

## U.S. COMMISSION ON CIVIL RIGHTS

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PUBLIC BRIEFING **FINAL**

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FRIDAY, NOVEMBER 2, 2018

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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*

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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

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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

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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

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COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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

(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.

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1 CHAIR LHAMON: Thank you. Is the Staff  
2 Director present?

3 STAFF DIRECTOR MORALES: Yes.

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

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

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

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

25 In the Commission's first reports issued

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

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

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

23 The last time the Commission issued a  
24 comprehensive report assessing civil rights  
25 enforcement efforts across Federal agencies, was in

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1 2002 when the Commission began issuing a series of  
2 reports looking at the extent to which Federal  
3 agencies had taken up prior recommendations of the  
4 Commission and how each agency's Federal enforcement  
5 efforts were proceeding.

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

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

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

24 My experience enforcing civil rights laws  
25 and working with colleagues doing the same across

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1 agencies, some of whom are with us today, as well as  
2 my current life witnessing current enforcement  
3 practices, raise questions for me about what should be  
4 done differently and better.

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

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

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

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

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1 Office of Federal Contract Compliance Programs,  
2 Education, Health & Human Services, and the Equal  
3 Employment Opportunity Commission.

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

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

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

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

21 Panels Three and Four include advocates  
22 and academic and legal experts in civil rights  
23 enforcement from a wide range of perspectives. The day  
24 will conclude with an open public comment session,  
25 during which the Commission will hear from members of

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1 the public who wish to present additional information  
2 to the Commission.

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

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

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

14 (Laughter.)

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

17 (Laughter.)

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

23 As is appropriate, given the Congress  
24 tasked to my fellow Commissioners and me with the job  
25 to evaluate every day, the effectiveness of Federal

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1 civil rights policy and enforcement, each of us  
2 necessarily brings strong views to that evaluation,  
3 and we have not waited for today to begin assessing  
4 what does and does not work in Federal civil rights  
5 enforcement practice.

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

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

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

21 I look forward to what I and my colleagues  
22 on the Commission will ultimately conclude following  
23 this investigation. And more than that, I look forward  
24 to our Nation's continued pursuit of more justice for  
25 all.

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1 I turn us now to begin our briefing with a  
2 few housekeeping items. First, a very deep thanks to  
3 our Commission staff, who researched and brought  
4 today's briefing into being.

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

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

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

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

25 I ask everyone present to please silence

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1 your phones. And not to take flash photos to minimize  
2 health risks to persons present.

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

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

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

18 For any member of the public who would  
19 like to submit materials for our review, our public  
20 record will remain open until Monday, December 17,  
21 2018. Materials can be submitted by mail to the U.S.  
22 Commission on Civil Rights, Office of Civil Rights  
23 Evaluation, 1331 Pennsylvania Avenue, N.W., Suite  
24 1150, Washington, D.C. 20425. Or by email, to  
25 [enforcement@USCCR.gov](mailto:enforcement@USCCR.gov).

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1           During the briefing, each panelist will  
2           have seven minutes to speak. After each panel  
3           presentation, Commissioners will have the opportunity  
4           to ask questions within the allotted period of time,  
5           and I will recognize Commissioners who wish to speak.  
6           I will strictly enforce the time allotments given to  
7           each panelist to present his or her statement, and  
8           unless we did not receive your testimony until today,  
9           you may assume we have read your statements. So you do  
10          not need to use them to read them to us as your  
11          opening remarks. Please focus your remarks on the  
12          topic of the briefing.

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

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

25                 My fellow Commissioners and I will do our

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1 part to keep our questions and comments concise. So  
2 now we turn to our first panel of current and former  
3 Federal agency officials.

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

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

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

21 Mr. Greene, please begin.

22 **PANEL 1 - CURRENT AND FORMER**

23 **FEDERAL AGENCY OFFICIALS**

24 MR. GREENE: Thank you. The Department of  
25 Housing and Urban Development welcomes this

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1 opportunity to provide the United States Commission on  
2 Civil Rights this overview of its current fair housing  
3 enforcement activities.

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

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

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

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

24 FHEO relies entirely on salaries and  
25 expenses funding for its Fair Housing Act

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1 investigations. How many complaints we can investigate  
2 and how fast we investigate them depends on staff  
3 resources both in FHEO and HUD's Office of General  
4 Counsel.

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

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

14 For fiscal year 2017, we reduced that to  
15 209 days. And in fiscal year '18, the average time was  
16 122 days.

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

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

25 FHEO administers grant programs. This

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

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

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

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

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1 housing attorneys.

2 Even with our declining resources, we've  
3 made significant progress in reducing Fair Housing Act  
4 age case inventory in recent years. The case -- number  
5 of cases that go beyond 100 days, or that are at  
6 beyond 100 days at the start of each fiscal year, has  
7 decreased significantly over the last several years  
8 from 1607 at the start of fiscal year 2016 down to  
9 1297 in fiscal year 2018.

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

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

20 This year marks the 50th anniversary of  
21 the signing of the Fair Housing Act. Ongoing  
22 segregation in America, regular reports of sexual  
23 harassment in housing, and newly constructed  
24 properties inaccessible to people with disabilities,  
25 are just some examples that underscore that we have

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1 not yet conquered housing discrimination.

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

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

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

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

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

23 There's no question there is still  
24 discrimination in our country. It's a serious problem.

25 And we have not slowed down in identifying it and

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1 eradicating it.

2 Thank you very much.

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

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

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

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

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

25 So, the anecdotal evidence I've received,

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1 and the GAO report that we received, both indicated a  
2 concern that many contractor establishments, and  
3 there's about 120 thousand of them in the United  
4 States, which are based on 25 thousand federal  
5 contractors that we have jurisdiction over, that  
6 there's a concern that many of them are not even doing  
7 the basic affirmative action compliance.

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

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

20 So, we -- I issued a directive, the  
21 Affirmative Action Program Verification Initiative,  
22 whereby we will be working with GSA to look at a  
23 certification that they do every year, where  
24 government contractors have to certify whether they  
25 have an affirmative action program or not.

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1 I have alerted all the federal contractors  
2 that they do have to do this certification, and that  
3 we will be looking at it.

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

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

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

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

21 Right now across administrations we have  
22 typically found discrimination about 2 percent of the  
23 audits that we do. And there are some companies that  
24 we will audit again and again, some of their  
25 establishments every year, and never find

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1 discrimination.

2 And that's not really a great use of  
3 government resources obviously. We want to be able to  
4 identify likely violators.

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

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

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

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

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

25 But largely based on -- we can look at sex

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1 discrimination and we can look at discrimination based  
2 on race. Well, you know, there's eight other  
3 protections as well.

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

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

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

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

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

25 And I'm hoping to try to improve the world

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

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

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

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

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

25 We're going to be interviewing people with

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1 disabilities who would like to talk to us. And we're  
2 going to be very focused on that issue.

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

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

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

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

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

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

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

25 CHAIR LHAMON: Thanks very much. I will say

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1 also that Commissioner Kirsanow has joined us on the  
2 line. So, we have yet another of us on the phone.

3 Ms. Miaskoff?

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

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

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

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

22 We have two major enforcement tools, the  
23 administrative process and litigation. In the  
24 administrative process, we investigate and we  
25 conciliate charges brought by individuals alleging

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1 unