completed.

And another study showed that, even before
that, between 2010 and 2016, there were over 33,000
reports of sexual and physical abuse in the detention
centers and less than two percent were investigated.

Given the growing number of people that are being held
under this administration, particularly women and children, what is CRCL's role? Does it have one?

MS. VENTURE: So again, any complaint or any allegations that come through to CRCL, they have to go to the IG and they have the right of first refusal. So they can say we take it or here, CRCL, you investigate this.

So some of those complaints that you are saying are closed are actually ones that have been reverted to CRCL for our investigative purposes.

COMMISSIONER NARASAKI: Oh, I see.

MS. VENTURE: Right. So it's not necessarily that they are not doing anything. That they understand that it is our authority -- within our authority to make those investigations -- to do those investigations.

But also what we have started fairly recently, in the past six months, is de-confliction meetings with OIG and all the Office of Professional Responsibility, different offices around CBP, ICE, around the Department. So we meet and say and talk about how if IG is going to doing say a spot inspection of a detention center, CRCL then does not need to go. We are sharing information more broadly with the IG to say if we have just gone to a detention
center, here is what we have found. So they don't have
to recreate the wheel or reinvent to go over the same
issues that we have looked at but then they can spend
their resources on other issues, possibly criminal
misconduct and things like that. So we are trying to
do that a little bit better, in terms of information
sharing with IG.

COMMISSIONER NARASAKI: Okay. Is it
correct, though --

CHAIR LHAMON: I'm going to turn to
Commissioner Heriot now.

COMMISSIONER NARASAKI: Okay, sure. If
there's another chance, I have questions for other
people.

CHAIR LHAMON: Yes.

COMMISSIONER HERIOT: Ms. Venture, I'm
sorry to keep you on the hot seat but I think my
questions may be easy here.

You were giving some statistics earlier
and like I got lost so, I just want to clarify this. I
thought I heard the number 1200 complaints per year.

MS. VENTURE: That's in our EEO.

COMMISSIONER HERIOT: That's the EEO. Okay
so those are all employees. Okay, I get it. Okay.

Then, when you were saying there were
3,000 family separation complaints, is there like one organization that is frequently helping people that are making these complaints, or one particular law firm, or are they all just individuals?

MS. VENTURE: So there are some organizations, the ACLU or other non-governmental organizations that file on behalf of their clients. Sometimes these are individual complaints coming in.

COMMISSIONER HERIOT: About how many of these would be ACLU-related out of the 3,000?

MS. VENTURE: I'd have to get the actual breakdown for you.

COMMISSIONER HERIOT: Could you do that? That would be very helpful.

And then what about like routine TSA complaints, do those come to your office?

MS. VENTURE: They come to our office if they are alleging -- so there are two things. TSA has their own Office of Civil Rights and Civil Liberties and they have an external complaint process.

So a traveler may go through TSA or they may come to us.

COMMISSIONER HERIOT: Their choice?

MS. VENTURE: Correct, their choice.

COMMISSIONER HERIOT: Okay. Do you then
send it to TSA for their group or just if it comes to you, you look into it?

MS. VENTURE: Yes, we look into it.

COMMISSIONER HERIOT: Okay.

MS. VENTURE: We do work in cooperation. We have a memorandum of understanding in terms of cooperation with them.

COMMISSIONER HERIOT: And do you know about how many of those you get, TSA complaints, a year?

MS. VENTURE: Not offhand.

COMMISSIONER HERIOT: Could you find out that for me?

And FEMA, do you get those too?

MS. VENTURE: Yes, we do, particularly after last year with the disasters, we got a lot of complaints about, for instance that the deaf and hard of hearing community were not given access to programs because there was no accessible way to give them information about going to a center to be able to file for benefits. So we did get some complaints on that -- not very many, maybe two or three.

But we do get a lot -- get complaints but those can also be handled under Section 504, which are a little different.

COMMISSIONER HERIOT: Okay, thank you.
CHAIR LHAMON: Commissioner Yaki, I understand you have a question.

COMMISSIONER YAKI: Yes, thank you very much. This is also for the Homeland Security rep.

Following up a little bit on what Commissioner Heriot was saying -- was asking, when someone presents themselves at the border, whether it is at an airport or at a physical location at the border itself, is it your -- who in the Homeland Security determines whether that person is subject to Bill of Rights protections under our law?

MS. VENTURE: So I'm not sure I understand the question. Someone presents at the border, Customs and Border Protection are looking at what kinds of --

COMMISSIONER YAKI: Well, let's -- okay, let me be more concrete.

If you detain someone at the border and place them into detention or, if they are a child, they are placed in a facility in the United States somewhere, what -- how does your Department determine whether or not any of the law regarding civil rights protections, if any, belong to these individuals who are now within our care, custody and control?

MS. VENTURE: So if a person is in detention and they feel that their civil rights have
been violated, in every detention center there is information about how to file a complaint with my office and we try to do it in many languages as well. And there is a language line that a person can call and say you know if they speak say K'iche', which is a rare language, there is someone there to be able to let them know here's the process, here is where you file the complaint with the Office of Civil Rights and Civil Liberties. And then that's when we get the allegation in and that's how we start the process.

So it is the individual in the detention center who is making the complaint, for instance, or their attorney, or whoever on behalf of them.

COMMISSIONER YAKI: But to summarize, these individuals do have access to your office and/or are afforded access to your office. Then, it is your office's responsibility to investigate their complaints.

MS. VENTURE: Yes.

COMMISSIONER YAKI: When you investigate their complaints, what standard of law do you apply to that analysis?

MS. VENTURE: I'm not sure what you mean.

So we have the civil rights laws. Is that what you --

COMMISSIONER YAKI: I mean do you apply --
well, it's a very simple question. Do you apply the
laws of the country to which they came from or do you
apply the laws of the United States in examining
whether or not --

MS. VENTURE: So under 6 USC Section 345,
our office has the ability to investigate complaints
brought by the public and that includes individuals in
detention. So that's when we investigate the civil
rights and civil liberties.

So if it is a violation of whatever,
Section 504, if it is a violation of race, or those
kinds of things, we have the authority under that Act
to investigate any allegation of a violation of civil
rights and civil liberties.

COMMISSIONER YAKI: Okay, thank you. Now,
I'm moving on to a slightly different subject but
thank you very much for your answer on that.

What role does your office have in
investigating the performance of the agency with
regard to addressing the civil rights concerns or
issues raised in FEMA's response to disasters? And I'm
thinking specifically of some of the language barrier
and other concerns raised with regard to the response
to Hurricane Maria in Puerto Rico.

Could you elaborate what your division has
to do with that?

MS. VENTURE: So it's the same process. As I said, we were talking about individuals who were deaf and hard of hearing filed a complaint with our office that they were not provided the access to the same services. So that information still comes into our office.

We work with FEMA, the Office of Equal Rights, sometimes to do the joint investigation because FEMA has, under the Stafford Act, specific authority to also investigate that independently of CRCL. So, we have a -- we work with them to do a joint investigation on those kinds of complaints but we still have the authority to look into them under Section 345 of 6 USC.

CHAIR LHAMON: Okay, I'm going to turn to - -

COMMISSIONER YAKI: It would kind of -- do you do any work proactively in reviewing whether or not FEMA procedures are adequate in terms of having material that are language accessible, hearing impaired accessible, etcetera, prior to disaster responses -- disasters actually occurring --

MS. VENTURE: Yes.

COMMISSIONER YAKI: -- so that -- go ahead.
MS. VENTURE: Yes, we do. We have a language access program. So part of what FEMA has to do is report to CRCL what their -- how they are actually involving the public or how they are say, for instance, investigating complaints of discrimination brought by the public with disabilities.

So they have to -- every component of DHS has to have a language access plan in place that is reviewed by my office yearly and then we work with them to strengthen it up. So if we see there are areas -- so we provide technical assistance on the plans to ensure that they have the strongest plan for their particular component available and that's one of the things that we do.

And also even in the -- we have a civil rights evaluation tool that we use for grantees so to make sure that they are -- particularly, since FEMA gives so many grants to different organizations, that as part of the grant process, they have to assure they, meaning the grantee or whoever is seeking access, has to fill out the civil rights tool to be able to tell us that there are protections in place for civil rights and civil liberties in their programs also.

CHAIR LHAMON: Thank you. I am going to
turn now to the --

COMMISSIONER YAKI: And have you made --

CHAIR LHAMON: Commissioner Yaki, I'm going
to turn now to the Vice Chair.

COMMISSIONER YAKI: I'm sorry. Go ahead.

CHAIR LHAMON: Thanks.

VICE CHAIR TIMMONS-GOODSON: Thank you very
much, Madam Chair.

Mr. Driscoll and others, as we didn't mean
to --

CHAIR LHAMON: They're all thanking
themselves that they are not with DHS.

VICE CHAIR TIMMONS-GOODSON: Our purpose
today, as we are seeking to evaluate federal civil
rights enforcement, we are looking for the things that
are being done well and perhaps looking at things that
could be done differently.

And you may have heard Arne Duncan share
that in his work with the Department of Education that
the civil rights division was a part of his leadership
team and an integral part of the way that he conducted
business there, that he brought a civil rights lens to
all policy decisions formulated.

And then I've read the pieces that you've
written and how you've talked about the fact that
civil rights enforcement, it's not written -- and policy is not written with a free hand, that you are bound by constitutional and statutory text.

And so I was wondering if Mr. Duncan's approach, which I found made a whole lot of sense and was downright compelling, I was wondering if there was anything inconsistent or was his approach and the way that he was looking at it inconsistent with what you've expressed in terms of civil rights policy and enforcement not being on a blank slate? Does that make sense?

MR. DRISCOLL: I think I understand the question and I don't think there is anything inconsistent at all. I think that it always pays to have experienced civil rights enforcers in the room when you're making decisions, even policy decisions, so that they can add that perspective.

You know I think that what may differ from kind of administration to administration may be the answers you would get in terms of no, we can't do that -- no, we cannot achieve that policy and through litigation or through regulation necessarily, we may have to ask for a statutory fix or an amendment. But I think that having civil rights involvement, you know particularly in the Department of Ed but really every
agency, makes a ton of sense. And I think it would be good practice to involve folks early on.

VICE CHAIR TIMMONS-GOODSON: What was so compelling to me is that, generally speaking, there wasn't a big price tag on it.

MR. DRISCOLL: Right.

VICE CHAIR TIMMONS-GOODSON: Okay, thank you very much.

MR. DRISCOLL: Ken Marcus will thank me, who can go straight into the Secretary's Office and set up a desk there. So he's there all the time.

CHAIR LHAMON: Commissioner Kladney, I understand you have a question.

COMMISSIONER KLADNEY: I just wanted to ask Ms. Venture a couple of questions and not really even about enforcement.

I was just interested in these unaccompanied minors and I was wondering if you have any information on them, like how many there are, how many sites they are kept at in detention? Are they living in dormitory-type housing?

MS. VENTURE: So that's -- once they are in CBP custody, then they are turned over to HHS. So we wouldn't necessarily know that information. Sorry.

COMMISSIONER KLADNEY: Okay, thank you.
CHAIR LHAMON: Commissioner Narasaki, I understand you have follow-up questions.

COMMISSIONER NARASAKI: Yes, I'd like to give air time to some of our other guests.

So Ms. Dorka, the Commission actually issued a report on EPA civil rights enforcement under the prior administration and we were somewhat, shall we say, harsh on it. I'm wondering if your office looked at our recommendations and what you are doing around the issue of environmental justice protections because I note that your statement didn't really talk about the environmental justice issues.

MS. DORKA: Yes, we are very familiar with the report. As a matter of fact, we met with the Commission once they had issued the draft report.

I must say that we've pointed out a number of areas where we've thought that the report had not correctly addressed the more recent developments that our office had put in place, all of the different accountability measures that we had instituted, in order to bring our program to a different level.

So, many of the recommendations that were reflected in the report are things that we had already started and are continuing to implement. So we are well aware of the challenges that were identified in
the report.

COMMISSIONER NARASAKI: Great.

MS. DORKA: As far as environmental justice, EPA has a separate office, the Office of Environmental Justice, that deals with that executive order, although there is a lot of coordination and collaboration.

In fact as the Vice Chair asked her last question, I was thinking that at EPA we have something unique. We have two orders that were issued. Some agencies call these directives within the agencies. But these two orders basically require the different regional offices within EPA, as well as the program offices, to identify high level, sort of at the SES level, high level persons that will coordinate with the civil rights program to ensure that civil rights is integrated throughout the agency and also to ensure that we have additional resources.

In other words, it's not just my 12 FTE but I can call on any regional office. There is what we call the Deputy Civil Rights Official, the DCROs within each regional office or program office and I can call on them when I need cooperation, or collaboration, or to know what is going on on the ground. And very frequently, it is to get better
information on the environmental justice efforts that are going on because so many of them happen at the regional level, all of that community involvement, whether it's super fund or anything else.

So those Orders, which are in fact reflected in our Case Resolution Manual and how we will work with the regional offices and different programs, pretty much put at our disposal a cadre of very, very highly skilled and trained environmental professionals that we can call on for assistance on individual cases.

COMMISSIONER NARASAKI: So you have managed to close many cases. And I know I'm aware of at least one that did have a finding about civil rights violations. Are there more cases than that where there was actually a finding of a violation?

MS. DORKA: There was one case in 2017 where we found a violation and because it was a case that was preexisting for quite a number of years, rather than take action on what happened 20 years ago, we decided to defer some of those actions to a more current complaint that dealt with the same community. And so we're working with that agency, with that state agency, to try and reach an informal resolution agreement.
There are other cases where we've reached informal resolution agreements, where we haven't made any findings. That's part of the deal when you enter into an informal resolution agreement, which is why sometimes it's more attractive. But we do have at least three others involving the States of Texas, Georgia, New Mexico where we've entered into these agreements that have produced, I think, very, very good results.

COMMISSIONER NARASAKI: That's really good to hear. Thank you.

And then I have, if there's time, one question for the VA.

CHAIR LHAMON: Sure.

COMMISSIONER NARASAKI: So when the Vice Chair and I started, the Commission had on its docket had had a hearing on the civil rights of veterans. And in working on that, we heard many stories from women about the challenges of an agency that was used to having largely men, male veterans and not female veterans. And so then the healthcare system wasn't really adequately set up for having women who had gynecological needs, who when they needed prosthetics, needed a prosthetic that would fit a woman rather than a man, a lot of issues around access.
I'm just wondering what progress, because that was a while ago, I'm wondering what progress has been made.

MR. JOHNSON: So I really can't talk about some of the medical progress that is happening. I'll have to get back to you when I can get with the VHA to get some of that data.

But as you know, it has been and it's been in the news, so we've all read about it, our Secretary is absolutely adamant about correcting that, very involved in it. So I think we are starting to see that we are making great enhancements with regards to female veterans.

And also just the overall acceptance because I know -- you know I am a veteran myself and I've talked to a number of female veterans that have said sometimes they don't feel they are being treated with the same equality and I will say equity, access, and inclusion. I am very sympathetic to that because I served with many of them and I think if you look at the number of veterans we have in the VA, that is progressively getting much better but I will have to get back with you on the actual.

If you want to send me the question on what specifically healthcare-wise, then I could answer.
for you.

COMMISSIONER NARASAKI: That would be
great, thank you.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I just have a little
question and it's for you, Mr. Johnson.

I thought of it just because I wanted to
make sure you had enough questions, too, but now that
you've gotten one from Commissioner Narasaki, maybe
this is simple.

Let's say you have two people, two
veterans and, just for the sake of argument, they are
very similar. One is African American, female,
Methodist. The other is African American, female,
Methodist. And they go to two different veterans
hospitals and the intake person there, the
receptionist, is incredibly rude to both of them. And
one of them thinks it has nothing to do with her race,
sex, or religion and the other one thinks that it did.

And let's say both of them are basically
right when you look at the evidence. Just how would
those two cases be handled administratively? Where
does the person who thinks this has nothing to do with
race, religion, or sex, where do they make their
complaint? And where does the one who thinks -- how
does that get routed?

    MR. JOHNSON: That's a very good question.

    Thank you.

    So there's a number of ways that can happen. There's probably not just one clean avenue. One way is -- so what I do is I believe in data. I have data scientists onboard because I like the analytical rigor that goes behind each complaint so that I can understand it.

    I talked about understanding the superstar harasser. Well, that's the same thing here. You know I want to look at where discrimination occurs, why it occurs, and is there a pattern -- and that's the biggest thing.

    So with data science, the beauty of it is it makes it easy on me because now I'm learning natural language processing, machine learning, where they can take surveys. So what happens is we look at social websites and we look at -- because what will happen is what you've just described -- let me go the informal route. Somebody doesn't say it right away but they go home and talk about it and they start getting on chat rooms and things like that. We start to pick up that buzz.

    And I'm working also with the Veterans
Experience Office. They have incredible data that I am personally -- I just started a partnership with them that I am starting to uncover --

COMMISSIONER HERIOT: So they get information about any kind of complaint.

MR. JOHNSON: It's real-time data.

COMMISSIONER HERIOT: Okay.

MR. JOHNSON: So something could happen this morning and we could know about it, in theory, this afternoon.

COMMISSIONER HERIOT: But where does the person who -- let's say the person that doesn't think it has anything to do with race, sex, or religion and, in her case, it's right, just as the other person is also right. You know they are different experiences.

MR. JOHNSON: Yes.

COMMISSIONER HERIOT: How does she complain? How does she know to complain?

MR. JOHNSON: Okay. So let me do this. The person that wants to make a complaint can go to the Office of Resolution Management. And we have everything posted throughout the facilities, websites, and everything.

COMMISSIONER HERIOT: For any kind of complaint.
MR. JOHNSON: We take any. We triage it. So when it comes in, you know that is why our resolution rate is high because we look at is it one of the nine categories of discrimination or is it just something else, conflict, something else.

COMMISSIONER HERIOT: Yes, some awful receptionist, who is just abusing her authority.

MR. JOHNSON: Yes, that intake in triage comes to my office. We look at it based on what it is. The other one, I still have to say, if they don't come to the Office of Resolution Management, ten-to-one they will say something on a survey and --

COMMISSIONER HERIOT: So everyone who comes in gets a survey?

MR. JOHNSON: They have the opportunity to complete surveys.

And also I will say again you know we worked with some of our commercial partners to look at how we could do risk sensing and look at chat rooms. So if I start to hear noise activity about -- and I'll just use my home state just for the example -- Philadelphia, Pennsylvania, then I will look at what noise activity is happening there and why. And then it's sort of that low-pass filter technique where we
listen, listen, and then we intercept here before it becomes a gross violation.

COMMISSIONER HERIOT: Thank you.

CHAIR LHAMON: Thank you very much to all of our panelists. As I did with the last panel, I will say that it is likely that our staff have follow-up questions and I would appreciate it if you would be willing to respond to those. I very much appreciate your time and your testimony today.

And with that, we are going to take a break until 1:10.

I will just remind folks here that we do have space open for public comments at the end of the day, if people would like to participate then.

Thank you very much.

CHAIRMAN LHAMON: Okay. Welcome back, everyone, and thank you for your continued attention to this important topic. We're going to now proceed with our third panel of advocate and community experts in civil rights enforcement. In the order in which they will speak our panelists are Fatima Goss Graves, President and CEO of the National Women's Law Center; Janel George, Senior Policy Advisor at the Learning Policy Institute; Vanita Gupta, President and CEO of The Leadership Conference on Civil and Human Rights;
Joshua Thompson, Senior Attorney at the Pacific Legal Foundation; John Yang, President and Executive Director of Asian Americans Advancing Justice, AAJC; and Burth Lopez, Staff Attorney at the Mexican American Legal Defense and Educational Fund, MALDEF.

So, Ms. Goss Graves, please begin.

PANEL 3 - CIVIL RIGHTS ENFORCEMENT

MS. GOSS GRAVES: Well, thank you for having me, Chair, and to the entire Commission. My name is Fatima Goss Graves and I'm President and CEO of the National Women's Law Center. And for more than 45 years the Law Center has been involved in virtually every major effort to secure and defend the civil rights of women and girls in employment, education and health care and beyond.

And I'm very honored and -- to testify today because it's a time where I feel like we are really grappling with a rise in hate in this country where discrimination and bias have -- that have long plagued us, have always I'd say plagued us as a nation, but has been not only revealed but is flying more proudly, such that there's actually an organization that bears the name Proud Boys and celebrates misogyny.

And so it feels like a different moment in
time in that more than ever our federal agencies should be reaffirming their commitment to ending systemic inequality and denouncing the range of systemic forces that undermine all of our lives. And I really believe that this should be and still can be the -- a unifying civil rights agenda for this country.

Unfortunately, under this administration many federal agencies charged with enforcing civil rights laws have de-emphasized civil rights investigations, have rescinded critical guidance that clarified civil rights obligation in schools, for health providers, for employers, have issued regulations allowing and even encouraging civil rights violations. And that's just what we know. There are leaks and reports of things to come that don't give me a lot of confidence about the things that we will be facing in the coming months.

So my remarks will popcorn really across several different agencies that are of importance of the -- at the National Women's Law Center, but I have a longer written testimony that tries to go into more detail.

Just starting with the Department of Education, some of the things of deep concern to us
include the rescinded guidance that clarified that Title IX's protections against discrimination based on gender identity had -- and instead actually initiating an investigation on whether schools with bathroom policies that actually affirm transgender people discriminate against girls.

Of deep concern to the Law Center is rescinding sexual harassment guidance that clarified the steps that schools must take to address sexual violence, and entering really confusing interim guidance that gave students named in harassment claims more rights than the survivors that have filed the complaints. And all of the reports that we have been receiving and from the New York Times and the Wall Street Journal about what we can expect to come in Title IX regulations that would codify some of these changes that ultimately we believe make it harder for survivors of sexual assault to come forward and ultimately would make schools less safe. Also the recision of guidance on race conscience admission policies that clarified the ways in which colleges can ensure diversity in the classrooms. Revising the Case Processing Manual to allow officials to dismiss without investigation hundreds of complaints per a new rule that purportedly goes after people who file
complaints against multiple recipients, but our concern is that actually this rule is selectively applied.

So for example, the rule was applied to bar a disability rights advocate from filing complaints against multiple schools to ensure website accessibility as required under the law while allowed to investigate complaints filed by one individual against multiple universities for legal affirmative action programs that advance gender equity.

Popping over to the EEOC, I will say that I was lucky enough to participate in a task force that the EEOC put together on the issue of sexual harassment in the workplace, and I really feel like that task force modeled a way to put the issues front and center and just to focus on solutions that actually work for workplaces that made employees feel better about going to work and work for broader communities. The EEOC has importantly continued to litigate important cases and filed a brief in the Zarda v. Altitude Express case correctly arguing that Title VII of the Civil Rights Act protects discrimination on sexual orientation.

Unfortunately, the EEOC's enforcement efforts and their efforts have been continuously
blocked and threatened by this administration. So for example, they have put forward and finalized a pay discrimination rule that would allow their EEO-1 form to be revised and updated to collect information on pay data by race and gender and occupational category.

In August 2017 OMB blocked that pay data collection claiming that it lacked practical utility and was too burdensome for businesses. This is after years of testimony and hearings and lots of opportunity for people to weigh in.

Similarly, the administration has inexplicably stalled efforts to update the workplace sexual harassment guidance that has been underway since 2016 and at a time when employers are hungry and desperate for actual specific guidance and rules. We are getting countless calls from employers; not just employees, but from employers saying what can we do in this moment? This is now an issue that we care about because of our reputation. It's an issue that we care about because our employees care about and it's an issue that we are grappling with. Please, please, please more guidance, EEOC. The OMB has refused to issue this final guidance for over a year with no explanation as to why and no estimated date of the release.
I'm going to pop to the Department of Labor because I have one minute left, and I will just say that we have been deeply disappointed with some of the steps that OFCCP has taken to reverse itself regarding the key issue of monitoring and enforcing pay requirements.

We've also been disappointed with the ways that civil rights protections across the board have been weakened by instructing employees to emphasize religious freedoms of employers. And of course religious freedom is core, but it doesn't give employers or anyone else a license to engage in discrimination, and that balance can be confusing to employers and my worry is that they will engage in unlawful contact.

And I know I'm over time, but I will just say that the Religious Liberty Task Force from the Department of Justice, which has issued guidelines to all agencies; so there are problems across all agencies that stem from what they did with that Religious Liberty Task Force.

And then I will just use that to pop over to HHS, which with it has started a new Conscience and Religious Freedom Division focused on protecting --

CHAIRMAN LHAMON: I have to cut you off,
and I apologize.

MS. GOSS GRAVES: Okay.

CHAIRMAN LHAMON: Thank you.

Ms. George?

MS. GEORGE: Good afternoon, Madam Chair and members of the Commission. It's my pleasure to testify today on behalf of the Learning Policy Institute, or LPI, and our President Dr. Linda Darling-Hammond. LPI is a non-profit, non-partisan organization that conducts and communicates independent high-quality research to improve education policy and practices at the state, federal and local levels.

My name is Janel George and I am a senior policy advisor with LPI. I'm joined today by my colleague LPI's Director of Federal Policy and Washington, D.C. Office Director Dr. Jessica Cardichon and we have submitted two papers today regarding the federal role in civil rights enforcement for our testimony.

These papers focus particularly on current threats by the Trump Administration to rescind federal guidance on school discipline and the actual rescission of federal guidance on school diversity. And we focus on what the likely effects of this
rescission would be. And I want to talk about the potential consequences of this rescission in part because this guidance is based on evidence-based research.

The federal role in protecting students' civil rights and access to equal educational opportunities is perhaps one of the most well-documented and compelling demonstrations of the federal role in civil rights enforcement. Following massive resistance to the ruling in the case of Brown v. Board of Education, which invalidated the separate but equal doctrine in school segregation, the role of the Federal Government in advancing integration of our public schools was critical. Passage of the Civil Rights Act of 1964, particularly its Titles IV and VI, as well as the following year's Elementary and Secondary Education Act, created levers for enforcement and conditions for compliance with federal law for recipients of these federal funds. But in contravention of this limited but significant federal role in education, the Trump Administration has taken actions to undermine civil rights enforcement.

Since taken office the administration has withdrawn nearly 600 policy documents regarding K through 12 and higher education and has rescinded --
is considering rescinding, based on leaked reports and threats, or delaying implementation of key federal guidance in regulations issued under the Obama Administration. And again, I want to focus on two areas of guidance that are targeted -- are being targeted by the Trump Administration: school diversity and school discipline.

In July of 2018 the administration rescinded Obama Administration guidance on school diversity in reducing racial isolation. This guidance was issued following a legal challenge to race-based student assignments in the case of Parents Involved in Community Schools v. Seattle School District No. 1. The guidance outlined evidence including an amicus brief joined by over 550 social scientists in the Parents Involved case outlining our racially diverse learning environments benefit all students, white students as well as students of color, including by preparing them for global citizenship and social interactions with diverse peers.

The guidance helped districts understand legally sound strategies for supporting integration, which a number of districts since have successfully used, but the rescission of the diversity guidance is particularly alarming given the trends we're seeing of
re-segregation in our public schools. Data shows that in 2010 about 40 percent of African American students nationwide attended schools in which students of color constituted 90 percent or more of the total. About half as many African American students are in integrated schools as was true in the late 1980s. Without this guidance districts will not have the valuable information including best practices about how to advance integration and we could see these trends of re-segregation persist.

And the Trump Administration is threatening to rescind guidance on the non-discriminatory administration of school discipline issued by the Departments of Justice and Education under the Obama Administration. This guidance reflects research-based best practices for fostering positive and inclusive school climates.

The guidance was issued shortly after the Department of Education civil rights data collection showed continuing racial disparities in school discipline rates including higher rates of suspensions and expulsions for students of color, higher than their white peers, despite research showing that they do not misbehave at higher rates. And the guidance addressed how to curb discriminatory discipline
practices that fuel these kind of disparities.

It also outlines the harm of exclusionary
discipline practices like suspensions or expulsions
that push students out of the classroom and increase
their likelihood of involvement with the juvenile
justice system. It also outlines alternatives to these
practices including restorative practices, social and
emotional learning and positive behavioral
interventions and supports. Rescission of this
guidance would deprive schools and districts of a
research-based set of resources for fostering positive
and inclusive school environments.

While the current administration's actions
related to guidance do not change existing law, they
can impact compliance. Further, they contravene well-
established evidence about the conditions that are
necessary for students to learn and thrive. These
recent actions and threatened actions also serve to
hinder the speed and effectiveness of the
implementation of law and are a significant departure
from the historic federal commitment to upholding
students' civil rights and increasing access to equal
educational opportunity.

Thank you again for this opportunity to
testify and I'm happy to answer any questions.
CHAIRMAN LHAMON: Thank you very much.

Ms. Gupta?

MS. GUPTA: Good afternoon. Thank you. I'm President and CEO of The Leadership Conference on Civil and Human Rights. And before that I had the honor of leading the Justice Department's Civil Rights Division for the last two-and-a-half years of the Obama Administration.

So the Federal Government plays a really critical role in enforcing our nation's civil rights laws and nearly every federal agency, as you know, has an office that's charged with enforcing civil rights, federal civil rights statutes, regulations and policies, and these enforcement activities touch every area of life for the American public including voting rights, employment, housing discrimination, equal access to education, and health care.

The division was -- the Civil Rights Division of the Justice Department was formed by the passage of the landmark Civil Rights Act in 1957 and it was charged with upholding the civil and constitutional rights of all people in America. And while different political administrations have different policy priorities, as is their purview, the duty to enforce the law is not discretionary. That
As my colleague Fatima Goss Graves has said, we now have a president who has emboldened and enabled the forces of hate and division in this country, and the division -- the Justice Department has had an attorney general during the first part of the tenure of the Trump Administration, Attorney General Sessions, who has actively undermined the work of talented career lawyers and professionals who serve regardless of the political administration and who are committed to fulfilling their duty mandated by Congress, which is to rigorously enforce our federal civil rights laws. They deserve the commitment to civil rights that the Federal Government made 60 years ago.

I want to just comment on a couple of themes of what we have been seeing around DOJ's federal civil rights enforcement. There's a lot of examples that I've provided under each in my written testimony.

One theme is that there are far fewer pattern and practice or systemic investigations that are being opened by the Civil Rights Division, and this really hampers the ability of the division to achieve broader systemic reform outside of individual
cases.

Another is that the division has been closing agreements or investigations against the recommendations of career staff who have publicly recommended that some of these investigations remain open or that the agreements remain ongoing because of lack of full compliance.

There's also been a reversal of long-standing litigation positions against the recommendation of career lawyers often marked by pleadings that are filed in court with zero career lawyers in the signature line, which is very unusual. I don't remember a single time that that happened while I was at the Justice Department. And there are numerous examples of that.

There's also very few consent decrees coming out of the Civil Rights Division. Most of the agreements are done by out-of-court settlement agreements which take away the -- kind of the ability of courts to have oversight over these agreements regardless of political winds, which is often very important.

There's been systematic withdrawal of any number of guidances, some of which my colleagues before me have attested to. They are too lengthy to
name. The Leadership Conference has done a full timeline of all of the rollbacks of civil rights across administrations that we will be entering into the record, and you can look at those through that.

There's also been an effort to use civil rights statutes to undermine equal opportunity of the very communities that those statutes were enacted to protect, and there are numerous examples of that in the written testimony and in the timeline of rollbacks produced by The Leadership Conference.

Just specifically in the three minutes I have left, on voting rights, from the Texas Photo ID Law case to the Husted v. A. Philip Randolph case, the case involving Ohio voter purging, those were clear examples of reversals or retreats from the agency's longstanding litigating positions but without any changes in actual factual conditions on the ground in those cases.

There's also been policy involvement by the Justice Department and a concern about inappropriate involvement of the Justice Department with White House policy on the Voter Suppression Commission led by Vice President Pence and Secretary of State Kris Kobach and concern about unlawful or inappropriate involvement of the Justice Department in
adding a citizenship question to the ’20 Census using the Voting Rights Act enforcement as the justification. There’s now been ample evidence to show that Commerce Secretary Wilbur Ross used that as a predicate, as a ruse to get that question added.

And so there’s been no new Section 2 litigation in the voting rights context, and there’s much more that I say about that in my written testimony.

On policing and criminal justice we’ve seen very troubling rollbacks in the areas of policing and criminal justice. Withdrawal of many memos by Attorney General Holder on -- from the smart on crime memo to others issued both under him and Attorney General Lynch seeking really to follow example of red and blue states to engage in criminal justice reform.

In the area of policing there have been -- has largely halted any new investigations into police departments. The Department tried very early on in February of 2017 to block a federal court in Baltimore from approving a negotiated consent decree. It failed to do so. And just last month the Justice Department took the very extraordinary step; and I would indeed say inappropriate to -- in filing a statement of interest opposing a consent decree to which it was not
a party that was negotiated between the City of Chicago and the Chicago Police Department.

Not only did the attorney general abdicate the Justice Department's responsibility to remedy longstanding systemic violations amply documented in an over 200-page report done by its career lawyers, they have sought now to kill this consent decree that was negotiated locally because DOJ had abandoned its role.

On LGBT equality the rollbacks have been numerous, reversing again longstanding positions. There's most recently the effort to interpret Title IX to effectively erase civil rights protections for transgender people. The Justice Department also filed a brief in the Masterpiece Cakeshop case reversing its longstanding position in prior iterations of that litigation to -- reversing the side in which it spoke.

On disability rights it's failed to seek full enforcement of the Americans with Disabilities Act. It's rescinded guidance last year that was originally issued to help achieve the important goal of the ADA, which was to create independent living and economic self-sufficiency.

In closing, my written comments provide a lot of areas of information and investigation for the
Commission and I appreciate the opportunity today.
Thank you.

CHAIRMAN LHAMON: Thank you very much.

Mr. Thompson?

MR. THOMPSON: Thank you to the Commission.

I'm Joshua Thompson, a senior attorney at Pacific
Legal Foundation. My remarks today will address two
areas of civil rights enforcement where unintended
consequences stem from the over-enforcement of our
nation's civil rights laws.

First I'd like to address our disparate
impact regulations under Title VI.

Title VI is not a disparate impact
statute. Its text plainly prohibits intentional
discrimination on the basis of race by any entity that
receives federal money. And in Alexander v. Sandoval
the Supreme Court held that there is no private cause
of action to enforce disparate impact regulations
promulgated under Title VI.

The Sandoval court did not decide whether federal
regulation promulgated by the federal agencies
themselves are constitutional, but did explain that
those regulations go beyond what the statute itself
requires.

Shortly after the Sandoval decision the
Department of Justice's Civil Rights Division reaffirmed its belief that disparate impact regulations promulgated under Title VI remain valid and that those agencies had a responsibility to enforce them. And currently 26 federal agencies have disparate impact regulations that were promulgated under Section 602 of Title VI. But over-enforcement of disparate impact can sap agency resources and lead to perverse results. There can be little doubt that as to the former concern proving a disparate impact violation under current DOJ guidelines is an extremely resource-intensive undertaking.

In addition to the voluminous evidence gathering needed to establish an illegal disparate impact plausible disparate impact claims can be raised from any host of benign policies or practices. As the Supreme Court has noted, racial disparities can often simply be caused by the laws of chance and marshaling finite agency resources to forbid non-discriminatory disparate impacts cannot be the best way to enforce or nation's civil rights laws. In my written remarks I outline a number of examples of how disparate impact -- over-enforcement of disparate impacts has actually led to discrimination against traditionally targeted communities.
Secondly, I'd like to talk about desegregation orders. The greatest success of the Federal Government in terms of civil rights enforcement has been in ending the segregation of the nation's public schools. The Department of Justice's efforts to break down racial barriers to schools have given millions of children opportunity to receive a quality education, but as of Section V of the Voting Rights Act the continued enforcement of decades-old desegregation orders is not without costs.

There are hundreds of currently active desegregation orders across the country and over 100 that are 50 years old. While maintaining federal supervision over practices that are quintessentially local presents similar federalism concerns that were present in Shelby County the content of these dated orders and consent decrees can be outright discriminatory.

Take the example of Edmund Lee. Edmund Lee is an African American boy who lives in St. Louis. He attended on of the city's premier charter schools. His family, desperate to leave inner-city St. Louis, saved enough to buy a home in the suburbs. Edmund's mother, Lashika White, inquired at the charter school as to whether Edmund could continue to attend. She was
willing to make the half-hour drive every morning if it meant he could continue attending his school. She was informed that moving to the suburbs meant that he could no longer attend the school, but not because of the geographic limitation. It was simply because Edmund was black.

St. Louis schools operate under a settlement agreement that ended a protracted desegregation battle in the courts. That settlement agreement allows non-black students in the St. Louis suburbs to transfer to schools within the City of St. Louis, but prohibits black children from doing the same.

At the time that settlement agreement was entered into there were few quality schools in the City of St. Louis, but today there are fantastic magnet charter schools within that city. Nevertheless, the prohibition on black student transfers remains.

I represented Edmund and his mother in a lawsuit challenging the racial discrimination perpetuated by this decades-old desegregation lawsuit. Ultimately the 8th Circuit held that the settlement agreement did not bind charter schools where Edmund was attending, thereby allowing him to attend his prior charter school, but the prohibition on black
children attending St. Louis' magnet schools remains
to this day.

That one sense will desegregation orders
work harm to the very students they are intended to
benefit is not unique to St. Louis. In Hartford,
Connecticut, for example, I currently represent eight
black and Hispanic families challenging a state law
enacted due to a stipulation in a decades-old case
that requires the city's magnet schools to remain 25
percent white. What this means in a city like Hartford
where over 90 percent of the public school students
are not white is that white children from the suburbs
are given significant preferences to attend the city's
world-class magnet schools over the black and Hispanic
kids in the city.

Moreover, even with that preference the
quality magnet schools have difficulty attracting
enough suburban white kids to meet their quota. The
perverse result is that quality seats go empty and
Hartford's black and Hispanic children are relegated
to the city's failing neighborhood schools, even where
there are over 1,000 open seats in the successful
schools.

Other examples are plentiful. In
Huntsville, Alabama the Alabama Accountability Act
permits students to transfer from failing schools into non-failing schools, however, a 50 year-old desegregation case prevents such transfer if it were to upset the racial balance at either school. Similarly, a decades-old desegregation order in a Little Rock, Arkansas suburb prevents black and Hispanic children from transferring out of a failing school if doing so would upset the ideal racial composition of the receiving school.

The Federal Government's involvement in desegregation efforts cannot be overemphasized, but continued enforcement of zombie desegregation orders comes with significant costs. These are resource-intensive cases. Cities are constantly evolving and desegregation orders, consent decrees, settlement agreements often fail to capture the dynamic nature of K-12 education. Worse, they all too often hurt the very individuals they are designed to help.

Strategic enforcement of civil rights is very much needed in this country, however, it's important that our civil rights enforcers are using their limited resources in the best way possible. As times and circumstances change our civil rights priorities must change. As the Commission evaluates the best ways to maximize the benefits of civil rights
enforcement, it should be mindful of the costs associated with focusing resources on non-mandated disparate impact regulations under Title VI as well as the decades-old desegregation orders that often work to the detriment of the nation's most needy children. Thank you.

CHAIRMAN LHAMON: Thank you, Mr. Thompson.

Mr. Yang?

MR. YANG: Thank you very much, and thank you very much for hosting this very important convening.

My name is John Yang. I am the President and Executive Director of Asian Americans Advancing Justice | AAJC. Our mission is to advance the civil and human rights of Asian Americans and to promote a fair and just society for all. While we are based in D.C., we operate with four independent affiliates across the country and have over 160 community partners throughout the country in 32 states and the District of Columbia.

Before we start, I think it's important to understand the Asian American population in the United States. The Asian American population in the United States has grown significantly in the last 17 years since the 2000 Census. We've grown by about 70
percent, and of that growth part of what we need to understand is that the Asian American community is an immigrant community. Over 90 percent of our community are immigrants or the children of immigrants. So when we're talking about civil rights enforcement and what civil rights needs the Asian American community has, in some ways they could boil down to stereotypes regarding our community, the lack of data about our community, and language access for our community.

I'll address a couple of topics. I know some will be addressed by others, so I will try to keep these short.

The first topic is immigration. I think it's important to understand how this plays out because the rhetoric that we have seen and the xenophobic sentiment that we have in society today are causing Asian Americans and other immigrants not to report civil rights violations. So as a result, we are seeing that Asian Americans feel more threatened and more vulnerable in a way that we have not seen in the past. With respect to specific immigration policies, there are a few that are worth noting. Obviously, there's a lot in the news. Much of it is in the way of policy that really does not fall under this Commission's jurisdiction, but a few that certainly...
this Commission should take note of. One is the politicization of immigration court judges. Immigration court judges under changed policies, now have quotas with respect to how many cases they see -- for which they seek dispositions, with respect to the processes that they can use to reach those dispositions, results in civil rights violations or the inability to have due process for these immigrants.

Now let's remember that immigrants have civil rights and are entitled to certain rights in this country as well. The hiring practices that we have seen or we have heard about with respect to these judges leads us to be very concerned about the future in terms of the fair adjudication of these cases.

The second is in the area of the U.S. Citizenship and Immigration Services, USCIS. USCIS has traditionally been a welcoming entity of the Government. I believe Leon Rodriguez testified earlier in the day, so he probably spoke to some of this. But what we are seeing now is that USCIS has been turned into an enforcement agency rather than an agency that seeks to integrate new Americans.

And what that has resulted in is, among other things, that USCIS is calling ICE, the
immigration enforcement operations, to pick up applicants that are presenting themselves to immigration interviews. They are denying applications for relatively small discrepancies without giving applicants any opportunity to renew or fix them. Notices to Appear in every instance where an immigration benefit request is denied is -- are issued in a way that obviously makes these immigrants vulnerable.

Another area with respect to USCIS is the establishment of a denaturalization force. We don't have specific details on this, but this is something that all of us should be looking into, with respect to threatening existing citizens with denaturalization. Traditionally, denaturalization has applied to war criminals, such as Nazis, that this country has determined should not be here or should not be deemed citizens. Now this notion of who should be denaturalized is often times based on small discrepancies in their immigration applications, causing their naturalization applications to result in enforcement proceedings where people are subject to deportation.

All of this really affects the trust that immigrants, and especially Asian Americans have in the
government in terms of approaching it with respect to some of these services.

With respect to voting rights, I think some of it has been addressed, and I believe Burth with respect to MALDEF will address some of these issues as well. I think what I would want to say here is that language access is an important issue for Asian Americans. Approximately a third of the Asian American population is limited English proficient, which means that we seek enforcement of Section 203 and Section 208 of the Voting Rights Act. Unfortunately, since fiscal year 2016, we have seen no enforcement actions under the Voting Rights Act with respect to the Asian American community.

On affirmative action, the simple message is that the Department of Justice is doing something that the Asian American community does not want. The Asian American community supports affirmative action, notwithstanding the current DOJ's position on affirmative action. We recently conducted a survey, led by AAPI Data and APIAVote, that showed that over 60 percent of the Asian American population supports affirmative action. Obviously, everyone has seen in the media that there are some vocal opponents to affirmative action, but that does not represent the
majority opinion of Asian Americans or Chinese Americans.

The last thing that I would address is with respect to the census. The census is fundamental to civil rights enforcement of our communities. Without accurate data regarding our communities, we cannot be sure that resources are allocated evenly or fairly. We cannot be sure that political representation is apportioned fairly.

Unfortunately, the potential addition of a citizenship question obviously puts that into doubt, and that is something that all of us are extremely concerned about and that should be addressed. We, along with MALDEF, are in the litigation process with respect to the citizenship question, but this is a question that is fundamental to who we are as Americans. It should be remembered that under the Constitution, we are counting all persons in the census, not all citizens, not all legal residents or anything of that ilk.

So the fundamental summary that I would offer is unfortunately this particular administration has moved us backwards rather than forward with respect to civil rights. There are many issues for which we need help from this administration enforcing
our civil rights, especially in the Asian American community, and that has not been done to date. Thank you very much for allowing me to testify.

CHAIRMAN LHAMON: Thank you.

Mr. Lopez?

MR. LOPEZ: Thank you. Good afternoon. My name is Burth Lopez and I am a staff attorney at MALDEF, the Mexican American Legal Defense and Educational Fund. Thank you to the Commission for the opportunity to speak here today about the current federal civil rights enforcement landscape.

Throughout its 50-year history MALDEF has secured important victories to advance the cause of civil rights for Latinos in the United States in areas of employment, education, voting and immigrants' rights. Not only has MALDEF broken new ground by securing rights previously unarticulated by the courts, it has also worked tirelessly to preserve these gains through its efforts in advocacy, education and of course litigation. But in addition to MALDEF's efforts, federal enforcement has historically played a vital role in preserving MALDEF's hard-fought gains.

The federal role in civil rights enforcement has become even more important in the years following the Supreme Court's decision in
Alexander v. Sandoval, which in most instances has effectively curtailed the ability of private litigants to enforce civil rights under a theory of disparate impact discrimination.

New administrations often shift priorities of federal agencies as they transition into power and pursue their own executive agendas, and under the current administration it has become clear that executive priorities have shifted away from the enforcement of civil rights in areas that are critical to Latinos, workers, students and voters. To that end I'd like to highlight some of the specific areas of concern for MALDEF.

In the area of employment the Federal Government plays a vital role in protecting health and safety of workers in the workplace. The need for federal enforcement in the -- of the Occupational Health and Safety, or OSHA standards is paramount considering that in 2016 there were over 5,000 workplace-related deaths and 2.9 million injuries and illnesses on the job. Of these 900,000 individuals required some time away from the job and 120,000 of those individuals identified as Hispanic or Latino. Yet under the Trump Administration OSHA enforcement has seen an accelerated decline, both in the number of
overall enforcement units, which is the metric used by
the agency to monitor its enforcement activity, and in
the total number of OSHA inspectors who were available
to carry out workplace inspections.

The current administration has also
reversed course on regulations that would have led to
increased wages for millions of workers. At the end of
the Obama Administration the Department of Labor
promulgated regulations that would have increased the
threshold for employers to exempt their employees from
receiving overtime pay from approximately twenty-
three-and-a-half thousand dollars, twenty-three
thousand, seven hundred dollars to forty-seven
thousand, five hundred dollars.

The proposed regulations would have
positively impacted millions of employees especially
managers in the food services and retail sectors who
work long hours but are under the current rule exempt
from receiving overtime pay. Before the rule went
into effect, however, several states and business
organizations filed lawsuits to block the rule’s
implementation. The Department of Labor initially
defended the rule, however, the Trump Administration
reversed course and the Department of Labor abandoned
its defense of the rule which was ultimately blocked
by the U.S. District Court in the Eastern District of Texas.

The implications for workers, Latino and otherwise, across the nation would have been significant in protecting middle class workers' ability to provide for themselves and their families.

While the Department of Labor has begun the process of promulgating a new rule in July of 2018 it has yet to do so. Moreover, any new rule is widely expected to set the overtime threshold far below the previously proposed rule and will as a result impact substantially fewer workers.

With respect to education, the area of significant concern for the Latino community relates to the proposed restructuring of the Office of English Language Acquisition, OELA, into the larger Office of Elementary and Secondary Education. OELA is tasked with ensuring that English learners, who comprise 10 percent of the K-12 population, receive equitable education by providing expertise, guidance and assistance to state and local agencies and educators.

The administration claims that proposed restructuring will help ensure everyone working on K-12 issues will consider the needs of English learners, however, it is unlikely that such a change will
improve the access to equitable educational opportunities for English learners whose unique needs are already often sidelined. And this is especially true in areas such as the southeastern part of the United States where the number of K-12 English learners has increased.

In the voting rights context, after the Supreme Court gutted Section 5 of the Voting Rights Act in Shelby County v. Holder, Section 2 has become the only available recourse to challenge measures aimed at suppressing minority voting power, yet the Trump Administration has failed to bring a single case under Section 2 of the VRA. Indeed, the last Section 2 case brought by the Voting Rights Section of the Department of Justice's Civil Rights Division was filed on January 10th, 2017 under the Obama Administration.

The current administration prefers to side with jurisdictions that are attempting to roll back voting rights protections going so far, for example, as Vanita mentioned, in filing briefs supporting Texas' efforts towards stricter voter ID laws. And these are but a few examples of the administration's attempted rollback of important civil rights protections through its redefinition of enforcement.
priorities, in some instances it's complete abdication of its responsibility to enforce civil rights law.

The current trajectory of civil rights enforcement under the Trump Administration is one that is decreasingly likely to protect Latinos, other minorities and the most vulnerable members of U.S. society. Private enforcement is no proxy for the awesome power of a federal government when it fully committed to civil rights enforcement. However, in the vacuum created by the current administration it is now more than ever incumbent on MALDEF and other civil rights advocates to fill that void created by an administration that seems increasingly hostile to the idea that all Americans should enjoy the fullest protection of the law. Thank you.

CHAIRMAN LHAMON: Thank you very much to each of our panelists. I'm going to open for questions from my fellow commissioners.

As folks are thinking about their questions, I'll ask each of the panelists to speak to what it is that you think the federal civil rights agencies should be doing now. I've heard very significant concern from you about what is happening and if you could speak to what you would like to see happen from this administration in this time now with
the agencies. And in particular in the first two panels that we heard from today we heard quite a bit of commentary about enforcing the law as it is as distinct from the law we might wish it were. Can you speak to what it is that you would like the agencies to do understanding that they are enforcing the law as it is written and interpreted by the courts.

Ms. George?

MS. GEORGE: Well, I would actually like to reference a 2016 Government Accountability Office report, again in the education context. And this report included some recommendations that the Department of Education could take to further steps to leverage data related to promoting school diversity.

So they recommended this focus on data including analyzing data by type of school and by the percentage of racial minorities to obtain a better picture of educational disparities such as access to advanced course work. It also recommends that the Department of Justice actively investigate its open desegregation cases, many of which have actually lied -- have laid heavily dormant for years, and monitor data such as test scores and for the states and districts involved in these desegregation cases. Such action would help to ensure that all students have
access to the lifelong benefits that racially diverse learning environments offer.

And so continuing to collect and report on this data is very -- is vital. And actually action in and oversight in desegregation cases our report details that actually by reducing court oversight of desegregation orders we have seen an increase in racial isolation and that the degree of integration is actually falling. And that's on page 9 of the school diversity report where we detail that data.

CHAIRMAN LHAMON: Thank you.

Ms. Goss Graves?

MS. GOSS GRAVES: So one of the things that I think would be really useful right now is to have, either together or separately, the heads of each of the civil rights enforcement agencies communicate very strongly the values around why they're in the business of enforcing our civil rights laws and that the various institutions that they have jurisdiction over, that they have critical obligations that continue no matter the public narrative. And because I think that there -- I think that there's a real opportunity for some bully pulpit moments that could help to unify people, but also again remind these institutions in important ways.
And I will just tell you we -- at the Law Center we run the TIME'S UP Legal Defense Fund, and we've heard from about 3,700 people since January 1st with instances of harassment and related retaliation, and almost all of those harassment complaints come with a retaliation complaint, like people were trying to use their systems and then they experienced retaliation that they did. So there are sort of basic and longstanding concerns and a real worry that the wrong communication is going out there.

And then I will just add related to that is around -- transparency around what you are doing. We've had to file a lot of FOIAs with this administration to figure out what exactly it is. We're relying on leaks to the press. And it's disconcerting for us as an organization that tries to do a lot of public education to students, to patients, to workers about what their rights are and what their institutions should be doing, but it's confusing for institutions that are recipients of federal dollars. So more transparency, not less would be good.

CHAIRMAN LHAMON: Thank you.

Ms. Gupta?

MS. GUPTA: Yes, just picking up on Fatima's last point on the transparency issue, I think
it's really important that the public have access to critical data on civil rights enforcement. Across agencies I think there are a set of metrics that agencies can use to -- for the public to talk about what's happening in terms of the number of new investigations that have been opened, cases that are closed without a finding, consent decrees that the Justice Department has entered; I'm speaking for the Justice Department Civil Rights Division, but this would apply to other offices of civil rights at other agencies, the out-of-court settlements that the Justice Department has signed, statements of interest that have been entered by the Justice Department, guidances issued or rescinded that sought to enforce civil rights or clarify the law since guidances themselves don't create new rights.

And the data should be made available so that the public understands kind of the ebbs and flows of enforcement while -- simply because the mandate of these agencies is to operate and enforce the laws that are on the books regardless of political administration. And I think that transparency would go a long way. And I -- you know, I think it is really important that these agencies are able to state their law enforcement objectives and goals and mandates.
There needs to be a lot more oversight over them and to really document the enforcement levels and how they ebb and flow with changing political administrations because that is not supposed to happen per the mandate of Congress.

And so those are just some things that I think would go a long way to ensuring both protecting career attorneys that are tasked with doing this work, but also ensuring public -- that the public understands what's happening at these agencies with some degree of transparency.

CHAIRMAN LHAMON: Thank you.

MR. LOPEZ: I would second everything that was -- especially with respect to issues of transparency. I think in particular in the context of immigration enforcement and the situation that is developing on the border where we have individuals disappearing into a system where they cannot be found. It's now more than ever important that particularly DHS, but really across the entire spectrum, make information available as much as possible so that we can literally within the context of DNS -- DHS have a -- paper trails of where people are.

CHAIRMAN LHAMON: Thank you.

MR. THOMPSON: Thank you. Consistent with
my comments I would say that our civil rights laws and our civil rights enforcement need to be focusing on rooting out and smoking out intentional discrimination. I think too often our disparate impact over-enforcement can lead to intentional discrimination.

And one comment piggybacking on the discussion of integration of the schools. Elaborating on what's happening in Hartford right now, it's a sad story where my black and Hispanic clients are not able to get into the integrated schools because they are black and Hispanic. And these schools are at sometimes 40 percent, 60 percent capacity, but in the name of integration they have to leave those seats open and they are denied the opportunity to attend the quality schools. But what schools are they relegated to? Well, they're relegated to neighborhood schools that are almost overwhelmingly 100 percent minority. So the efforts to integrate the quality schools leaves the children suffering in this city and I do not think that our civil rights laws should be focusing on integration when they are in fact discriminating against the very people that need protection under the civil rights laws.

CHAIRMAN LHAMON: Thank you. So I'm -- oh,
go ahead.

MS. GUPTA: Could I just follow up on my co-panelist's comment? First of all, it isn't clear to me what is meant by 'over-enforcement of disparate impact.' The Supreme Court in twenty -- as recently as 2016, I believe; maybe it was 2015, decided in the Inclusive Communities case very clearly that disparate impact is a lawful standard and is an important one to use for the Federal Government to ensure that there isn't discrimination that whether intentionally or inadvertently is having an impact on particular protected classes of people in this country.

And so where you draw the line of over-enforcement versus enforcement of what are legally viable claims I think is a subjective one and I would caution the Commission to understand that. Again, I would also want to see what the data is to back that up.

And in terms of integration as a goal for educational opportunity, Brown v. Board of Education made very clear that integration and integrated schools and desegregating them is a duty and mandate the Justice Department took very seriously. These are all consent decrees that are lodged with federal courts that make their independent determinations of
whether a district should be declared unitary or not and it is a very serious fact finding effort.

I do know certainly when I oversaw the Justice Department's Civil Rights Division that there was a lot of studying of those consent decrees to determine which ones could actually be closed out where unitary status could be achieved and it was based on a very complex set of factual findings that were lodged with a federal court and ultimately the federal judge had to make that determination.

And so it was incumbent on the career staff to ensure that there weren't open consent decrees that could be closed because of compliance. But remember that it is -- those decisions ultimately reside with federal -- Article 3 federal judges.

CHAIRMAN LHAMON: Thank you.

I was struck and interested by how many of you focused on the bully pulpit or transparency in data. And those are obviously very important tools. I'm wondering if you are saying that about the existing tools in the federal civil rights agencies or if there are other tools that you think that they need, other tools that you think they should be using, different ways to enforce it, or if in fact the principal tools that you would like to see used in
this time to secure federal civil rights enforcement are the messaging and signaling tools.

MS. GUPTA: I can --

CHAIRMAN LHAMON: Ms. Gupta?

MS. GUPTA: -- very quickly take really --

I think that oftentimes actually there's no question that enforcement itself can be very resource-intensive for the career attorneys, but that is precisely why guidances are actually quite effective and they can conserve resources when the Federal Government is able to opine and clarify the U.S.' interpretation of particular standards or statutes. Again, they do not create new substantive laws. They can only clarify. But for a lot of local jurisdictions and states they derive enormous benefit from receiving those guidances by way of developing policies and avoiding any kind of enforcement action or non-compliance, inadvertent or advertent with the law.

CHAIRMAN LHAMON: Thank you.

Ms. Graves?

MS. GOSS GRAVES: So in the area of sex discrimination in house and number of agencies this administration has put itself at a disadvantage in enforcing the existing complaints that it is getting. And so by doing things like changing the compliance
manual that make it easier to wholesale dismiss whole
categories of complaints that you're receiving -- so
these are individuals who are trying to find their way
oftentimes by themselves and who have been told for
many years we're open for business, come to us if you
have a civil rights concern, and then they get what
looks like to them a form letter saying that your
concern is unimportant.

And so the reason I focused on
communication and transparency is I sort of see that
as a building block. And then you got to undo the
things that are basically barriers for people who are
trying to come forward.

The one area where I think you're seeing
efforts to have meaningful enforcement in the area of
harassment right now that is responsive to the need is
at the EEOC where they have the highest number of
charges that they have received on the area of
harassment that's absolutely tied to the cultural
movement, but I also believe it's tied to them sending
messages that they're taking this issue seriously. And
it is OMB that is blocking them from moving forward
and doing more.

CHAIRMAN LHAMON: Thank you.

Ms. George?
MS. GEORGE: I think I would add to what has already been said by just saying that the federal agencies have tools at their disposal. We also thankfully have data and evidence of what actually works. The U.S. Supreme Court in Brown v. Board of Education relied in large part on the social science evidence compiled by Drs. Kenneth and Mamie Clark who actually started doing their research over a decade before the case was ever filed on the harms, the psychic harm of segregation on children.

And we know that integrated diverse learning environments promote tolerance, cross-cultural understanding, eliminate bias and prejudice and actually improve critical thinking skills. We have this data. We have this evidence. And what's concerning about the rescission of a lot of the guidance is that it's based on evidence and research of what we know works and what students need for positive and inclusive learning environments.

So again I would emphasize that the tools are available and it's important to understand that these tools are not just political tools. These are tools based on research and evidence and we can't undermine or ignore the evidence of what students need to succeed.
CHAIRMAN LHAMON: Thank you.

I think, Mr. Yang --

(Simultaneous speaking.)

MR. YANG: Yes, I think I would completely agree with that. It seems to us that especially in the voting rights case at least some tools exist. We would argue that additional tools are needed, whether it is Section 5 or something along those lines, but there are tools such as Section 203, 208, and Section 2 that exist but are not being used right now. So before we even get to the question of what other tools do we need, we need to see the existing tools being implemented.

And I would also posit the existing tools being used in a way that is helpful rather than harmful for our community such as in the case of affirmative action where the tool, the Civil Rights Division, is being used in a way that is actually undermining civil rights in our minds rather than furthering it.

And I think, to pick up on another theme, there is this notion of how these guidances are being changed without any evidence suggesting the need for the change. And that's where for us the census comes into play is that there has been no demonstrated need
for a citizenship question. We know now from the
evidence that's been developed that it's just a sheer
pretext as to the need for a citizenship question. So
what we are left with is these made-up stories for a
need for a change in policy where there's no change
that's necessary.

CHAIRMAN LHAMON: Thanks very much

Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you, Madam
Chair.

In the Department of Education Office of
Civil Rights the administration, as I understand it,
has instructed investigators to dismiss a complaint if
it's a continuation of a pattern of complaints
previously filed by an individual group against
multiple recipients or a complaint filed against
multiple recipients that places an, quote/unquote,
"unreasonable burden on resources."

As of March of this year 623 complaints
have been dismissed not because there was no
violation, but because of this rule, yet this
administration budget request keeps seeking to cut the
actual funding for the Office of Civil Rights.

I'm wondering what kind of examples, what
kind of cases under this rule are being kicked out and
should we be concerned?

MS. GOSS GRAVES: Well, I gave one example about the disability and web access. Sometimes there is a problem that for whatever number of reasons is pervasive across a number of institutions, a common practice so that you sort of feel like I could almost throw a dart and hit someone who is not following this rule. That is the perfect moment for the Office for Civil Rights to speak out proactively and remind institutions of their obligations. Sometimes they don't do that, right, through guidance.

Another way is to do it through enforcement and making transparent your enforcement so that people understand and are reminded. So if you have a single institution that is doing the work of actually calling this to the attention of institutions who receive federal dollars but for some reason are not following the longstanding and decades on federal law, you would expect to see it.

And we've seen it pop up in the anti-affirmative action context where you have a single institution filing very similar complaints against private institutions to try to dismantle the diversity initiatives. So the thing that has caused us even greater concern is that it's been selectively
enforced, right?

So I actually think the thing to do in this situation is look at what is the harm? If you're seeing a lot of different problems at different parts of the country raising very similar concerns, maybe that means that the Department of Education needs to speak out in other ways about the harm.

MS. GEORGE: Another area that I would add where this could have significant impact is the area of school discipline disparities, school discipline complaints. I mentioned some of the data on that. These disparities start for African American students as early as preschool. The civil rights data collection shows that in 2013-2014 African American children represent about 19 percent of preschool enrollment and about 47 percent of preschool children who receive more than one out-of-school suspension, right? So these rates we know are very high.

And so other panelists mentioned the case of Alexander v. Sandoval. And to put it I guess in a little bit of non-technical legal speak it's effectively foreclosed a private right of action for a lot of these kind of complaints. So instead people are left with filing complaints with the Office of Civil Rights. For instance, these high rates a lot of
parents might file a school discipline complaint saying I believe my child has been discriminated against.

And so what this means is that you could see a reduction in addressing these kind of complaints that are being filed and effectively people don't have relief, right, for these kind of issues that they're seeking.

Our report also details that as of the end of March of this year this change has resulted in more than 623 complaints being dismissed, not because there was no actual violation of the law, but simply because of the volume of complaints. And what happens is children's educations are effectively being undermined, right? Their educational opportunity is being undermined. They're life outcomes are being undermined. So parents again -- parents' organizations don't have the kind of relief that they actually need to address these issues.

COMMISSIONER NARASAKI: Thank you. Ms. Goss Graves, we've heard reports that the Trump Administration wants to create a legal definition of sex as a biological immutable condition determined by genitalia at birth. Are there concerns with this definition? And if so, what are the implications?
MS. GOSS GRAVES: We have deep concerns about the effort that was reported, I guess it was only a week ago. Whether that definition is limited to HHS or is a definition that's adopted throughout agencies, we think it's inconsistent with what scientists have said and the way that medicine is actually approaching the issue of sex, but it's also totally in opposite of the law that has developed over time.

And if we go back to Price Waterhouse, the idea that sex is some narrow definition and tied only to biological rather than the various social structure that develops around it, that's 30 years of case law that has said the opposite. And when you think about that particular case where she was denied a promotion because she exhibited characteristics that people decided were male-like characteristics. She didn't wear makeup, she was considered aggressive.

So our courts over time have understood that sex and sex discrimination includes not just treating people differently based on biological considerations, but based on social constructs around them and sex stereotyping and a whole body of law developed around that. And that's why you've seen case after case where courts have made clear that gender
identity discrimination is a form of sex stereotyping and a form of sex discrimination. And that's why you've had multiple courts of appeal say the same about sexual orientation. So citing virtually nothing is my understanding, and this is how -- what you end up happening.

But the deeper troubling thing I think for many of us in the women's community is that the subtle idea behind it is that this is -- doing this as some sort of protectionism for women, and at least at the National Women's Law Center we feel very strongly that we -- it's our obligation to reject that message very much so.

But it also -- what worried me so much last week is the many transgender and intersex people who felt unsafe. They worried about what it would mean to their ability to access medical care, what it would mean to their ability to keep their jobs, to keep their housing, to move in the community safely.

And so to go back to what maybe is a theme of my remarks today is the messages that we are sending right now have real implication for people as they are moving in and out of their world. And it is never a good idea for people to be left with this deep feeling that they do not feel unsafe.
COMMISSIONER NARASAKI: Well, related to that I believe that there is a belief that Section 1557 of the Affordable Care Act which covers discrimination based against LGBTQ might be weakened or removed. And how important is that prohibition of health care? A recent Center for American Progress study found that one in four transgender respondents avoided doctors' offices out of fear of discrimination. And the enforcement so far under that act has found that a -- far over a majority of the complaints are actually not related to transition, which is the issue that raises concerns from some religious communities, but actual just straight up discrimination.

MS. GOSS GRAVES: Right, I mean, one of the things that we know is that there is longstanding sex discrimination in health care access and health insurance that until the health care rights law was passed as a part of the Affordable Care Act went totally unaddressed. There wasn't really a place for people to meaningfully turn to. So you move from now people understanding that you can get care and if you're trying to get -- whether you're trying to get care because you broke your arm or you're trying to get newborn care that discrimination has no place in
the provision of health care.

And those are some of the examples that we've seen, that a couple because they were a lesbian couple brought their newborn in to a pediatrician and is told that they cannot see their pediatrician, or a transgender woman is told that she can't get services for-- like a broken arm. I mean, it just means that people will be less healthy.

And just the last point that I will make about this, here again, even before HHS had put out its regulation; and I will say we were one of the groups saying put the regulation out, let people know what to do; and it took a number of years before it came out, court after court was sort of -- was issuing decisions saying, yes, of course, right? And there was one decision that went the other way.

And now what we've been hearing from HHS is they're -- that they have plans to take that rule and limit it some terrible way, limit the sex discrimination provision in some terrible way. You know, 1557 of the Affordable Care Act, that health care rights law, it still exists whether -- it existed before there was a rule and it will exist after there is a rule. The only question is are they out there confusing people and encouraging them to engage in
discrimination and doing things that run totally opposite to where the huge weight of the law has been?

COMMISSIONER NARASAKI: Okay. And, Ms. Gupta, I wanted to ask you, there have been a number of stories about the fact that in some of the position changing or positions taken by the Civil Rights Division of the Department of Justice that career staff who would normally under historic processes be signing are not. And I'm wondering what the implications of that is? What are we to make of that?

MS. GUPTA: Yes, there are several cases where there's been a change in litigating position without any change in factual conditions on the ground, and those changes of position have been signaled in pleadings that have had no career lawyers in the signature block. And that is an unprecedented set of circumstances and signals to the outside world that understands the Byzantine nature perhaps of the Justice Department that the career men and women who are there to enforce the law regardless of political administration were quite uncomfortable with the change of position and that the pleading that got filed was a purely political decision.

And the danger really is that the Justice Department career men and women who enforce the law
day in and out for the Civil Rights Division are
supposed to be doing that, as I said, really following
the facts in the law regardless of the political tide.
It's a core duty as they're law enforcement officers
representing the United States Government.

And so that kind -- those kinds of
pleadings that get filed without career lawyers in the
signature block I think really signal the degree to
which political decisions are being made against the
recommendations or without the buy-in of the career
lawyers.

And just to -- there's also another
example of that, which is a little different than not
having career lawyers in the signature blocks, and
that is the example of the Harvard investigation that
the Civil Rights Division is now conducting. It is
being conducted out of the political front office and
the Educational Opportunities Section is -- does not
have a lawyer on that matter. The position of the
Justice Department investigating, doing an original
investigation into a higher education institution in
the context of race-conscience admissions is also
unprecedented and it suggests that the career lawyers
did not recommend that this investigation be lodged
and that is being done for political reasons.
COMMISSIONER NARASAKI: Thank you. I probably pushed the envelope as far as I can with the Chair, so I will stop.

(Laughter.)

CHAIRMAN LHAMON: Thank you.

Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Thank you very much, Madam Chair.

This is for Ms. Gupta and others that might which to chime in.

But, Ms. Gupta, you made the point very convincingly in your materials that civil rights enforcement has always been and should always be a bipartisan tradition. And one of our other panelists, or maybe even several of them, earlier set out for us the various federal civil rights legislation and the different administrations responsible for it. And so as we try to come up with ideas about what should be done, what could be done with federal civil rights enforcement, it seems that that might be a solution, returning in some way to bipartisan -- that bipartisan tradition with regard to civil rights enforcement. And I was just wondering if you had any ideas about how it is that we might somehow return to a bipartisan tradition in civil rights enforcement.
MS. GUPTA: Well, obviously we're at a time in this country that is deeply polarized, but the beauty of having government agencies that have institutionalized offices of civil rights, say in the Civil Rights Division of the Justice Department, is supposed to inoculate these institutions from politically kind of gerrymandering the very core role of the Federal Government in enforcing our nation's civil rights laws.

I believe overall as a country we have to make sure that civil rights enforcement is not viewed as a Democratic or Republican agenda. It should be a part of the legal system and, as I said, bipartisan. And I know through my own relationships with several Republican and Democratically-appointed heads of the Civil Rights Division that those were -- that was a mandate that was taken very seriously.

I think that it would help to have some degree of transparency that tracks whether their political administrations really have an impact to the detriment of enforcement. When it goes -- when the public doesn't have access to that information, when Congress isn't conducting appropriate oversight or sufficient oversight, it can alleviate the kind of responsibility of the heads of these agencies who are
politically-appointed from really seeing their role as bipartisan or non-partisan.

And so I think that's one piece of it. I think it's important that you all as commissioners are engaging in this investigation and can take an objective approach to getting the data that you need to take this investigation. And I think that the -- there's a bully pulpit role for officials that serve at these agencies to present this work in a non-partisan or bipartisan way.

And so to me this is part of a bigger project in America, but certainly oversight and the ability of these agencies to feel accountable to the American public, to Congresses that in bipartisan ways enacted landmark legislation -- I think that's a really important message as well.

VICE CHAIR TIMMONS-GOODSON: Mr. Thompson, do you have any ideas that you wish to share on how we might somehow return to that bipartisan tradition regarding civil rights enforcement?

MR. THOMPSON: I appreciate the question. It's not a topic I'm -- I came here prepared to speak about, but I thought Ms. Gupta's comments were spot on.

VICE CHAIR TIMMONS-GOODSON: Thank you.
CHAIRMAN LHAMON: Well with that I think we will save the remaining minutes of this panel and I -- oh, Commissioner Narasaki, yes?

COMMISSIONER NARASAKI: Sorry. I thought we had run out of time.

CHAIRMAN LHAMON: We have three minutes.

COMMISSIONER NARASAKI: Okay. One more minute. Okay.

So, Ms. Goss Graves, in your written testimony you mention that EEOC has had to stop its pay data collection efforts, or it's been stopped. Why is this data important? How is it different from the data that was being collected? What was the point of trying to get this data?

MS. GOSS GRAVES: So the pay data collection has been halted and has never been sent out to employers. The goal of it was to add pay onto the information that's already collected by the EEOC, which is information around race and gender and occupation, so it would basically add information on pay to that.

And part of the project of that collection is twofold: One to give the EEOC more information about pay practices because it is really a hidden form of discrimination. Employers have tons of information
about pay, but basically nobody else does employees. It's very difficult for them to know unless they find out by accident that they're experiencing pay discrimination.

But the second thing; and I actually think is the thing I was most hopeful about, is that most employers are going to actually look at their pay and look and see if they have a problem before turning it over to the Federal Government.

And so that project of actually examining your own pay, fixing problems and moving forward with practices that won't get you in that same bind is one that we are hoping more employers will actually begin to adopt.

COMMISSIONER NARASAKI: Thank you.

CHAIRMAN LHAMON: So with that I thank each of these panelists. I will say that, as I have said to the other panels, it's likely that the Commission staff will have some follow-up questions, and I would appreciate it if you'd be willing to answer those questions if the staff do.

So then in the meantime very much appreciate your time and your testimony today. Thank you very much.

We will reconvene at 2:40 for our fourth
panel of the day. Thank you.

(Whereupon, the above-entitled matter went off the record at 2:28 p.m. and resumed at 2:40 p.m.)

PANEL 4: Academic and Legal Experts in Civil Rights Enforcement

CHAIRMAN LHAMON: Okay. I'm going to get us started for the fourth panel of academic and legal experts in civil rights enforcement. In the order in which they will speak, our panelists are Curtis L. Decker, Executive Director of the National Disability Rights Network; Aderson Francois, Professor of Law and Director of Institute for Public Representation, Civil Rights Clinic, at Georgetown University Law Center; Kim Kendrick, former Assistant Secretary for Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development, and current partner at Leftwich LLC; R. Shep Melnick, Thomas P. O'Neill, Jr. Professor of American Politics at Boston College; Margo Schlanger, Wade H. and Dores M. McCree Collegiate Professor of Law, University of Michigan Law School, and my former law school classmate; and Anthony Varona, Professor of Law, American University, Washington College of Law.

Mr. Decker, please begin.
MR. DECKER: Thank you, and thank you for inviting me to speak. And also, I'm humbled that I am on the legal scholar academic --

CHAIRMAN LHAMON: We're expecting a paper.

(Laughter.)

MR. DECKER: They must have been out of seats at the advocate table, so thank you for including me in this august body.

As you said, I'm Curt Decker. I'm the Executive Director of the National Disability Rights Network. We're the voluntary membership association of the 57 protection and advocacy programs that exist in every state and territory and in the southwest for Native Americans with disabilities.

We are congressionally mandated and funded, and we enjoy a very strong legal authority, the full range of legal remedies available to enforce the civil rights protections or people with disabilities. And we also enjoy very strong access authority. We are able to go into any facility, any school, any workplace where people with disabilities are involved to investigate abuse, neglect, and other forms of discrimination.

And we are the major enforcer of the large number of bipartisan-created civil rights protections
for people with disabilities. It's one of the populations that I think has enjoyed support for Congress over many decades, a full range of civil rights protections.

However, being on the ground every day, we know that civil rights protections without enforcement is really just paper. And so it is absolutely critical that we on the ground work in partnership with the federal agencies that have jurisdiction on enforcement of these many different statutes, and it is one of the reasons I am here today to talk about that.

We have just recently completed a study on behalf of the National Council on Disability on the EEOC, the Department the Labor, and the Access Board, and we're now embarked on a second study to look at DOJ, HUD, and the FCC on its enforcement -- duties, enforcement, and actual implementation.

We have been around for 40 years, and we have seen many presidential administrations come and go, and every one is slightly different and changes their impact on enforcement. And it's not uncommon for new administrations to review policies, regulations, guidance from previous administrations, but the current administration seems to have taken this to an extreme level, one clearly targeting the rights and
protections for all minority populations and especially people with disabilities.

For example, in the Department of Justice, committed to strong enforcement, interpretation, and oversight of the ADA immigration mandate, as expressed in the Supreme Court decision in Olmstead v. LC, is questionable. The Department of Justice, during this administration, has not filed any finding letters in a case related to community integration, nor has it filed any amicus briefs in other Olmstead litigation across the country.

The Department of Justice withdrew, as I think you heard, its order to allow for further discussion of 2016 statement on the application of the immigration mandate of the ADA and Olmstead to state and local governments, employment service systems, for persons with disabilities.

The Center for Medicare and Medicaid Services, which plays an important role to ensure that Medicaid programs facilitate access to community-based services and supports, pulled prior guidance on when a Medicaid funding setting is too isolated to meet the requirements for community-based services. Such actions call into question the commitment of the administration to the community integration mandate of
the ADA.

At the Department of Labor, also an important role in coordinating disability employment policy, and the enforcement of Section 14C -- and let me remind the Commission, many of my colleagues in the civil rights community are working very hard to raise the minimum wage. But, remember, under 14C of the Fair Labor Standards Act, the disability community can be paid less than minimum wage, and that's often the case.

There are 500,000 people with disabilities who receive less than the minimum wage, sometimes as little as 10 or 30 cents an hour.

The extent of the changes by the Department of Labor are still too early to assess. However, some shifts are occurring. According to a recent report by the National Council on Disability authored by us, there appears to have been a reprioritization of resources by the Department of Labor's Wage and Hour Division for targeted strategic enforcement of Section 14C towards instead compliance assistance to employers, a much softer approach to enforcement.

Meanwhile, the Department of Labor's Office of Disability and Employment Policy has reduced
the number of outreach events by 50 percent each in 2017 and 2018, and proposed to reduce the amount of technical assistance events in 2018 from around 1,700 to 500.

In the Department of Education, we see similar problems. First of all, they have lost nearly -- the Office of Civil Rights and Education has lost nearly 70 staffers overall, about 11 percent of its workforce. These reductions were so drastic that Congress stepped in, directing more money to maintaining the staffing levels.

The Department of Education amended the OCR case process manual unilaterally and without public notice and comment. The changes included new provisions to mandatorily dismiss certain complaints and the elimination of complainants' rights to appeal OCR decisions.

It is the legal responsibility and stated mission of OCR to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools. And when they don't do that, the burden falls on parents of kids with disabilities.

And, lastly, the Trump administration has formally taken a number of actions which are harming
students of color with disabilities with no indication that the tide will turn. Just looking at the summer of 2018, the Department of Education delayed previously approved regulations on equity for students with disabilities, rescinded guidance on the use of race in school admissions, and signaled its intent to rescind a package of guidance documents on school discipline jointly developed by the Department of Education and the Department of Justice.

Meanwhile, the Department of Justice rescinded key guidance documents that provide protections against discrimination for youth of color in the legal system, explaining that these actions, the administration has left no doubt of its intent to roll back civil rights protections.

So the disability community is incredibly concerned about an overall diminishing of aggressive enforcement on behalf of people with disabilities.

Thank you.

CHAIRMAN LHAMON: Thank you very much.

Professor Francois?

PROFESSOR FRANCOIS: Good afternoon, Madam Chair, and thank you, Commissioners, for the invitation.

I understand that the prior panelists and,
indeed, my colleagues on this panel intend to cover very specific matters regarding specific issues of urgency. My hope today is to step back and take a broader, sort of a more historical view regarding civil rights enforcement.

It is fair to say since at least the 1980s we have been treated with a certain kind of phenomenon, pursuant to which civil rights agencies or civil rights offices become ghost agencies. They shuffle along with a staff and a budget. But for all intents and purposes, they cease to function according to their statutes and regulations.

And when these agencies are about to turn into ghost agencies, there tend to be at least five warning signs that we know are present. The first is that the agency leadership is entrusted to individuals who lack either meaningful experience in civil rights law or are in fact opposed to robust enforcement of civil rights law or whose notion of civil rights law is reduced to a single issue that may be personally important to that individual.

The second is that the mission of the agency or the division gets reduced or narrowed to a very, very, very small point that either becomes meaningless or at worst is the exact opposite of the...
agency's mission.

The third is that the agency's professional staff is slowly reduced to the point that it can no longer function even at a basic level of competence.

The fourth is that the agency's budget year after year is either zeroed out or reduced, often with the acquiescence of the agency's own leadership.

And, fifth, the agency ultimately cannot point to the public to any meaningful achievement that the agency has accomplished other than perhaps issuing sort of press releases.

Judged by these metrics, apart from HUD, which I understand my colleague Kim Kendrick is going to speak about, I would submit to the Commission, with all due respect, that there are three current civil rights offices that are in danger of becoming ghost agencies. They're the Department of Labor's Office of Federal Contract Compliance, the Department of Health and Human Services' Office of Civil Rights, and the Department of Education's Office for Civil Rights.

Every single one of these offices exhibit between four or five of these signs. And while the time doesn't permit me to go into detail into -- into every single one of them, that much we can say.
Virtually every single one of them have had their budget reduced. Virtually every single one of them have had their full-time equivalent staff reduced. Virtually every single one of them are currently being led either by individuals who have no experience in civil rights law or individuals whose prior experience in civil rights law gives us no confidence that these agencies will survive.

This is true for HHS OCR, OFCC, as well as DOD OCR. But perhaps the most troubling warning sign is that the main federal agency that is designed to serve as the watchdog for these agencies, namely DOJ's Federal Coordination and Compliance Division, essentially has ceased to function, even by its own public admission.

Again, if one even were to look at it as a single example, the Office of Federal Contract Compliance at the Department of Labor, the two main -- main work that the office has done is to publish guidance for contractors, which it is supposed to supervise, that are essentially referred to as a contractor's bill of rights.

The second -- the second man position that is taken, it has issued guidance for its auditors, essentially giving it green light to engage in a form
of discrimination by insisting that when it audits companies in terms of the new obligation, it ought to give great weight to the company's religious freedom or beliefs or act of conscience.

And as I'm sure perhaps the Commission has heard already from others on the panel, OCR essentially has started a brand-new office or section within OCR that is dedicated to conscience and religious liberty.

Now, of course, the most obvious consequence of these agencies becoming ghost agencies is that the communities that these -- they are designed to serve do not get a measure of justice that they deserve. But I want to suggest in the short time that I have left that in fact there are four larger, long-term and more worrying consequences that the Commission ought to be concerned about.

The first is that when this agency is behaving this way, they result in a loss of institutional loss of memory. They essentially forget how to do civil rights work.

The second one is that there is a loss of deterrence effect. That is, if in fact you signal to the market that you are no longer in the business of civil rights enforcement, as some of these agencies
have done, essentially certain actors don't have any
incentive to behave. And, in fact, when you do go
after them, it becomes more expensive for you to go
after them, precisely because they haven't been
deterred.

The third is a loss of doctrinal
development. The fact of the matter is, each of these
agencies have a tremendously important role to play in
the way that doctrine in their particular area
develops, because courts tend to give them far more
leeway in the course of litigation. And the moment
that they step out from enforcing, that role cannot be
fully fulfilled by private litigants, so we lose, if
you will, the way the doctrine itself develops.

And the fourth, which I think is
potentially the most consequential result of this lack
of enforcement of these agencies when they become
ghost agencies, is that they are in fact used as
examples by those perhaps who don't favor civil rights
enforcement as the perfect demonstration of why civil
rights agencies are a waste of time.

In other words, the more you basically
hollow out the agency, the more they become ghost
agencies, the more they start functioning according to
enforcement role, even though they were driven that
way purposely by those who were charged with that.

The more these agencies then are held up as an example as to why we need to cut them further, so in time it becomes something of a vicious cycle. I do believe that it is important to focus, as the Commission is doing, on the specific rules and regulations and action that these agencies are doing.

But I also believe that it is equally important to understand the larger pattern in which what we are seeing is the hollowing out of an entire sublevel of civil rights enforcement. The three that I mentioned having -- being the most obvious one, perhaps the only one that rivals any of these agencies, is HUD.

Thank you.

CHAIRMAN LHAMON: Thank you.

Ms. Kendrick?

MS. KENDRICK: Good afternoon to the Chair and the other Commissioners. My name is Kim Kendrick, and I am an attorney who practices law in the District of Columbia. Prior to joining my firm, I served as the Assistant Secretary for Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development, from September 2005 until January 20, 2009.
Prior to joining HUD in 2004 as a political appointee, I served the District of Columbia Housing Authority as its General Counsel, and then as a Regional Director responsible for managing and maintaining over 3,000 units of public housing.

Prior to joining the Housing Authority, I spent eight years as a career employee in HUD's Office of General Counsel. All together I have spent 18 of my 37 years in legal career working for HUD or working on HUD issues, HUD programs, HUD's policies and rules.

Since my departure from the U.S. Department of Housing and Urban Development, I have kept abreast of the work that HUD undertakes. In addition to occasionally being retained by clients to represent their interests before HUD, I also follow with great interest the policies and practices of the Fair Housing and Equal Opportunity Office.

While I am humbled to join this particular panel of academics and legal experts, I like to consider myself a former federal agency official and offer my opinions here today based on my current observations that I have gleaned from the media or other writings regarding HUD's enforcement efforts, and most significantly from the experience that I gained during my four years as the Assistant Secretary.
for Fair Housing and Equal Opportunity.

I am sure that Bryan Greene, who spoke to you this morning, provided you with a deep background on the office of FHEO and its enforcement protocols and policies. So I will dive directly into the questions that you have presented for our comments.

As the former Assistant Secretary for FHEO, I was charged with the enforcement of several federal laws associated with housing and federal programs that receive federal dollars, the most formidable of which is the Fair Housing Act. After the Voting Rights Act, I consider the Fair Housing Act to be the most significant civil rights tool available to the federal government and to the people of the United States who are protected by this Act because of their race, color, national origin, sex, religion, familial status, or disability.

I say this with such emphasis because I believe that providing fair housing to all provides more than just housing to the person -- more than housing. A person who can purchase a home of her choice at a fair rate without discrimination not only can provide opportunities for minorities to close the racial wealth gap; it can provide opportunities for better educational opportunities, which is also
another way to close the wealth gap between races.

Thus, as a federal civil rights officer, I took great effort to enforce the laws outlined by the Fair Housing Act. I certainly expect anyone who holds a civil rights position in the federal government, even if he does not believe as deeply in the laws as I do, that they should be held accountable for enforcing the applicable laws, including the regulations as they were intended, without interference of politics.

I am happy to say that the current assistant fair housing secretary certainly feels as I do; she has said so in public.

There are certain several evaluation approach that we can take in measuring the effectiveness of the work of our civil rights offices. For example, one could take the 7,600 complaints that were filed with HUD during fiscal year 2018 as a sign that HUD is doing well in communicating its message that it is available to enforce the Fair Housing Act.

However, before you can take -- make that assessment, you have to take a look at the enforcement history. How many complaints were filed in fiscal years 2017, '16, and '15? In addition to looking at the number of complaints filed, you have to also take a look at the type of complaints that were filed, the
percentage. Were they race complaints? Were they
disability? And, again, take a look again, if three
years is a good gauge, to compare the percentage of
cases and categories that were filed.

If it appears that the agency has received
increased numbers of a particular -- it could mean
that the determination -- discrimination is up in that
area or could mean one particular factor impacted a
number of cases in a particular category.

For example, during 2005, before I became
Assistant Secretary, Hurricane Katrina hit and
certainly impacted this country in a great way. And we
received a number of fair housing complaints based on
race because of the discriminatory actions of some
communities outside of New Orleans and based on
disability because of the inaccessibility of the
mobile homes that were made available by the
government to the hard-hit communities.

Thus, one could say that fiscal year 2005
was an anomaly because of the influence of the
hurricanes.

Since I'm running out of time, I'm going
to let my testimony show you what I'm going to --
first, I'm going to talk about priorities, policy and
priorities. I certainly hate to sit here today and say
that the policy priorities for any civil rights organization should be at this time. However, I can say that if I could go back in time, I would have done more to focus on systemic issues as opposed to focusing on the number of complaints that FHEO filed each year.

During my time at FHEO, we were often criticized because we did not receive or investigate complaints. In an effort to address such complaints, we spend a lot of time trying to get complaints, which I think was a big waste of time.

Instead, we should have focused our efforts on more systemic issues, such as mortgage lending. We started a Mortgage Lending Division and that -- the impact of the fair -- of the Mortgage Lending Division was significant in that it was -- you were able to take a few people, an economist, the lawyers, to sit back and take a look at what was happening in the federal banks to determine if they were discriminating in issuing mortgages, denying mortgage applications, and providing interest -- providing -- what types of interest rates they were providing.

This division had small successes that impacted a large number of holders, mortgage holders
and applicants. Most importantly, the impact could be felt because discriminatory practices declined. They did not go away, but they certainly declined.

We could have a greater impact if we directed more resources to divisions such as that, and to impact -- the fair lending investigations could certainly have a greater impact than a few fair housing complaints that have been serviced by -- that could be serviced by other fair housing agencies or even by the private sector.

Without -- I will save most of what I have to say for questions. But HUD could take most of its efforts and look at systemic cases instead of these individual complaints, because individual complaints, we hear a lot about dogs and cats and service animals.

And while that is very important, I certainly -- not to Mr. Decker, but talking about hamsters and gerbils is really not as important as talk about mortgage and fair lending and affirmatively furthering fair housing.

So I defer my 13 seconds.

CHAIRMAN LHAMON: Thank you very much.

Professor Melnick?

PROFESSOR MELNICK: Thank you. I'm Shep Melnick. I teach political science at Boston College,
which I think makes me the only non-lawyer on this panel.

I will limit my comments to what I know best, which is enforcement of Title VI and Title IX by the Office for Civil Rights in the Department of Education, and I want to emphasize two points.

The first is that much of the heated debate over enforcement of civil rights laws is really not about enforcement at all. For decades, Democrats have accused Republicans of failing to enforce civil rights laws, Republicans have accused Democratic administrations of regulatory overreach and administrative bullying, but in reality these are often disputes about the proper way to interpret ambiguities in civil rights laws, not about the extent to which established rules and laws have been adequately enforced.

Recognizing the distinction between underlying legal standards on the one hand and enforcement of these standards on the other I think will help clarify many of the things we have been debating.

My second point is that the peculiar process by which the Office for Civil Rights and the Department of Education formulates and enforces its
rules not only contributes to this confusion but also deprives the entire regulatory regime of transparency, clarity, and ultimately legitimacy.

This is not the fault of the Trump administration. It was not the fault of the Obama administration. It was a product of a very long series of judicial and administrative decisions made with very little attention to their long-term significance.

To understand why enforcement is so often disguised -- or subterranean form of policy-making, I think it's necessary to appreciate three peculiar features of regulation under Title VI and Title IX.

First, OCR's aversion to rule-making. Under Title VI and Title IX, federal agencies are authorized to issue regulations about the obligations of recipients of federal funds. This, of course, is subject to the Administrative Procedures Act notice and comment rulemaking procedures.

For decades, this Commission has criticized OCR for its failure to announce clear general rules on many topics. OCR has responded to this criticism, but it has done so by issuing guidance and basically evading the commands of the Administrative Procedures Act in issuing unilateral Dear Colleague Letters rather than actual rules.
The biggest problem with this approach is that it provides little opportunity for public participation or for adequate information-gathering by the agency.

The Dear Colleague Letter strategy is based on what I call transparent fiction; namely, that these DCLs do not mandate anything new. For example, the 2011 sexual harassment rules DCL claimed that there -- this is no new policy here. Meanwhile, the White House, I think quite correctly, said this was path-breaking. Those two things can't both be true.

Another problem with a Dear Colleague Letter is that their legal status remains ambiguous. Are they mere suggestions, or are they legally binding? When asked that question in 2014, two Obama administration officials said they were not legally binding. A third, Assistant Secretary LHAMON, said they are.

CHAIRMAN LHAMON: Just for the record, that's not correct, but --

PROFESSOR MELNICK: Oh, okay. Well, correct that in my -- I'd like to hear more about that.

So does enforcing civil rights laws mean requiring schools to follow each and every command of lengthy Dear Colleague Letters, or does it mean
something else? There's a huge gap between the two, so this is no minor matter.

Second, enforcement sanctions. When these laws were enacted, they were seen as administrative alternatives to judicial enforcement. We could very expeditiously cut of federal funds and not have to wait on extended litigation in order to punish those who discriminate.

But, of course, before long it became clear that termination of federal funds was too administratively cumbersome and too politically perilous to employ. In fact, the total number of terminations under Title IX is exactly zero over 45 years. So termination has become an empty threat.

What puts teeth into enforcement? It has been implied judicial rights of action in court, the threat of injunctions, and monetary damages.

The result of this is a process I have called institutional leapfrogging, in which both agencies -- courts and then agencies take small steps, building upon each other, ending up with the incremental growth that no one has really thought about the consequences of what this means.

But what happens when OCR goes beyond what the Supreme Court has said in its interpretation of
these statutes? That is what happened with sexual harassment. Unable to rely either on the funding cutoff or judicial enforcement, OCR turned each individual complaint into a high publicized lengthy and costly investigation of the entire institution. These investigations were designed to threaten the college's reputation and impose so many burdens on the school it would sign a legally binding agreement.

In short, the process was the punishment. And in some circumstances, what was signed went well beyond anything OCR had put into its informal guidelines.

Third point. Policy-making through complaint investigation. A central feature of civil rights regulation of OCR is the intense focus on resolving all individual complaints that come through the door. I realize now that this is true of many other agencies as well, but the key statutes do not require this.

This was a product of a long-running Adams v. Richardson litigation. In most cases, these investigations -- this means in practice that in most cases investigations and resolution agreement remain confidential, outside of public view.

As UNC law professor Catherine Kim has
noted, this not only limits judicial review, but it has precluded the public's ability to exercise meaningful checks on audit.

What can be done? We can attack this underlying problem from two directions. First, more use of notice and comment rulemaking. Secretary of Education DeVos has promised that the era of rule by letter is over. I hope she is right. It would at least let me point to one thing the Trump administration has done right.

Second, more transparency in the resolution of individual complaints. Here it was the Obama administration that has taken the lead, at least selectively. Why not start with the presumption that all of these agreements should be made public unless there are compelling reasons to the contrary?

An important first step in this direction would have been make public the details of the large number of complaints filed by a few hyperactive individuals. For example, in 2016, a single individual filed 6,157 Title IX complaints. Why not make these public, who filed them, and how they were resolved?

In short, I urge this Commission to recommend changes to the process OCR uses to address civil rights issues in order to promote a more open,
thoughtful, and civil discussion of these important matters.

Thank you.

CHAIRMAN LHAMON: Thank you.

Professor Schlanger?

PROFESSOR SCHLANGER: Thank you very much, Madam Chair and Commissioners. I maybe bring together both of the strands on this -- on this panel, because I am both an academic and a former federal official. I used to run the DHS Office for Civil Rights and Civil Liberties as its presidentially appointed head, and I had the privilege to serve with about 100 staff, trying to do something very different than you have been hearing about all day.

The chief mission of the non-EEO side of the CRCL shop was to try to induce, advise, and otherwise influence DHS itself -- not to deal with the folks who DHS gives grants to, not to deal with the non-federal partners, but to actually be a civil rights office inside the agency, an internal agency watchdog.

That is a very different role than you've been hearing about all day, and it's a very highly constrained role. But that's the role that I want to talk to you about because I think it's a really
important function that OCRs can play, and occasionally even, not just at DHS, do play, in some other agencies.

I have written about this at length, and I think possibly you have gotten some of that material in your briefing. So I'm going to refer you to a very long law review article that goes into great depth about all of this.

But as a quick piece of background, the chief threat to the mission of an agency -- an internal -- OCR agency watchdog are threats to its influence, because after all the agency is trying to influence its own self. The possible civil rights violator is its own colleagues. And threats to its commitment, because one way to deal with the problem posed by vigorous civil rights activity inside an agency is to co-opt it and make it not as interested in civil rights anymore.

And so those are the twin threats to watchdog OCRs. And Congress has -- with respect to both CRCL and a couple of similar, though much smaller, offices within the intelligence community -- responded to this by saying that OCR, watchdog OCRs need to have four really crucial aspects to their influence. They need to have information. They need to
have a right of consultation. They need to have a
voice that is external to the agency; they need to
have an ability to talk to the outside world without
the superintendents of their own agency. And they need
to have adequate resources.

I'm going to add one to that. They need to
have some ability to safeguard their own
investigations as well, so -- which is to say a
modicum of freestanding authority, not merely
influence.

And so Congress has done that, but it has
not been a wholesale success. I believe you heard from
my former EEO deputy, who is a current employee at
DHS, this morning about some of the challenges faced
by CRCL.

And my understanding of what has been
going on in the current administration, and also, to
be frank, my -- my knowledge of what went on in every
administration prior to that where CRCL has been
around, which is about 15 years, is that there are
ever-present threats to each one of those aspects of
influence.

And so I urge the Commission to make some
recommendations that deal with those threats, and I
have spelled those recommendations out in a little bit
more detail in my written testimony. But the basic idea is this. Watchdog OCRs need a guarantee that they can get the information they need. They need not to have to engage in a bureaucratic tussle over every request for information, where they try to persuade the very organization that they are investigating, that that organization should come forward with the needed information.

They need a right to that information, and they need it to be enforceable. Not in court. You can't sue your own secretary in court. That would be ridiculous. But enforceable by some method of, for example, a report to Congress when -- when the agency says no.

They need required consultation. There needs to be a system where consultation is not merely urged but actually required, and I have some recommendations about how that could actually be made real.

They need an independent voice. I was authorized to file reports in Congress, and I had an understanding with my front office that they did not edit my reports. But they did have to clear them, which is almost the same as editing but not quite the same as editing.
And so we engaged in a pretty protracted negotiation over every one of those reports. That's insane. So what should be done, as is done with some other offices inside federal agencies, what should be done is that watchdog OCRs should have authority to file reports without those reports being edited by their -- the agency that is the agency they are actually trying to help regulate. So they need that.

They need some degree of resource independence, again, for the exact same reason. How would HUD civil rights work, if the very agencies that it was trying to enforce against had control over its budget? I venture to guess less well, and that's true at DHS and all of the other agencies, too.

And so I have a recommendation not about what resources are needed, but at least that allowing the watchdog OCRs to say themselves independently what resources are needed for Congress then to evaluate, rather than having to funnel that through their secretary and through OMB.

And, finally, they need some modicum of actual authority. And this is not unheard of. This is not unheard of, but it's close to unheard of. There are tiny little aspects where watchdog OCRs have some little bit of authority, not just to advise but
actually to say, yeah, you have to do that.

And so I have some recommendations about when that might actually be augmented, where it has to do with small individual matters that are not central to the agency's mission and where it has to do with safeguarding of the ability and the completion, the ability to complete an investigation. And so I run through that as well.

I guess I want to close in 30 seconds with just one point, which is that in the current climate, it is not clear to me that any of this will work. I just -- I want to just be clear about that. This is an internal office. If there is a department that is insisting on orphaning children at the border, if there is a department that is insisting on engaging in Islamophobic -- may I have 15 more seconds, just to finish this up?

CHAIRMAN LHAMON: Fifteen seconds.

PROFESSOR SCHLANGER: Thank you. That is insisting on Islamophobic screening protocols, if there is a department where violations of civil rights are at the core of what it sees as its role, then an internal civil rights office is -- might be able to slow that down, might be able to make it more embarrassing, but is not going to be able to reverse
That said -- that said, it might be able to reverse some things at the edges. And even in less high profile or maybe a more civil rights kind of an environment, the kinds of recommendations that I have made I think would stand watchdog OCRs in very good stead and really improve their functioning in the federal system.

Thank you.

CHAIRMAN LHAMON: Thank you.

Dean Varona?

DEAN VARONA: Thank you, Madam Chair. My name is Tony Varona, and I'm on the faculty of the American University Washington College of Law. It is an honor to join you, to join all of you and all of my colleagues on the -- on this panel.

I come to you today not just as a law professor, but also as an openly gay Latino immigrant and naturalized citizen who, with his family at the age of three, sought and found refuge and a better life in this great nation from our native country of Cuba.

The theme of today's briefing captures so much of what distresses Americans like me in this moment. It also begs the question of what it is that
we mean when we talk about civil rights. We could certainly look at the Constitution, at the Bill of Rights, at the Declaration, at all of the wonderful things that The Reverend Dr. Martin Luther King said. We can go back to the social contract as postulated by Rousseau and Locke.

And what we can conclude is that we are not talking about regulatory minutiae or esoteric points of legal theory when we discuss whether the federal government is satisfying its duty to advance civil rights. Instead, what we are talking about is our very identity and moral infrastructure as Americans and how it is that we will treat one another. Civil rights, then, undergird civilization itself.

The late Mr. Rogers, whose neighborhood in Pittsburgh was lacerated last Saturday morning, in the sacred space that is the Tree of Life Synagogue, understood all of this very well. Fred Rogers' trademark was, "Won't you be my neighbor?" A question that was at the same time mundane and revolutionary.

His concept of neighborliness is central to our notion of what it means to be an American, and how it is that we should respect and promote civil rights.
Another of Fred Rogers' oft-quoted maxims is that we should look for the helpers, he said, in times of trouble and fear. You, the U.S. Commission on Civil Rights, the rightfully called conscience of the nation on civil rights, are preeminent among those federal helpers who safeguard and promote the civil rights of all Americans.

But as you note, there are scores of federal civil rights offices that are important civil rights helpers, too. Many agencies have earned hard-fought reputations as civil rights champions for our nation's most vulnerable populations.

But recently many of these same agencies have done an about face. Key federal agencies now are aggressively undermining the recognition and protection of the civil rights of millions of Americans that depend on them.

The retrenchment and even antagonism of federal government civil rights enforcement efforts is exemplified vividly through the lens focused on the LGBT community, which is significant both in its size and in our vulnerability.

For many years, through both Democratic and Republican administrations, agencies throughout the federal government have responded to the bias and
harassment faced by LGBT people with meaningful measures aimed at enforcing and protecting our basic civil rights.

But then came the Trump administration and what appears to be a deliberate weaponization of regulatory homophobia and transphobia as a means to repay and motivate Mr. Trump's base.

The Departments of Justice and Education rescinded the 2016 Dear Colleague Letter protecting transgender schoolchildren, despite the decisions of five federal circuit courts of appeal holding that anti-trans discrimination is illegal sex discrimination.

The Department of Education has gone as far as saying not only that it will not pursue the complaints of transgender students pertaining to school accommodations, but it will outright reject them.

The Justice Department now insists that Title VII does not prohibit discrimination on the basis of sexual orientation or gender identity, thereby contradicting the expert agency -- the EEOC's repeated conclusions to the contrary, which are in harmony with the holdings of countless courts.

The Justice Department further has argued
in favor of an aggressive and overbroad interpretation of the First Amendment's free exercise clause and permitting anti-LGBTQ bias.

LGBT inclusive language has been stripped from agency websites across the federal government. The Washington Post reports that the Trump administration has forbidden the CDC from even using the word "transgender" in its budget proposals.

The Bureau of Prisons has stripped protections from transgender inmates, exposing them to the danger of sexual assault or worse.

The Department of Housing and Urban Development has eliminated resources for LGBTQ people in homeless shelters despite the high rates of homelessness among LGBT youth. And HHS, in January, proposed a new rule that would allow healthcare providers to discriminate against LGBTQ patients, solely because of religiously motivated bias.

We will be excluded from the 2020 census. The State Department has ceased granting visas to same sex partners of foreign NGO employees and diplomats. President Trump continues to insist that the 15,000 transgender service members who serve their country admirably must be kicked out. Less than two weeks ago, a memorandum leaked from HHS, as we have already
heard, calling on agencies that have significant Title IX enforcement duties to enact a definition of gender that essentially erases transgender status by requiring that gender be defined inflexibly and immutably as sex assigned at birth.

CDC Director Robert Redfield expressed alarm, calling it stigmatizing. Chairwoman LHAMON is quoted in The New York Times quite accurately stating that "This policy takes a position that what the medical community understands about their patients, what people understand about themselves, is irrelevant because the government disagrees."

There is so much more, but suffice it to say that the LGBTQ community not only feels unprotected by much of the federal government, but altogether besieged and harassed.

In conclusion, these issues of decency and dignity and how we define our national identity transcend partisan politics. They are why this Commission's role as the civil rights conscience of the nation is so important. I urge you to embrace and build upon that role and to use your authority, vision, and voice to insist that we, as a nation, aspire to be our better selves as citizens and as neighbors.
Thank you very much.

CHAIRMAN LHAMON: Thank you very much to all of the panelists. I am going to open it to questions from my fellow Commissioners. I understand that Commissioner Yaki has a question to start us.

COMMISSIONER YAKI: Yes. Thank you very much, Madam Chair.

And, first, thank the -- thanks to the staff for putting a great briefing together. It has been mesmerizing to say the least for the past six hours.

And thanks to all the panelists who have made it -- made it so -- I have been on the Commission for over 13 years. And when I first came on the Commission, I thought that we had some issues and we worked and we fought and we disagreed.

But I have never been at a point as I have right now in this, my 13th year, where I feel completely discouraged, when I want to not listen to the television or to the radio or read the headlines that pop up on my -- on my phone about what is going on, because I cannot quite believe what is happening.

And as the Commission -- as the last speaker just said, we are the conscience for civil rights in this country. We are the watchdog. We are...
also the advisory body. And I know that for one branch of this government any advice we give is going to fall on deaf ears. It just is. It just will. I don't think there is any debate about it whatsoever.

Anyone who does debate it is not, obviously, listening to what our leaders are saying about caravans of invaders, about the criminals, about other -- how -- disparaging people by taking away rights, by rolling back protections about dismantling programs.

So the question I have, and I'm glad we're hearing from academics, because there is a hypothetical, and you deal with hypotheticals all the time, or at least you used to when you gave me -- when you used to give me your exams back in the day -- is what -- and it's not what are we to do.

So we are going to be giving advice, possibly to one body or one-half of one body of the legislative branch of government about what they could do to put their shoulder against the wheel and stop it from turning and grinding under all the civil rights gains and all of the protected classes and communities and people that we have in this country.

What are the remedies, what are the options, what are the -- what are the tactics available to -- to the Congress or to a body or to one
body of Congress that could make a difference in what this administration is trying to do?

That's my question to you. If you can't answer it now, write it down, send it to me, I'll read it, but this is -- this to me is, as I sit here listening, what it is that we can do and what we can say. For me, it would be some of the most important and valuable advice and information that I could get in terms of taking from what we hear today and moving it and taking it to the next step.

Thank you.

DEAN VARONA: I can attempt an answer. I believe that what you can do, Honorable Commissioners, is of course remind our government officials, remind our President, that the bully pulpit that the President occupies is not intended to be used for bullying the most vulnerable of our communities. That's number 1, because you of course have the moral authority and the moral suasion and the position to make such an argument.

But I would also go further and say that the government, the federal government, in many respects at this point is far behind corporate America. Just yesterday, 56 major corporations representing 4.8 million employees and 2.4 trillion in
annual revenues came out with what they are calling a business statement for transgender equality.

Now, these are the Who's Who of Corporate America -- Accenture, Adobe, Altria, Amalgamated. I'm just looking through the list. Amazon, American Airlines, Apple, BNY Mellon, Cargill, Citi, Coca-Cola, Corning, Dow Chemical, Deutsche Bank, DuPont, Levi Stress, Intel. I won't bore you with the full list. I will file it with you.

But it is 56 major corporations who in their statement write, "We, the undersigned businesses, stand with the millions of people in America who identify as transgender, gender non-binary, or intersex, and call for all such people to be treated with the respect and dignity everyone deserves. We oppose any administrative and legislative efforts to erase transgender protections through reinterpretation of existing laws and regulations. We also fundamentally oppose any policy or regulation that violates the privacy rights of those that identify as transgender, gender binary, or intersex.

So the point is simply to make the argument that if this or many of our government leaders fancy themselves as being at the vanguard of corporate America, we might want to point out to them
that they are very much not in this area, and that they need to be led by these 56 major corporations who have just stood up for fairness and justice.

CHAIRMAN LHAMON: Mr. Decker?

MR. DECKER: Well, I think we have to persevere, and I think we just keep fighting, and I think we look for other avenues to work through channels to try to see what we can accomplish during these times.

So, for example, we were able to use our access authority this summer to convince the Office of Refugee Resettlement to allow us to go into the detention centers about the separated children to look for children with disabilities, to see whether those children were being adequately -- their diagnosis and their disabilities were being addressed.

So there was just a little glimmer of hope there. We were able to actually access, you know, those camps through using our existing -- our access authority.

We were able to get a program out of Congress to try to protect the eight million beneficiaries of Social Security who have representative payees who may be being abused or having their money stolen.
So there is -- I would argue, you know, I often on the Hill don't talk about civil rights. I talk about the economic benefit to getting people with disabilities back to work and ending discrimination against them in the workplace because they will become productive citizens, and they will no longer be depending on benefits and other kinds of services from the government.

That resonates with a certain number of people in the Congress, and so I think we have to look at our arguments. We have to get creative. We have to keep fighting and work through -- I do tell my people that in a time of this kind of turmoil, everything is up in the air. Sometimes you have the ability to have impact on how it lands.

CHAIRMAN LHAMON: Professor Melnick?

PROFESSOR MELNICK: I'm a political scientist, so I'm paid to be a pessimist. But I would say one thing: that this administration is unusual in the extent to which the rhetoric is so overheated, and there is a huge gap between what the President says or Tweets and what government actually does.

For example, he tweeted that we were going to throw transgender people out of the military, and the Defense Department said, "Well, you know, we're
not -- we're going to take that with a grain of salt."

So I -- one thing I would recommend is not overreacting to this, what is often really horrible rhetoric.

And I will give one example, and some people might -- on this panel might disagree with me, which is the report in The New York Times about the transgender -- the leak of a proposed regulation. And then we read over it, that this had erased transgendered people.

Well, I don't think that the power of the federal government is so great that the leak of a proposed regulation, we should take that as being such an assault on us. Let's kind of remember that the government is just one part of society.

And as Tony pointed out, there -- it's not always the most important part. So maybe we should not overreact to some of the things that the President, and other people, the administration say.

CHAIRMAN LHAMON: Dr. Schlanger?

PROFESSOR SCHLANGER: I just -- there are things that the federal offices of civil rights need to get the job done. And if they don't have them, and this Commission can help them get them, then maybe that will help now and maybe it will help later. But
it is certainly worth doing.

CHAIRMAN LHAMON: Thank you.

Commissioner Narasaki?

COMMISSIONER NARASAKI: Sorry. I have questions for a few of you. The first question is to Mr. Decker. In your statement, you say some DOJ investigations have been closed with settlements when -- I'm paraphrasing -- when prior administrations would have required consent decrees, or something to that effect. What did you mean and which cases were you talking about?

MR. DECKER: We understand from our contacts at the Department of Justice that the current Attorney General is very averse to consent decrees, and we've seen I think their attempt to try to remove some consent decrees that were already negotiated around police issues.

And so as a result, when they are settling cases, and they are settling some cases, they seem to go for settlement agreements, which are -- you know, does settle the case, but the consent decrees I think are stronger, enforceable, and it gives those of us on the ground the ability to monitor what is going on.

So, again, this sort of like softening of pulling back from really hard enforcement and trying
to take a less strict rule. And I think that is clearly making it more difficult for those advocates on the ground to utilize that. Certainly, all that we talked -- there has been a lot of talk in the previous panel and here about losing guidances and -- right.

The guidances are such, but, remember, those are the things that we can wave in front of an employer or a state agency and say, "If you don't abide by this guidance, then you're going to be subject to possibly us or the Department of Justice taking you to court.

They are incredibly helpful in making more efficient the enforcement of these civil rights.

COMMISSIONER NARASAKI: Okay. Thank you. And then, Ms. Kendrick, so the further -- I can't -- AFFH --

MS. KENDRICK: Affirmatively Furthering --

COMMISSIONER NARASAKI: Furthering Fair Housing.

MS. KENDRICK: -- Fair Housing.

COMMISSIONER NARASAKI: These acronyms get to me. So it appears that HUD will not be aggressively implementing that. So what could HUD do, if it's not going to be aggressively trying to enforce that?
We understand they are talking about housing mobility toolkit, resident education housing vouchers, listening to landlords. What would you be telling them, okay, if you're not going to be doing what the prior administration was thinking about because you dislike them intensely, what could we be saying maybe you could consider doing?

MS. KENDRICK: Instead of enforcing, using enforcement tools, education. Because it's important that, you know, whether you get to where you want to go through litigation or you get through it by education, it's certainly important that communities understand what affirmatively furthering fair housing is and what it is not.

So using the tools to educate the communities about what they should be doing under the statute, because it's a statutory requirement, is important. If you're not going to go out and enforce, you're not going to go out and do the inspections, you're not going to review plans right now, then go out and educate the communities.

Now, I am certainly one of those people who want to believe that people want to do right, communities want to be better. Then let's let the communities be better by giving them the tools that
they need through education, guidance, policy statements, if we're not going to have a rule.

CHAIRMAN LHAMON: May I just follow up on that? And I will -- I'm not cutting you off.

COMMISSIONER NARASAKI: Okay. You scared me there.

CHAIRMAN LHAMON: Sorry.

COMMISSIONER NARASAKI: I have so much more to go.

CHAIRMAN LHAMON: Is your interest in education given where we are, or is your interest in education -- would that be sufficient, do you think? I'm surprised at that respond given that it's five decades since the Fair Housing Act has been enacted, and the community desire to affirmatively further fair housing either has or has not been present over those five decades, but the requirement has been.

And so if we are a place where we're not planning to enforce but we are hoping to rely on education as a way to get us there, that feels like a faint hope to me and I'm just curious if it does to you and you're grasping at that straw because it's the one available.

MS. KENDRICK: It's not. It's -- when I was there, and I guess -- I said I tried. It was one of
those things I tried to get a rule out, couldn't get a rule out before I left. We ran out of time.

And so if we had given the communities tools 50 years ago, what does affirmatively furthering fair housing mean? It means different things to different communities at different times. What does it mean? What should it mean?

If we had given them those tools, we had educated them 50 years ago, we wouldn't be sitting here talking about using these tools to enforce right now. And I think that those of us who were -- and I take blame, too -- not a lot.

(Laughter.)

CHAIRMAN LHAMON: That if we had taken the time 50 years ago to explain, what does affirmatively furthering fair housing mean, because the communities wanted that information. We go; we do the investigations; we say you're not affirmatively furthering fair housing here in Pittsburgh. You say you're not affirmatively furthering fair housing here in D.C., but it means different things, and what does it mean?

CHAIRMAN LHAMON: So I take the point that guidance is in itself a useful end and there may be another tool.
But I'm sorry, I've cut you off. Commissioner Narasaki?

COMMISSIONER NARASAKI: It's okay. So I see Professor Francois, but I have a couple of things before she cuts me off, but I will circle back to you if she lets me have time.

So I do want to respond to Professor Melnick, because you talk about not overreacting. But I have to say when the President of your country tries to erase your very existence, I don't think there is an overreaction to that. That, in a democracy, is very powerful.

I know after 9/11 when President Bush stood up and said, "You should not blame all Muslims," that meant everything to the Muslim community. Of course, the policies afterwards, unfortunately, undermined some of that, but the fact that he did that was incredibly comforting to my staff who were under attack.

So I just want to say that be careful when you say that, because there is a lot of power there. So end of lecture.

PROFESSOR SCHLANGER: Can I just say --

COMMISSIONER NARASAKI: Professor Schlanger -- you're going to take up my time, and I don't want
to be rude, but she is going to bang the gavel on me.

So, Professor Schlanger, thank you so much for laying out actual recommendations, because we are always begging for a roadmap. And I will date myself by saying that I was around leading an organization opposing the creation of the Department of Homeland Security because we were concerned about this issue, about this kind of power and the intermixing of immigration services with this.

So, and the office was set up because of that concern. So it is great to be checking in now to say what is not working. And I feel that you have given us a really solid roadmap to follow, so I just wanted to -- I know you got cut off, so I just wanted to give you a few seconds if there were some other things you wanted to explain to us about why your recommendations were so important.

PROFESSOR SCHLANGER: I think I should say thank you because I think it was your organization that created CRCL, and I think it was a good move. I think it was helpful, not overwhelmingly helpful, not solving the problem.

COMMISSIONER NARASAKI: Yes. Sadly, we have found out not sufficiently helpful.

PROFESSOR SCHLANGER: Not sufficiently
helpful, but better than nothing, and I think that's what we try to do, right? What I would say about an office like CRCL -- and to be clear, CRCL is not the only one. A bunch of the intelligence community elements have civil liberties offices. The Department of Agriculture has a watchdog OCR in some respects. It is not -- it is not a singular model.

I just don't think people have spent enough time thinking about how different that is than what happens in the Department of Education, what happens in the Department of Justice, what happens -- right?

It's a very different model, and I think that some real thinking about it, and how do you let it play this role, being very careful always that if you -- to balance influence, the threat of influence, the threat of impotence, right, and the threat of cooptation, and just being very conscious of that.

And so I think that the statute that I understand perhaps you helped write, that runs through what is needed, that I have pointed to in my testimony, I think that statute lays it out, but it's toothless. And I think that giving it maybe not like really sharp teeth, but baby teeth, I think that would be a really good thing.
COMMISSIONER NARASAKI: Great. Thank you.
And with the Chair's indulgence, if I could let the professor respond.

PROFESSOR FRANCOIS: I just wanted to go back to the HUD point, but I'm happy to defer if in fact this is something that has already been covered by a prior panel.

With respect to your question about what could be done and the enforcement, I'm just curious whether or not we have already covered the Secretary's power under 3610 this morning, because under 3610 the Secretary has the power to initiate actions and complex investigations.

And these are particularly powerful because of the role that the Secretary plays, and it helps to remember that in 2009 there were 12 such actions that the Secretary of HUD initiated. In 2010, there were 10. In 2011, eight. In 2013 and '12, they averaged 18. And same numbers in general in '15 and '14.

It dropped in '16 because it was an election year. In 2017, and so far there has only been one -- just a single one -- and it has pretty sort of -- it got a lot of play in the news, but it goes to the point that I was trying to make. It matters when
the Secretary initiates these actions because the Department plays an outside role in the way the law develops.

The fact of the matter is the very first federal civil rights agency that was defund -- and almost killed off was the EEOC in the early '80s. And when that happened, you could actually track very specifically how the number of cases where the EEOC appeared in federal court as a party simply dropped precipitously.

And as a result, it led for a while to the freezing of development of Title VII, and I think the same thing is happening in HUD. So my suggestion would be, and of course there is no way to enforce it, what could the Secretary do other -- do other than these actions?

I think there is this tremendously powerful tool that the Secretary himself has at his disposal, but clearly they decided not to use it.

CHAIRMAN LHAMON: Thank you.

VICE CHAIR TIMMONS-GOODSON: Ms. Kendrick, you're looking puzzled. And Professor Francois was getting at what -- was saying what I was trying to get at in an earlier question. When you have limited resources, doesn't it make more sense to go --
something systemically that will take care of situations as opposed to one at a time, individual.

But your -- the response that I got from the other HUD person didn't -- anyway, didn't click, but you're looking confused. Is something that he is saying not making sense?

MS. KENDRICK: Oh, no. I used to use Secretary-initiated actions on a regular basis. But when you have a Secretary and an administration that has withdrawn a rule, then to use -- you can't use a Secretary-initiated action to take actions against these communities because the Secretary has already made a decision that he is not going to enforce. So there is no -- there is no connection there.

VICE CHAIR TIMMONS-GOODSON: Okay. Thank you.

MS. KENDRICK: But if you want to, instead of doing -- and I talked earlier about these -- the complaints, you know, you focus on all of these complaints, instead of using these individual complaints, which are important, especially in disabilities are very important, use the Secretary-initiated actions to do investigations on systemic issues that make a powerful impact across the country.

VICE CHAIR TIMMONS-GOODSON: And possibly
more bang for your buck.


VICE CHAIR TIMMONS-GOODSON: With limited budgets.

MS. KENDRICK: Absolutely.

MR. DECKER: I would -- yeah, I certainly agree that systemic action is far more efficient. However, given what my colleague said, initially, in the beginning of the administration, a lot of people, especially in the disability community, said don't file complaints at DOJ, don't file complaints at OCR. They all -- they will mangle them; they will be bad.

And when we went back and said no, we've got to file those individual complaints; otherwise, there won't be any complaints, then that will be argument for the fact that there is no work. That will be the argument for decreasing funding. So as much as I'd like to see systemic work, I do feel like we have to keep pushing all of those different Office of Civil Rights with individual cases to maintain -- to maintain them through this period. Otherwise, I think they will be hollowed out and gone by the time we have some different administration in place.

CHAIRMAN LHAMON: Thank you. Professor Francois, I'm mindful of time. I know you have a very
hard stop at 4:00. I believe we might let the rest of
the panel stay a little bit past when we said.

So I'd like to ask you a few questions.

You said in your testimony, which I found very
compelling -- and I will say I'm hoping that you will
be able to submit in writing what you shared with us
today because I was trying very hard to track it, but
I'm not sure I did.

PROFESSOR FRANCOIS: I don't want to tell
tales out of school, but I didn't get the Commission's
invitation. And one of your colleagues called me
literally Monday night.

CHAIRMAN LHAMON: I know. I am so grateful
to her because I sent you the invitation myself, so
I'm so sorry -- we need to have a better address for
you.

PROFESSOR FRANCOIS: It went into my spam
folder.

CHAIRMAN LHAMON: But if you wouldn't mind
submitting in writing --

PROFESSOR FRANCOIS: Absolutely.

CHAIRMAN LHAMON: -- that would be
terrific. Thank you.

One of the things that -- that you said I
think was that the role of civil rights enforcement
cannot be fulfilled by private litigants. And I -- I think that's such a crucial piece, and I'm wondering if you can expand on it, and, in particular, I'm hoping that Mr. Decker could follow those remarks, because, Mr. Decker, your organization, as you said, does so much work every day trying to enforce civil rights laws. And I heard you make such a strong argument for the need for federal enforcement in addition.

And so if the two of you can speak to what it is that the federal government brings to that enforcement that is not replicatable even by the valiant efforts of Mr. Decker and his organization, I would appreciate it.

PROFESSOR FRANCOIS: Of course. Obviously, there is a role for private litigants to play, but there are a number of reasons why private litigants were never enough. By definition, private litigants have few resources. It is actually very difficult for private litigants to obtain representation because it simply doesn't pay.

Secondly, the private litigants has an incentive on assembly, so that when they bring a case, to settle the case according to terms that benefit them, rather than any term that will benefit the
system overall, but beyond that I think it is important to understand that when the federal government said that when these agencies come, they come into the process with a built-in level of credibility.

They are more likely to be heard. They are more likely to shape the law. And I do understand that it is very important for the -- for both sides to play a role, both private litigants and the government. But unless the government agencies play an active role in civil rights enforcement, the law is never going to develop the way it was originally intended, and public litigants are unable to carry the load on their own.

CHAIRMAN LHAMON: Thank you.

MR. DECKER: I agree with most of that, but I think it's a little -- somewhat more complicated. Clearly, we have seen litigants try to use, for example, the ADA for their own purposes and to settle a case at a very lower level.

We actually began intervening in some of those cases because we were afraid that these class actions were going to get settled by courts at a very low level, and so we confused the judges by showing up saying, "Wait a second. We don't think this is a good settlement."
But, again, similar to my colleague at the end of the table, I think we are now reaching out to pro bono law firms, and we're reaching out to the private sector to say this is -- we need you more than ever.

You're absolutely right. The Department of Justice coming into our cases is the gorilla in the room with resources and clout and power and they are usually extremely important in our cases. They are disappearing, and so we are just going to have to find other resources to pull in.

But you're right, we have limited resources and we're not going to be able to do it alone. But I'm hopeful that we can turn to the private Bar at this point in our history to try to get them to step up to the plate.

CHAIRMAN LHAMON: Thank you.

Professor Schlanger, I echo my fellow Commissioners. Thanks to you for the very concrete recommendations that are enormously helpful to us as we try to imagine what recommendations we ought to make.

In particular, you talk about the need for sufficient resources for offices, and I wonder if you have a view about both internal watchdog OCR offices
and OCRs with other enforcement roles as well, the impact on those offices of the -- of the repeat requests to reduce our budgets that we've seen so far in both budgets proposed in this administration.

PROFESSOR SCHLANGER: There is no question that the budget process is always an internal war, right? And everybody is sort of asking for resources. And that's just part of the normal dynamic. That said, the arguments that OCRs are making for budgets are not the normal. They are not just normal participants in that war.

They are taking it in a budgetary environment where agencies -- take DHS -- are getting massive, massive increases, they are getting these decreases. So it does seem like it would be useful to develop some kinds of benchmarks that might be used, maybe a little bit less for the -- for the watchdog OCRs, because that's very specific to the agency.

But take Title VII. Excuse me. I didn't mean Title VII; Title VI. I started DHS's first title VI -- I made the first Title VI hires at main DHS. That's crazy, right?

I mean, like think about how many billions and billions and billions of dollars are grants, and we had no Title VI operation at all.
Now, FEMA had one. I don't mean to pretend that there was nothing going on, but FEMA's concentration was on the disaster-related grant-making, which is not the same as the immigration and policing and other kinds of law enforcement-related grant-making. And the result has been that there has basically -- I did stand up a small office, although I don't -- it's suffering now I gather. But it has to be that you could come up with a sort of percentage of billions of dollars, right? A number per million that is the right amount of money for Title VI enforcement.

And it seems to me that that would be a valuable enterprise, that there could be a benchmark. I don't know what the number would be honestly, having experienced how hard it was to try to hire four people, which is what I was allowed to try to hire, four people for all of those billions of dollars.

I know the number isn't four. All right. That I know. But there -- that would be a useful exercise, right, so that there would be some external reference, so that the OCRs when they are asking for more money are not thought to be engaged in the ordinary arm wrestle that is the federal budgetary process. It would be useful to come up with a benchmark.
On the agency -- on the internal side, on the watchdog side, I think probably a process improvement is better than a benchmark. I think the process improvement that I have proposed to you is that the watchdog OCR gets some independent voice as to its own budget and its own budget justification, and I think that probably makes more sense than a, you know, numbers of people per thousand kind of -- kind of benchmark.

But I do think on Title VI, in particular, we ought -- at this late stage of Title VI enforcement, we ought to be able to benchmark that. And then an agency that doesn't have it could be scolded and held to account for under resourcing its Title VI efforts.

But I don't know what the benchmark would be. I think that would be an interesting -- I think that would be an interesting project for a combination of budget people and political scientists to try to come up with that benchmark.

CHAIRMAN LHAMON: Professor Melnick, she is giving you homework, but thank you.

I am going to follow up on that with a question specific to you, but then also I am hoping that each of the panelists might speak to it. On an
earlier panel, the current person who is leading the 
CRCL at DHS said that in response to a very high 
volume of complaints that come in on a particular 
topic, the office is choosing representational samples 
as a way of thinking about how to go after 
investigating those particular issues.

And the numbers that she cited were I 
think approximations, but that there were 3,000 
complaints that came in on a particular topic and they 
chose a representational sample of 23 to then figure 
out what to investigate.

And I wonder what you think about that as 
an approach to investigating, both in the watchdog 
office function where you're not actually adjudicating 
the rights of a person in a particular case but trying 
to make policy for the office.

And then panel-wide I am hoping that you 
all can talk about whether that is a wise approach, 
where you are trying to adjudicate the rights of a 
particular person and the wisdom of that kind of 
approach.

PROFESSOR SCHLANGER: Right. So three per 
thousand seems a little low to me.

CHAIRMAN LHAMON: Twenty-three to be fair.

PROFESSOR SCHLANGER: What?
CHAIRMAN LHAMON: Twenty-three.

PROFESSOR SCHLANGER: Twenty-three. Thank you. Okay. Right. I think that for a watchdog OCR that is using complaints as a method of doing two things, because that's -- that's what is going on, right? The watchdog OCR uses the complaints as -- one, as a -- kind of a visibility check. It's sort of a fire alarm, right? Like, if we're getting a complaint that seems like it's worth looking into, that's one thing.

And, number two, it uses it as an external bolster to its legitimacy. Somebody is complaining about this. We didn't just make this up, right? This is -- this is like a real external thing that is making us look into this. That is the combination of what is being done by those external complaints.

I think that coming up with a system for picking representative complaints is fine. Honestly, I actually think you might be able to do -- you would want to do something systemic in any event, right? So you would combine a sort of systemic investigation with some individuated things. So if you're doing a -- if you're doing an individuated -- so if the issue, for example, is deaths in detention, which is a burning issue, a burning civil rights issue for DHS, right, people dying in detention like that's a civil
rights crisis, if people are unnecessarily dying in
detention, you'd want to investigate every one.

But if the -- if the problem is bad
medical care in detention, but not deaths in
detention, then you might sort of say, let's look at
what is coming in, let's look at where it's coming in
from, let's look at the kinds of trends, and let's do
something systemic taking account of all of that as a
quasi-empirical sort of base for that systemic
investigation. And that seems to me perfectly
appropriate.

CHAIRMAN LHAMON: Thank you.

MR. DECKER: Could I -- I also -- again,
not that I'm very happy about the current condition,
but I do think, again, we have to get more creative,
and I think these panels today have been, you know,
incredibly broad. I'm very happy at the way, you know,
Vanita Gupta, The Leadership Conference, is trying to
pull the civil rights community together to think
together.

So, for example, the immigration community
is very thrilled that we were able to use our access
authority to get into those detention centers.

Prisoner right groups are incredibly
constrained from being -- I can get into prisons. We
have access to any prisoner with a disability, and so they have been coming to us to work together to see how we can improve conditions in prisons through the disability lens. And I'm sure there is a reverse situation, so trying to piggyback on each other's strengths and rules to try to, you know, skin this cat, if you will, as we hope for a change in the weather I guess.

So I'm hoping that we have that kind of creativity and start thinking about that.

CHAIRMAN LHAMON: Thank you.

I see that we are right at our time, so hearing no further thoughts, I thank each of these panelists. I will say, again, it's likely that our staff have follow-up questions. I hope that you might be willing to answer them when we ask you follow-up questions. And I am so grateful to you for taking your time and sharing your expertise with us today. So thank you very much.

With that, that will conclude until 5:00 p.m. when we will reopen for public comment. And I invite folks who are present who are interested to submit public comment to sign up and to return at 5:00 p.m. Thank you.

I am told all participants in the open
public comment period should report back at 4:45 p.m., so that we can give you instructions for how to do that. Thank you.

(Whereupon, the above-entitled matter went off the record at 3:59 p.m. and resumed at 4:58 p.m.)

CHAIR LHAMON: Welcome back, everyone. We're going to now proceed with the open public comment session.

OPEN PUBLIC COMMENT SESSION

CHAIR LHAMON: A few opening instructions, which I think have been provided to each participant, but I'll just say them so we all have them, too. Please tailor your remarks to the topics of today's briefing, which is federal civil rights enforcement. Please state your name for the record.

Please note that the U.S. Commission on Civil Rights has a policy not to defame, degrade, or intimidate any person.

And this comment period is a time for commissioners to listen, not to engage in questions or discussion with the presenters. We appreciate your testimony. We're very eager to hear it. We will not take your short time with questions or with dialogue.

I will be typing fiendishly. And so, when you're hearing that, it's just because I'm trying to
record what you say.

You will have three minutes to speak, which will be measured by a timer. Please note the box with the three lights. Here, when the light turns from green to yellow, that means that one minute remains. And when the light turns red, you should conclude your statement. And if you do not conclude, I will conclude it for you.

If you have not finished or you would like to submit additional information, we encourage you to do so by mailing or emailing your written submissions to us at the address provided on your information sheet by Monday, December 17, 2018 when our record will close.

While waiting for your turn, please sit in the numbered chair that corresponds to your ticket. And in order to reduce time between speakers, we ask you to move forward to microphones before the speaker in front of you has finished. And a staff member will direct you when to come forward.

If you need to step out briefly before it is your turn to speak to use the restroom or otherwise, please let a staff person know so you don't lose your spot.

Sign interpreters will be signing during
the presentation. They are to my right. And if you have a question, please ask a staff member.

And note that some of my fellow Commissioners, including the Vice Chair, have flights to catch and so might step out a few minutes early. We apologize for the interruption. Please do continue your statement unless I direct you otherwise.

And with that, I invite our first speaker to begin.

MS. JACOBS: Madam Chair and members of the Commission, I'm Lisalyn Jacobs, consultant and adviser to Ujima Incorporated, the National Center on Violence Against Women in the Black Community.

Ujima is also a member of the National Task Force to End Sexual and Domestic Violence, a national coalition that advocates for survivors of sexual and domestic violence, dating violence, and stalking at the federal level.

Towards the end of my testimony I will share some coalition concerns regarding the vulnerability of incarcerated women, the transgender community, and immigrant survivors. I will also submit several NTF statements connected to these concerns for the record.

I begin by commending to the Commission's
attention and will be submitting for the record a recent publication by the Center for Law and Social Policy, *Unjustice: Overcoming the Trump Administration's Rollbacks on Youth Justice*. It raises several concerns that we share.

Regarding juvenile justice, our parent organization, the D.C. Coalition Against Domestic Violence, leads a girls' coalition in D.C. We're concerned by the failure of the administration to maintain the vital efforts to reform the school-to-prison pipeline.

Without resources, leadership, and the kind of policy guidance states received under the previous administration, girls and boys of color will be at increased and disproportionate risk of school discipline and being shunted into the prison pipeline.

In terms of policing reform, the Department of Justice has rolled back its work to improve law enforcement accountability by obtaining consent decrees with localities where federal oversight is warranted.

We urge the administration to use its civil rights investigatory power to hold police departments accountable where appropriate to the end that communities will be safer and enjoy higher levels
of community trust and engagement with law enforcement.

The Congress should also regularly use its oversight powers to engage DOJ on this important issue.

Regarding the priorities of the National Task Force to End Sexual Violence, with respect to incarcerated women, we commend to the Commission's attention the Dignity Act, S.1524, worked on by women reentering from federal incarceration and focused on improving basic conditions.

The NTF is working to get some of Dignity's provisions enacted as part of the reauthorization of the Violence Against Women Act, H.R.6545.

Finally, and in the interest of time, we share with the Commission the NTF statement condemning the Trump administration's efforts to harm the transgender community and several statements on the impact of the Trump administration's immigration and asylum, and in particular with respect to recent suggestions, statements that are in support of the human rights of immigrant survivors of violence.

Thank you so much.

CHAIR LHAMON: Thank you. Our second
MS. MCGERALD: Members of the Commission, thank you for this opportunity. My name is Katherine McGerald, and I'm the newly appointed Executive Director of SurvJustice, a national not-for-profit organization working to increase the prospect of justice for survivors of sexual violence.

We provide legal assistance to survivors of sexual violence in campus proceedings, as well as civil and criminal legal systems. In addition to these public comments, SurvJustice will submit more detailed written comments.

Title IX was instituted to protect equal access to education. On September 22, 2017, the Department of Education issued a new Dear Colleague letter pertaining to Title IX that weakened Title IX enforcement and fails to protect survivors' civil right to access their education.

This new policy imposed the following requirements on schools that weakened Title IX enforcement and protections for sexual harassment survivors in many ways, including but not limited to, one, eliminating the requirement to investigate assaults or harassments that take place off campus.

Think back to your own time in school and
how many things actually occurred off of the campus of the school, whether it was college, secondary education, or anything. Off campus assaults or online harassment wreak just as much havoc on a student's education as on-campus assaults. It does not require schools to timely resolve reports of sexual harassment or violence.

Permitting schools to resolve complaints concerning sexual assaults through mediation. During my career, I have litigated a significant number of cases involving sexual violence and intimate partner violence in family court in New York. I have never recommended that one of my clients in those situations utilize mediation.

Eliminating the caution against schools relying on criminal investigations as a substitute for their own independent investigations and determinations. Eliminating the prohibition on permitting a respondent to question a survivor's sexual history. Eliminating the requirement that schools provide appellate rights to both parties, if provided at all, and instead, allowing schools to provide appellate rights to only the alleged perpetrator. Eliminating the strong discouragement to schools from permitting alleged perpetrators to
directly cross examine complainants.

As a former prosecutor, I understand the importance of cross examination. But there are ways to limit re-traumatization and re-victimization to survivors of sexual harassment or assault.

In closing, I urge this Commission to look at how the September 2017 Title IX policy changes weaken Title IX enforcement and fails to protect survivors' civil right to access their education.

Additionally, in the near future, the current administration's new rules will be unveiled. And I seek this Commission to seek input about the impact of the proposed rule. Thank you.

CHAIR LHAMON: Thank you. Our third speaker.

MS. DOOLEY: Good afternoon. My name is Nicole Dooley, and I work as policy counsel at the NAACP Legal Defense and Educational Fund.

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice.

We will submit more extensive written
comments after today's hearing, but I want to give a brief overview of the effect that the current administration's attack on civil rights has had on communities of color.

The administration is making a concerted effort to dismantle diversity efforts from K through college by withdrawing guidance on the voluntary use of race to achieve diversity in schools and supporting a lawsuit challenging the consideration of race in college admissions.

The administration seemingly plans to withdraw guidance advising schools and districts on the non-discriminatory administration of school discipline, a move that will be inconsistent with the Department of Education's own findings that decades old racial disparities in school discipline persist.

And the department has delayed implementation of significant disproportionality regulations, abdicating its responsibility to protect students from widespread and well-documented race-based disparities in the identification, placement, and discipline of students with disabilities.

HUD has sought to weaken several roles aimed at ending discrimination and segregation in housing. One provides jurisdictions with a roadmap and
tools for compliance with the Fair Housing Act and included measures for accountability.

A second, which was reinstated after a successful legal challenge to HUD's proposed suspension, aims to give families the purchasing power to move to higher opportunity neighborhoods instead of being confined as segregated and impoverished ones by improving the way that the value of housing vouchers is calculated.

The Department of Justice has become this administration's voter suppression agency, siding with Texas in an effort to impose a discriminatory photo ID scheme and with Ohio in an effort to unfairly purge voters.

The administration created a so-called voter integrity commission, since disbanded after substantial resistance, to manufacture a record of voter fraud to both vindicate the president's false claims of voter fraud and to create an excuse to suppress the votes of black and Latinx voters.

The Department of Justice is also working to reverse years of advances in criminal justice. It has, for example, reinstated the long-discredited policy of harshly punishing individuals who commit low level, non-violent drug offenses and is trying to
undermine consent decrees into a policing reform, even those to which DOJ is not a party.

These actions are not exhaustive but illustrative of the broad attack this administration has undertaken against all civil rights. We ask this commission to continue its mission of enhancing enforcement of federal civil rights through robust and independent fact finding. Thank you.

CHAIR LHAMON: Thank you. Next speaker.

MS. FERATI: Good afternoon, Commissioners.

My name is Amina Ferati. I serve as Senior Director of Government Relations and Policy for the Asian and Pacific Islander American Health Forum.

For over 32 years, we at the Health Forum have sought to improve the health and well-being of the 23 million and rising Asian Americans, Native Hawaiians, and Pacific Islanders.

We work to advance health access and protect civil rights and healthcare for communities who are 60 percent immigrant and 30 percent limited English proficient. For my testimony today, I will focus on the intersection of health and civil rights.

Concerns about enforcement of civil rights are nothing new. However, they are substantially heightened under the current Trump administration. In
particular, we must understand the complex chilling effect the administration is having with respect to individual civil rights and access to programs that they are legally entitled to.

At the Health Forum, we work with over 150 partners in 28 states. And we have heard a number of stories that show the continuing lack of language access protected by federal civil rights laws for patients.

For example, we heard a story from a young woman originally from Indonesia who now calls Pennsylvania home. She has a T visa. She has a T visa because she survived human trafficking for over ten years.

Despite her experiences, she now has healthcare through Medicaid, something she should be able to rely on with strong federal civil rights protections.

However, even when she is able to access an interpreter using a language line at the doctor's office, her care is of lower quality than those who are English speakers. She is often not provided written instructions for follow-up and other critical information. This threatens her health and undermines the quality of her care.
We have also worked with advocates nationwide over the past several years to enroll one million Asian Americans, Native Hawaiians, and Pacific Islanders in 50 languages in Affordable Care Act, Medicaid, and Children's Health Insurance Program coverage.

We have heard numerous stories from assisters and patients that language access continues to be a consistent barrier to getting health insurance and actually using it.

People have often never understood, limited English proficient people rather often have never understood when they have received legally required notices in the mail that impact their eligibility and enrollment and ability to see a doctor. This is because the notices are only sent in English and Spanish. They are not sent in Asian and Pacific Islander languages.

This context now is far more difficult, as AAPIs and other immigrants are afraid to enroll in services and access them given the chilling impact this administration's immigration and other actions targeting civil rights are having as a result of the proposed public charge regulation.

There are serious questions as well about
how this administration is enforcing federal civil rights protections when it leaks proposals that seek to undermine or otherwise eliminate civil rights.

These are just some of the examples that we wanted to provide the Commission. Thank you.

CHAIR LHAMON: Thank you.

MS. GIBSON: Good evening, Madam Chair and Commissioners. My name is Candace Gibson. I am the staff attorney of the National Health Law Program.

Founded nearly 50 years ago, the National Health Law Program protects and advances the health rights of low-income and underserved individuals and families. We advocate, educate, and litigate at the federal and state levels. Thank you for the opportunity to provide comments today.

We are deeply troubled by the current administration's actions to undermine access to healthcare for low-income individuals and communities who already struggle to access care, particularly those who are from communities of color, including women of color, people living with disabilities, and LGBTQ individuals, and the federal protections they rely on to access care.

As one example, the Trump administration has encouraged states to impose additional barriers to
Medicaid coverage including requiring individuals to
work or complete work-related activities to maintain
their coverage.

The administration has also allowed states
to impose premiums on individuals with very low or no
incomes and to punish individuals who do not pay their
premiums by terminating their coverage and locking
them out of Medicaid for up to six months.

Not only are these actions illegal but
they are troubling. Low-income people rely on
Medicaid, people like Charles Gresham (phonetic) in
Arkansas, who has several serious health conditions
including asthma, social anxiety, and a seizure order.

Medicaid coverage has allowed him to get
the treatment and services he needs. Work
requirements, antithetical to Medicaid's mission of
providing medical assistance to eligible individuals,
threaten his ability to maintain Medicaid coverage and
to stay healthy.

In the past two months, over 8,000
Arkansans have already lost their Medicaid coverage
due to these requirements.

Further, this administration has approved
similar draconian policies in other states. As of
yesterday, the Department of Health and Human Services
approved Wisconsin's waiver package.

In addition, we are concerned that the Office for Civil Rights at the Department of Health and Human Services lacks the leadership and resources needed to enforce federal civil rights protections.

In January of this year, the Office for Civil Rights established a new division, the Conscience and Religious Freedom Division. The division will have the authority to investigate and enforce federal refusal laws that allow providers to opt out providing the standard of care reproductive health services.

We are concerned that this division will take away needed resources from the enforcement of federal protections, such as Section 1557 of the Affordable Care Act, also known as the Healthcare Rights Law, which bans discrimination in healthcare, Title VI, and the Rehabilitation Act.

We are also troubled by the administration's proposed changes to undermine the healthcare rights law. Combined, these efforts will decrease access to coverage and care for individuals who already struggle to obtain the care they need.

The National Health Law Program will continue to protect the civil rights of Medicaid
participants across the country so they can maintain their access to healthcare free of discrimination.

CHAIR LHAMON: Thank you.

MS. KEISLING: Thank you, Madam Chair and Commissioners. I'm Mara Keisling, the Executive Director of the National Center for Transgender Equality, advocating on behalf of two million transgender people in the U.S.

We are your neighbors, coworkers, and family members. And while we have made crucial and historic strides in visibility, too many of us still face widespread disrespect, discrimination, and violence.

In a survey we conducted of 28,000 transgender adults, we found that one in three lives in poverty, one in eight has been homeless in just the past year, and one-third of those who saw a doctor were turned away or mistreated. According to another study, nearly nine in ten transgender students face routine harassment in school.

Such mistreatment touches every community. Earlier this year a school in Oklahoma was shut down for two days when a group of parents made violent online threats against a 12-year-old transgender girl named Maddy.
On her first day of seventh grade she was told to use the staff bathroom but hadn't yet been told where it was. So naturally she used the girls' room. The threats started immediately and the family was forced to move away.

This extreme case illustrates the climate of fear endured by trans children and adults and fostered by this administration. The Trump administration has waged a constant campaign against the civil rights of trans people, including students like Maddy.

The administration has rolled back lifesaving guidance that was specifically requested by the nation's educators and childcare experts to help them understand protections for trans students. The Department of Education is also reportedly now just throwing out complaints from transgender students. They have taken the same approach to protections in employment and healthcare law.

And last week we learned that officials are pushing a coordinated strategy to deny the very existence of transgender people and erase us from federal law, requiring us to endure genetic testing before exercising our rights.

Trans people and our families are
increasingly and understandably scared and angry because of these lawless attacks from the administration.

The president denigrates and attacks anyone he can paint as different or other, using lies, fear, and dangerous policies that put lives at risk. He has targeted asylum seekers, Muslims, survivors of sexual violence, people of color, women, and, yes, transgender people.

The administration has refused to enforce or even follow the law, ignoring binding appeals court precedence. At the same time, it has seized on outlier rulings from a single district court to justify its attacks.

They have ignored the voices of the medical community that recognize that trans people are real and that we should be respected for who we are. They have brushed off thoughtful, fact-based policies and court precedent with vague, sweeping memos, or as was the case for transgender service members, mere thoughtless tweets.

Despite all this, transgender people are incredibly resilient. Every trans person I know has lost something. And yet we continue to live as we are, knowing that the power of our truth is more valuable
than a life in hiding.

Though the harm is already, though the harm already done is inescapable, it is not irreparable. The federal government has a unique role in protecting the civil rights of every person in this country including us.

I urge the Commission to stand with the courts and stand with the people in resisting this administration's efforts to permanently harm us and tell the administration that our civil rights won't be erased and transgender people won't be erased. Thank you very much.

CHAIR LHAMON: Thank you.

MS. KEISLING: Sorry about my cold.

CHAIR LHAMON: Sorry for you. Next speaker.

MS. ADAMS: My name is Amy Adams. I'm from Stafford County, Virginia. And I am the proud mother of three children.

My middle child, Morgan, is a transgender girl. That means that while she may have been designated male at birth, she has consistently identified as female for as long as she can remember.

Morgan transitioned four years ago at ten when she stopped living life as a boy and started living as her true self. She has many friends and
family members who support her, as well as teachers and administrators at her public school who are on her side.

Morgan is a wonderful, amazing, and beautiful young woman. But because Morgan is transgender, I can't count on all of the adults in her life to be on her side.

I was forced to confront this sad fact early last month when Morgan's school had a lockdown drill to simulate an active shooter situation. My daughter was in gym class during the safety drill. And teachers were supposed to bring Morgan and her fellow students into the locker rooms until the safety drill was over.

Most of the students were quickly taken into the locker rooms, but my daughter was not. Instead, Morgan's teachers debated whether my daughter should go into the boys' locker room or the girls'. This was a result of the school's decision to exclude Morgan from using the girls' restrooms or locker rooms.

This drill was supposed to be about safety, student safety, my daughter's safety. Morgan's teachers ultimately sent her to sit in the hallway between the locker rooms. I want to repeat that.
During a safety drill designed to protect Morgan and her fellow students in case of danger, my daughter was considered such a threat to her peers that she was left exposed and defenseless.

I don't blame my daughter's teachers. They weren't trained on how to work with transgender students. And fortunately since this incident happened, the school has been working to better support Morgan. But not all transgender students are lucky enough to attend schools that can learn from their mistakes.

This administration and Secretary DeVos' Department of Education have only made things worse for transgender youth by withdrawing the Obama administration's critical guidance on supporting transgender students in schools.

Adults, especially those working in schools, are expected to protect young people. This was not protection. This was the opposite of protection, actually putting my daughter in more danger.

Like any parent, I want to protect my children. Like any parent, I want my children to learn and grow and thrive at school. Unlike many parents, though, I am forced to watch as my daughter's
civil rights are ignored and cast aside.

My daughter, Morgan, is 14. She wants to be a makeup artist when she's older. She is beautiful and hilarious and the strongest person I know. She is known as a leader at her school, always getting good grades and eager to help her peers.

Her peers love her and support her completely. And the education system failed her. The federal government failed her, just like it is failing transgender young people in schools across this country. Thank you.

CHAIR LHAMON: Thank you. The next speaker.

MS. MORITSUGU: Thank you. Good afternoon.

My name is Erica Moritsugu. I'm here on behalf of the Anti-Defamation League. Madam Chair and Commissioners, thank you for holding this briefing.

Over the years, the Commission has done trailblazing work on so many core issues for ADL, including hate crime response, campus antisemitism, civil rights, LGBTQ equality, and religious freedom. We've been honored to work in partnership with the Commission on these and other issues.

I'd like to use my time to try to elevate two issues for the Commission. First, ADL has been a leader in promoting effective response to hate crimes.
In the aftermath of the murder of 11 Jews in a synagogue in Pittsburgh last Shabbat, the single worst incident of antisemitism in U.S. history, we wanted to emphasize that the Department of Justice and the FBI have done very good work in enforcing federal hate crime laws and in investigating a wide range of hate crimes in America, including several involving victims targeted for no other reason than their gender identify.

But the best way to address hate crimes is to address hate. The ADL has long argued that America's leaders must use their bully pulpits to call out hate. The language that our leaders use and the issues they prioritize affect how we treat one another, just like the laws they pass and implement. And on this, the administration has to date fallen short of what we have come to expect and what this nation needs.

The federal government cannot effectively address hate crimes if it is at the same time scapegoating Muslims, denigrating Hispanics, demonizing refugees and other marginalized communities through their words and actions, through policy and executive actions, promoting regulatory changes, and filing briefs that negatively impact the LGBTQ
communities, especially the transgender community.

Second, the administration has repeatedly spoken about the importance of religious freedom. But it is promoting an unrecognizable redefinition of religious freedom, one in which the notion of religious liberty is no longer a shield to protect individual and institutional religious freedom, but instead is a sword designed to thwart anti-discrimination laws protecting women, LGBTQ equality, and religious minorities.

In the name of religious freedom, we have seen this administration promote government-funded employment discrimination, restrict access to health services, and attempt to restrict the rights of transgender Americans in the military, in public schools, in the workplace, and in prisons.

Again, we are very grateful that the Commission is examining these and other issues today. ADL intends to file more complete comments for your consideration in the coming weeks. Thank you.

CHAIR LHAMON: Thanks very much. The next speaker.

MR. KYE: Members of the Commission, thank you for the opportunity to comment today. My name is Peter Kye. And I am a law and policy associate at the
Poverty & Race Research Action Council, a national civil rights policy organization based here in Washington, D.C.

We are working to ensure that there is robust fair housing enforcement and oversight and are greatly concerned about the current direction of federal fair housing policy.

First, we are deeply concerned about potential changes to the 2015 Affirmatively Furthering Fair Housing rule. The AFFH rule established a valuable oversight mechanism and planning framework to help HUD grantees meet their statutory duty to take proactive steps to dismantle entrenched patterns of segregation, discrimination, and disinvestment.

This rule has already benefitted many communities around the country. Unfortunately, the suspension of this rule in January and HUD's intent to revise it undermine this critically important tool for advancing fair housing.

While the rule is suspended, there is little HUD oversight of fair housing planning. Keeping the rule intact and restoring its implementation is critically important to achieving the aims of the Fair Housing Act.

HUD's intent to revisit its disparate
impact rule is also troubling. This regulation formalized the long-held interpretation by HUD in courts that disparate impact claims may be brought under the Fair Housing Act.

Disparate impact liability is essential to fair housing enforcement. Without it, there will be major obstacles to attacking subtle but pervasive housing-related discrimination, as well as implicit structural biases in the housing market.

Revising the rule could unduly weaken the definition of discriminatory effect, the burden-shaping framework and more, making it more difficult to address the discriminatory effects of housing practices and the reinforcement of segregation. We urge HUD to leave the rule intact.

We are also concerned about inadequate staffing and funding of HUD's Office of Fair Housing and Equal Opportunity. FHEO's staff play a vital role in enforcing the Fair Housing Act, providing guidance, and ensuring that housing and community development programs are administered in a way that promotes diverse, inclusive communities.

Despite the critical importance of FHEO, it has been chronically underfunded and staffing levels continue to decline, severely limiting the
ability of the federal government to effectively enforce fair housing protections.

We call for a robust funding of FHEO and increased staffing so that the office can have the resources and capacity it needs.

Finally, there is a need to address the role of federal housing programs in perpetuating and exacerbating racial and economic segregation in the United States.

For example, many aspects of the administration of the housing choice voucher program prevent voucher holders from exercising true housing choice. As a result, voucher holders are disproportionately concentrated in poor and racially segregated neighborhoods that lack quality schools, jobs, and other opportunities.

The consequences of this type of segregation are devastating and contribute to wide racial disparities in education, health, and other areas. More must be done to ensure that the citing of affordable housing is balanced and that residents have true housing choice.

We urge the Commission to carefully examine the enforcement of fair housing protections.

Thank you.
CHAIR LHAMON: Thanks very much. The next speaker.

MS. DAVIDSON: Madam Chair and members of the Commission, my name is Jess Davidson. And I'm the Executive Director of End Rape on Campus, a national non-profit organization that seeks to end a world free from sexual violence and education through direct support for survivors and their families, prevention education, and policy reform. Thank you so much for having me today.

I'm also a survivor of campus sexual assault who is dependent on the civil rights afforded to me under Title IX. I know that I'm not alone. Three million college students will be sexually assaulted this fall. This is unacceptable. And it isn't even the entire story.

Sexual assault in education isn't just about college campuses like that on which my organization focuses, but also future leaders like students in elementary school.

Approximately 40 to 60 percent of black girls report coercive sexual conduct before they turn 18. And 78 percent of transgender or gender non-conforming children are sexually harassed in grades K through 12.
There are civil rights protections put in place to protect students. And yet this administration is determined to rip those rights away.

Civil rights violations do not happen in a vacuum. As human beings, we live at intersections. At EROC we believe passionately that Title IX's strict enforcement, including with its intersections with other civil rights laws, is the federal government's moral and legal imperative.

Title II should be built for survivors. A student's history of depression or anxiety or other disability should not be used to discredit their report of sexual violence.

Title VI should also be built for survivors. Race, color, and national origin should never be grounds to discredit survivors of sexual assault in classrooms, in the workplace, or online.

Experienced advocates have looked on in horror as this administration has staged an intentional attack on civil rights protections for students, particularly students of color, students with disabilities, and transgender and gender non-conforming students. To attack those students is to attack survivors.

Students with disabilities experience
assault at two times the rate of students without disabilities. And nearly one in four transgender, genderqueer, or gender non-conforming students experience sexual violence during their undergraduate education.

Meanwhile, this administration is not seeking to protect those students further, but doing everything it can to erase civil rights for these very students. But these violations, this violence is not a foregone conclusion.

I'm here today to respectfully request that this Commission investigates the Department of Education's recent and impending decision making on rescinding previous guidance on Title IX enforcement and replacing it with a dangerous regulation that will chill reporting and prevent students everywhere from being able to access their civil rights under Title IX, including an egregious lack of survivor inclusion in the stakeholder engagement process, to which my organization can further attest, and a policy decision-making process that is based on rape myths and false sex stereotypes, ensuring Title IX and its sister civil rights laws, Title II, Title VI, and Title VII are protected as a civil rights issue and a human rights issue. Thank you very much.
CHAIR LHAMON: Thank you.

MS. CARROLL: Good evening. And thank you for the opportunity to address this committee. My name is Michelle Carroll. And I am the current Associate Director of External Programs with End Rape on Campus. And prior to joining EROC, I was the Director of Campus Projects with the New York State Coalition Against Sexual Assault.

I am here to speak to you about the importance of the government's leadership and enforcement of Title IX, Title II, and Title VI and how these civil rights protections can be the difference between a student finishing their education and a student dropping out due to discrimination and/or violence.

It is the government's role to ensure that all students are safe during their educations, including our K through 12, college students, and grad scholars. This role is referenced in numerous Dear Colleague letters from the Department of Education's Office of Civil Rights, including the 2001, 2010, and 2011 Dear Colleague letters.

This expectation has been taken seriously by previous administrations. And the government's leadership on preventing and addressing gender and
race discrimination has successfully signaled to communities, K through 12 schools, and our colleges the seriousness of the short-term and long-term effects of gender, sex, and race discrimination.

Thirty-one percent of college students will drop out after experiencing sex discrimination and/or sexual violence. That percentage is higher for vulnerable student populations.

Additionally, a single instance of sexual violence can cost upwards of $200,000 for medical costs, mental health costs, student fees, et cetera. Consider the lifetime costs of victimization for students who are assaulted in middle school or elementary school.

And as we continue to move into the new age of social media, the government must continue to provide leadership on the importance of online harassment and how these instances of harassment can rise to the level of gender, sex, and race discrimination, thus following a student from their desk at home to their homeroom classroom.

The government's leadership on these issues, as evidenced by federal guidance, and its role as an accountability measure has enabled community organizations to confidently offer their expertise to
schools and colleges, thus building local collaborative decision-making bodies dedicated to combining the community's medical, mental health, and criminal justice services available to help students stay in school after experienced discrimination.

In my previous role with the New York State Coalition, I witnessed how over 200 colleges have partnered with our local rape crisis programs to provide prevention training and direct services to students.

Additionally, New York has seen a rise in the development of sexual assault response teams and college consortiums that meet to discuss their community's resources and how best to ensure that students have access to all the community can offer.

In the 2011 Dear Colleague letter, the government recognized how education is the great equalizer and that the government's role in preventing and addressing harassment is a key function of its preservation of student rights.

This committee has an incredible role in preserving our students' rights to an education. And I commend the committee for the work so far. Thank you.

CHAIR LHAMON: Thank you.

MS. JACKSON: Thank you. Good evening,
Madam Chair and members of the Commission. It is an honor to testify today before the U.S. Commission on Civil Rights on the important topic of federal civil rights enforcement.

My name is Toni Michelle Jackson. I am a Deputy Attorney General in the Office of the Attorney General for the District of Columbia.

Our office is charged with conducting the law business of the District and with protecting the public interest. In that vein, we have worked very hard over the last four years to develop a public interest litigation practice that is responsive to the needs of our residents.

I want to highlight, while there are many, I want to highlight two today, two key areas in which the lack of federal enforcement or the rollbacks in enforcement are having an outsized effect on District residents.

First, a pressing issue for District residents is housing. And housing discrimination in particular is a barrier to opportunity.

Among other documented discrimination in the housing market, the Center for Investigative Reporting has uncovered racial disparities in mortgage lending in the District. But to assess potential
claims, we need among other things detailed information about credit scores, loan-to-value ratios, and debt-to-income ratios.

Under the Home Mortgage Disclosure Act, the Consumer Financial Protection Bureau has the power and indeed previously promulgated regulations to require that kind of detailed reporting from banks, which our office could have used to enforce local and federal protections against housing discrimination.

But under Mick Mulvaney, the CFPB backed a law that exempts 85 percent of banks and almost 50 percent of other mortgage lenders from providing this comprehensive information.

The failure to require detailed reporting limits the federal government's ability to uncover disparities in mortgage lending based on race and national origin. And it impedes the ability of the District to ensure that mortgage lending is fair. The abdication of the federal government's information enforcing function is not unique.

Second, the administration's push to redefine sex in civil rights laws to include only biological sex threatens the District's already marginalized transgender community.

A 2015 study of District employers showed
that almost half would prefer to hire a less qualified cisgender person than a more qualified transgender applicant.

Moreover, hate crimes are on the rise in the District. They nearly tripled between 2015 and 2017. And one of the biggest increases we are currently seeing is in crimes based on gender identity.

Thankfully, the District has the Human Rights Act. But the federal government's resources are not comparable to what the District has. And we need greater and more strategic enforcement on the federal level to ensure that our residents are fully protected. Thank you for your time.

CHAIR LHAMON: Thank you very much. The next speaker.

MR. HAILES: Madam Chair, Commissioners, staff, certainly appreciate the opportunity to testify before the Commission.

I'm Edward A. Hailes Jr. I'm a Managing Director and General Counsel for Advancement Project, a national civil rights and racial justice action tank that works on the ground in support of local organizing informed by careful legal reasoning and strategic communications.
We're engaged in a thousand points of fight around the country where effective federal civil rights enforcement would be helpful. I just want to lift up one particular concern today and supplement this statement with additional information before your stated deadline.

Advancement Project is nearly 20 years old. And right after we were founded, we coauthored a report. It was a groundbreaking report with the Harvard Civil Rights Project entitled Opportunities Suspended.

This document identified and named the school-to-prison pipeline, the policies and practices that push children out of school and on a pathway to prison, and outlined its harmful effects specifically upon black and brown children, students with disabilities, and other groups of marginalized children.

And in nearly 20 years of our existence, we have worked with various community partners across the country to dismantle the egregious civil rights violation known as the school-to-prison pipeline.

In July 2016, Advancement Project along with our partner, DeSoto County Parents and Students for Justice, filed a new supporting letter documenting
the continuation of discriminatory discipline practices in DeSoto County, which is a school district in Hernando, Mississippi.

The letter supplemented information sent to the U.S. Department of Education and came months after the Department opened a formal investigation in response to a complaint filed on behalf of students and parents in 2015. The letter pointed out the major instances in which the discriminatory discipline policy impacted black students there.

And what we have learned more recently, according to the U.S. Department of Education's Office for Civil Rights website, as of September 30, 2018, there are 1,556 pending Title VI cases currently under investigation at elementary, secondary, and post-secondary schools. There are 328 discipline cases.

In March 2018, the U.S. Department of Education's Office for Civil Rights issued a revised case processing manual designed to, quote/unquote, help the office better manage its docket, investigations, and resolution.

A particular provision in that statement now has resulted in over 500 disability rights complaints being dismissed, leading to concerns that more effective oversight and federal guidance is
needed. Thank you very much.

CHAIR LHAMON: Thank you.

MS. KING: My name is Liz King, and I am the Director of the Education Program at the Leadership Conference on Civil and Human Rights in Washington, D.C., a coalition charged by our diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States.

I appreciate the Commission's willingness to hear from the public on this critically important topic. Issues of civil rights enforcement are not simply interesting legal puzzles or fodder for academic debates. This is about the actual lived experiences of children in our nation's schools every day.

This Commission has the responsibility to ensure that federal civil rights laws and federal civil rights enforcement are meaningfully ensuring equal opportunity for students and preventing the discrimination that limits the potential of children of color, children with disabilities, girls, students who are LGBTQ, Native American, immigrants, religious minorities, or English learners.

It is critically important that the
Commission understand the need for a continued federal enforcement where areas of federal law and the U.S. Constitution are concerned.

While children are dependent on the educators and other adults around them every day for their safety and fair treatment, it is irresponsible and inconsistent with the laws themselves to suggest that these federal obligations can be fulfilled by state and local leaders alone.

The civil rights community and the marginalized people we represent have learned over and over again that without necessary intervention from federal civil rights enforcement agencies, rights are undermined and opportunities are lost.

What we have seen from the U.S. Department of Education over the past 22 months is a failure to execute the legal and moral responsibility of the agency.

The rescission of the transgender student guidance, the rescission of the sexual assault guidance, the changes to the case processing manual, the limitations on considering data in the context of investigations, the rescission of guidance on diversity at the K-12 and higher education levels, the
delay of the significant disproportionality rule, and other actions both public and hidden have demonstrated that Secretary DeVos and the department she leads are unwilling or unable to fulfill their responsibility to protect students from discrimination and enforce federal law.

The Commission must take note and take action on behalf of our children and our laws. Thank you.

CHAIR LHAMON: Thank you.

MS. GARCIA: Good evening. My name is Lynda Garcia, and I am the Policing Campaign Director at the Leadership Conference on Civil and Human Rights. Prior to this role, I served as a trial attorney in the Department of Justice Civil Rights Division where my work focused on pattern-or-practice investigations of police departments and the enforcement of consent decrees.

Today the Commission asked whether the federal government is meeting its obligation to vindicate and protect civil rights. In the context of addressing systemic police misconduct, the answer is no.

As part of any pattern-or-practice investigation, investigators speak with hundreds of
community members and police officers. During my time at the Department of Justice, I heard from community members who would tell stories of being slammed against a wall and searched just when walking home from work or to the corner store to buy milk.

I would hear that police used excessive force from applying handcuffs too tightly just to cause pain to tasering children in schools for minor misbehaviors.

And I listened to mothers who told their stories of identifying their children's bodies after they had been shot and killed by a police officer.

Excuse me.

I also listened to officers. And they shared stories of working within a system where their performance is measured by metrics that incentivize stopping, searching, and arresting people many times without regard to civil rights.

They spoke of broken accountability systems that do little to address officer misconduct, thereby delegitimating those officers who go to work every day to try and help the communities that they serve.

The consent decrees that the Department of Justice negotiates to fix these sorts of problems,

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like the ones in New Orleans, Ferguson, and Baltimore, promote sustainable, constitutional, and effective policing by reforming the policies, practices, training, and accountability systems in police departments.

They give communities a meaningful voice in the process and in developing the policies and practices for their police departments.

When communities view police and the process as legitimate, they start to work with police departments and cooperate with them to address serious crime, thereby improving public safety.

The current administration is, for lack of a better word, hostile towards this work. Attorney General Sessions has stated that, quote, it is not the responsibility of the federal government to manage non-federal law enforcement, unquote.

Yet the department has tried to stand in the way of police reform at the local level as well, most recently by urging a federal court not to enter a consent decree that was negotiated between the Illinois Attorney General and the City of Chicago.

This work is under threat. And without pattern-or-practice investigations, communities across the country will continue to be impacted by police
misconduct while the federal government abdicates its
duty to address this injustice, which warrants the
oversight of this Commission. Thank you.

CHAIR LHAMON: Thanks very much.

MR. SOTO: Good evening. Thank you to the
Commission for having this opportunity for all of us
to testify. My name is Jorge Andres Soto. And I'm with
the National Fair Housing Alliance. I'm Director of
Public Policy there.

The National Fair Housing Alliance is a
national civil rights organization dedicated to ending
housing discrimination and made up of local non-profit
fair housing organizations that do intakes and
investigations of victims of discrimination in their
own communities.

Fifty years after the Fair Housing Act
made housing discrimination illegal, acts of housing
discrimination still occur every day. And while often
these go undetected and underreported, housing
discrimination is still a huge obstacle for many.

The importance of private enforcement of
the federal Fair Housing Act cannot be overstated for
this and many other reasons.

Every year NFHA collects, and that's our
short name, NFHA collects data from both private fair
housing organizations and government agencies across the country that receive and address fair housing complaints from the public.

In 2017, there were over 2,800, I'm sorry, 28,000 reported complaints of housing discrimination across the country. Seventy-one percent of those were addressed by private non-profit fair housing groups as compared to complaints processed by HUD, local and state fair housing agencies, and the Department of Justice.

Increasingly, acts of discrimination are taking on more subtle forms. And while overt housing discrimination still occurs, it is masked by housing providers offering false information, quoting different prices, providing an inferior product or amenities, or applying different standards of qualification criteria.

Without private enforcement that utilizes testing investigation tools, subtle discrimination would permeate rentals, sales, lending, and insurance markets to a greater degree and relatively unchecked.

In terms of HUD's administrative challenges when enforcing the Fair Housing Act, its enforcement regularly exceeds the 100-day deadline set forth in its own regulations for each complaint that's
submitted to HUD. Indeed, HUD has decreased its average complaint investigation time. And we commend it for that. However, this trend must continue in order to ensure that victims have faith that HUD will resolve their issues and not be done so in a way that pushes legitimate complaints to the side for the purpose of expediency.

HUD also lacks the effective oversight of state fair housing assistance program participants, which it relies upon to work through its case load. By statute, HUD is authorized to refer complaints it receives to state and local civil rights agencies that enforce a substantively equivalent fair housing law to the Fair Housing Act, the federal Fair Housing Act.

However, investigation protocols and cause determination policies often widely vary across participating agencies and can conflict with the standards set forth by the Fair Housing Act itself.

HUD also has undermined the work of private fair housing organizations through its failure to effectively administer the Fair Housing Initiatives Program, which provides grants to private non-profit fair housing organizations to investigate complaints and educate the marketplace about fair housing laws.
For the last several years, HUD has delayed the release of the Notice of Funding Availability for this program and has derailed three year enforcement grants which require reapplication each year.

The result has been dozens of private non-profit fair housing organizations temporarily ceasing operation of their services and actually letting go experienced staff as a result of all of these mismanagements.

To address these issues, HUD must request additional resources for fair housing enforcement staff from Congress, conduct an independent oversight audit of the Fair Housing Assistance Program, and revise existing regulations to ensure HUD hands over, complaints that HUD hands over to state and local agencies are appropriately adjudicated and that --

CHAIR LHAMON: I need to stop you. I'm sorry.

MR. SOTO: Yes.

CHAIR LHAMON: But thank you very much.

MR. SOTO: Thank you.

DR. YOUNG: Hi. Good afternoon. My name is Lih Young. Thanks to the Commission we're still here --
CHAIR LHAMON: Thank you.

DR. YOUNG: -- to hear my message. And I think that's very important. And I've been here since this morning, 8:30. So you've got to know how important your job is.

And I want to go back to this this morning. All the message you talk about is really the data and knowledge is you asked how they want to help you and whether that you know that data and knowledge is so far incorrect.

Incorrect information is always there by all the agencies, by all their staff, by all the police. So you've got to know if this is gives you a false message, your remedy will be wrong.

So I hope you go back to re-research the data and reexamine that information whether it's correct or not, not as an agency or lower court or lower government agency. Give it to the maybe Census Bureau or something. That is not called data. It's true. But you have to compare whether the data used is correct or not.

And other education funding or social program funding, they are not, do their purpose. They are not for education purpose. They are not for free lunch purpose. They are not for Social Security
benefit for elderly or for somebody, or if you say the jail, that's not for public safety purpose.

So you must compare to see what they are doing wrong or let's send people to the jail just to give them the provision of their sleeping or their food. And that's called torture and murdering.

So we know this society is very bad. And the most important now is the police and Department of Justice. They are being ordered wrong, yeah. They are real negative productivity, negative.

Sorry, you are not try to think, unemployment lower is good. That's a negative. It's getting worse. So you have to think about all this negative.

So this is important for your children, for your sibling, for your elderly. And I see a lot of time the elderly are separated. They are not a couple. They are separated, send them to a different kind of rehab or nursing home. And they don't give them food. Instead they may be forced injection and murder them, because I know my family have just experienced.

So I tell someone, especially now, you know it's PPP, public permit, partnership. This is propaganda everywhere from the local to federal to global, and then including education or non-profit
So just to turn our society around you've got to examine those.

CHAIR LHAMON: Thank you very much.

DR. YOUNG: And I will submit my testimony and give this more detail later.

CHAIR LHAMON: Thank you very much. Next speaker.

DR. YOUNG: Please read carefully. Thank you.

MR. HERRING: Ladies and gentlemen of the Commission, I'm Mark Herring, the Attorney General of Virginia, here tonight on behalf of the people of Virginia, as well as several fellow state Attorneys General who intend to submit supplemental written comments.

It's a particular honor for me to address this body because my great-uncle, Robert S. Rankin, served on this Commission from 1960 to 1976. And the Commission's library bears his name.

Over the last several decades, individual Americans and state governments have been able to rely on the federal government as a partner in the shared mission to secure and vindicate civil rights. Sadly it seems this reliance and expectation is no longer well
founded and this relationship is fracturing.

One of President Trump's first executive orders attempted to enact a Muslim ban that violated the constitutional rights of many living in our nation and raised fear among American Muslims and other minority communities that they could find themselves the next target of government sanctioned and mandated discrimination.

These fears have proven well founded as we have witnessed further efforts to undermine cherished civil rights, including deeply troubling talk in recent days about executive orders to nullify the 14th Amendment and birthright citizenship.

The Department of Education under Secretary Betsy DeVos is trying to undo years of progress led by Chairwoman Lhamon and others to combat sexual violence on college campuses and ensure the right to pursue an education in a safe and equal environment.

The CFPB and HUD have reversed or rolled back rules and regulations that ensure minorities are not subjected to unconstitutional discrimination when trying to secure housing or loans.

And this administration is currently presiding over one of the most frightening surges in
antisemitism and white supremacist violence in recent memory.

And where the peddlers of hate and violence should have been met with swift consequences and clear condemnation from political and community leaders, too often they instead have heard indifference, equivocation, tacit approval, or worse.

My colleagues and I have successfully sued to block many of the most egregious moves by this administration, relying on the courts to protect our citizens' rights from actions by the federal government.

We've also worked to pick up the slack where we can through programs or enforcement actions, though we work with more limited resources, jurisdiction, and authority than those available to federal agencies.

Simply put, this is not the way it should be. And it is not a sustainable model for protecting citizens' rights.

We need to again be able to rely on the federal government to be a partner in protecting the civil rights of our citizens rather than a threat to them.

As the Commission continues its work, I
would encourage you to be bold and be honest about the realities of civil rights in the United States and the sources of threats to those rights. It is clear to me, many of my constituents, and many of my colleagues that there is reason for alarm.

A clear-eyed, impartial declaration of the threat to civil rights in America would be a courageous and necessary step that history will surely judge favorably. Thank you. And as the top law enforcement officers of our states, my colleagues and I stand ready to assist you in any way possible.

CHAIR LHAMON: Thank you very much.

MS. SRIDARAN: Good afternoon, members of the Commission. I'm Lakshmi Sridaran, and I serve as the Director of National Policy and Advocacy for South Asian Americans Leading Together or SALT.

We are a national non-partisan, non-profit organization that fights for racial justice and advocates for the civil rights of all South Asians. And our core policy priorities are in civil rights, immigration, and combating hate crimes.

In our critical work both documenting and addressing hate violence against our communities, we rely on the Department of Justice to enforce hate crimes protections at the federal level.
During a time when hate violence against South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab American communities has risen nearly 45 percent in the last year alone, and I should note that our data found that one in five hate incidents we documented we found that the perpetrator cited the president, his administration, or one of this administration's policies while committing the act of violence.

So, as you can understand, we are appalled that underreporting of hate crimes is occurring at a factor of over 40 to 1 according to the National Crime Victimization Survey.

Even more unacceptable are ProPublica's recent findings that 120 federal agencies have not complied with mandates to submit hate crimes data to the FBI. In fact, ProPublica's investigation found that the FBI itself is not submitting hate crimes it investigates to its own database.

The DOJ must make hate crimes by both local law enforcement and federal agencies mandatory with consequences for inaction to ensure that we all have the data to even understand the magnitude of this problem and then fully enforce and prosecute hate crimes.
Additionally, we are deeply disturbed by the racist and anti-immigrant framework being advanced by this Department of Justice through its task force on crime reduction and public safety defined as so-called illegal immigration, drug trafficking, and violent crime.

A subcommittee within this task force focuses on hate crimes. This infrastructure advances the myth of immigrants as perpetrators of hate crimes rather than focusing on the growing problem of white supremacist hate violence targeting all vulnerable communities.

Lastly, on this point, prosecutions cannot be the only tool of enforcement to address hate crimes. This DOJ eliminated the budget of its Community Relations Service. CRS was an arm of DOJ that supported the very difficult task of building trust between communities and law enforcement, which research and evidence strongly suggests is one of the most effective ways to improve hate crimes reporting. This DOJ has undermined a key tool for addressing and preventing hate crimes.

On immigration, another one of our priority areas, we are aware and disturbed by the number of detainees and detention facilities across
the country facing a number of civil rights violations. This includes withholding medical treatment, force feeding, abusive treatment, and retaliation by detention center staff, withholding critical language interpretation, and denial of bond hearings.

The Office of Civil Rights and Civil Liberties within DHS must have more power and resources. DHS staff visited the folks in Georgia, a detention facility this year, a private detention center run by GEO Group in August after receiving several complaints. And yet we have not heard anything about this investigation.

Due to the deference to ICE within DHS, we recommend an independent ombudsperson position to be created to liaison between communities and CRCL to move such complaints through a transparent process and ensure the civil rights of all detainees are enforced --

CHAIR LHAMON: Thank you very much. Thank you.

MS. BEANE: Good afternoon. And thank you for the opportunity to speak here today. My name is Catherine Beane, and I serve as Vice President for Public Policy and Advocacy at YWCA USA.
Founded 160 years ago, YWCA is one of the oldest and largest women's organizations in the United States and is dedicated to eliminating racism, empowering women, and promoting peace, justice, dignity, and freedom for all.

Today we serve over two million women, girls, and family members through a network of 210 local associations across 46 states and the District of Columbia.

Across this vibrant network we are proud to provide a broad range of services to meet the health, safety, economic security, racial justice, and civil rights needs of women, girls, and communities.

And as our CEO, Alejandra Castillo, often says, while not every YWCA has a pool, we are here to help when women feel like they're drowning.

At YWCA we are profoundly concerned by the active and ongoing rollback of civil rights enforcement and attention to the needs and experiences of marginalized communities across numerous federal agencies.

Of particular note, YWCA is concerned by the rescission and changes to guidance by the Department of Education regarding sexual violence, campus sexual assault in transgender students and the
potential rescission of guidance on school discipline, changes to the Department of Health and Human Services' draft strategic plan, which eliminated references to health disparities experienced by racial and ethnic minorities and LGBTQ people, the Department of Justice's rollback in the use of consent decrees, the Department of Housing and Urban Development's removal of anti-discrimination language from its mission statement, as well as HUD's suspension of the Affirmatively Furthering Fair Housing rule, and the denial of refuge and safety for survivors of domestic and sexual violence that is occurring daily at our borders, as well as the ongoing tragedy of children's separation from their parents.

These and other recent actions which you've heard detailed testimony about throughout the day reinforce gender and racial stereotypes, exacerbate systemic barriers, and send a clear message that the federal government is not fulfilling its critical role of protecting and vindicating civil rights.

And the true irony here is that these rollbacks are occurring at a time when women have heightened concerns about discrimination, safety, and economic security.
YWCA's recent national report, What Women Want 2018, makes clear that women's experiences of gender discrimination remain prevalent and, in fact, have increased since 2012 and that black, Latina, and Asian Pacific Islander women experience racial discrimination at even higher rates in addition to the gender discrimination that they experience.

Moreover, many of women's top areas of concern relate to issues that are directly impacted by the lack of enforcement of civil rights.

As is too often the case in our history, women, people of color, and other marginalized groups are directly impacted and bear the cascading impacts of the federal government's changed policies and practices with respect to civil rights enforcement. These are the very same people in communities that YWCAs serve.

Thank you for the opportunity to share these comments. I anticipate and will be thankful to be able to provide additional comments in writing in a few weeks. Thank you.

CHAIR LHAMON: Thank you.

MS. WILLIAMS: Hello. My name is Faith Williams, and I'm the Senior Manager of Government Relations at the National Council of Jewish Women,
known as NCJW.

NCJW is a grassroots organization with members across the country devoted to improving the lives of women, children, and families and safeguarding individual rights and freedoms. We're 125 years old this year.

Thank you for the opportunity to speak today. We will submit a more detailed statement for the record.

There is no shortage of the ways the administration has rolled back and undermined civil rights. You've heard so many of them from our partners here today.

Rather than reiterate that list, I want to focus on a broader push from this administration to make policies and interpret law based on a narrow interpretation of evangelical Christianity.

NCJW supports comprehensive, accessible, and affordable healthcare for all, including access to abortion. We believe women have the right to make their own reproductive and childbearing decisions.

We work for programs and policies that protect all people from discrimination and bias regardless of their race, religion, gender, ethnicity, sexual orientation, immigration status, ability, and
Why do I list just some of our many principles? Because these beliefs are based on our Jewish values not in spite of them.

As Jews, we know that gender is a spectrum, a concept rooted in traditional Jewish text. We are taught that protecting an existing life is of paramount importance. We believe in Kavod HaBriyot, respect and dignity for all people, B'tzelem Elohim, we are all made in the image of God, and Tzedek, Tzedek Tirdof, the pursuit of justice always.

When the administration makes policy to align with one interpretation of one religion or when they allow employers, health plans, and business owners to use their religious beliefs to thwart our laws, it threatens the religious liberty of all people.

We depend on religious liberty to be a protective shield not a weapon to harm and demean others. Thank you for your time.

CHAIR LHAMON: Thank you.

MS. DORHOI: Hi, my name is Monica Dorhoi. And it's a great pleasure to get today to speak to you.

For over the decade I've worked at World
Bank. And I got the chance to conduct training with the Equal Employment Commission, to be an official enforcer for the Fairness Act. I worked with the Comptroller General, David Walker, for over 15 years.

However, my work is international. And I'm not as much known here in Washington. However, I wanted to show a little bit the work that we have done at World Bank and international organizations and how you apply the civil rights to international organizations, because many of us are Americans working in those institutions.

My job and my PhD was last year the most recommended, commended, and received more congratulatory letters from the United States Senate and Congress than any other PhD in the union. I received a medal of honor, a celebration for a decade of research.

My job is on anti-fraud and anti-corruption. I do not play and do not have a political career. I'm just a professional. So please note, I do not play any political role in such, neither was appointed by President Barack Obama or Trump. I'm a career professional.

Mentioning so, my research and my PhD research was awarded in 2005 at Michigan State. And we
speak today about civil rights. My PhD advisor was Brian Silver. And he worked after September 11 all the civil rights and how we're affected by September 11.

However, my PhD advisor at the time is the largest, the most known expert in dissidents of the Soviet Union that immigrated to United States. Michigan State and the University of Michigan hold the largest database, what happened to Americans that emigrated from Eastern Europe.

Why would you care? A decade later we looked through the database. And I want the Commission to understand this is research. It's not political. It was not intended as such. It's pure data. And we have here also an excerpt for you in the PhD dissertation.

Melania Trump is foreign born in the country of Slovenia. Melania Trump, you say what's the link with civil rights. The link is you need to look at Melania Trump and what will happen through -- and this is our research in our book to, in fact, who is Melania Trump. Melania Trump grew up in a dictatorship. And her parents were leaders in the Tito --

CHAIR LHAMON: I'm going to have to stop you there. But we'll be pleased to see the written submission. Thank you very much.
MS. DORHOI: Okay. Thank you.

CHAIR LHAMON: And with that, that closes this briefing. I thank everybody for your participation.

We will, as I mentioned, keep our record open until December 17th. Panelists and members of the public who would like to submit materials for Commission consideration, which we welcome, may mail them to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation. The address is 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425 or email them to enforcement@usccr.gov.

And I ask that our attendees move any continuing conversations outside of the hearing room so our staff can complete the logistics necessary to close this out.

And please make sure you exit the building through the F Street lobby as the exit to the Pennsylvania Avenue side is closed.

Thank you very much. That concludes this briefing.

(Whereupon, the above-entitled matter went off the record at 6:07 p.m.)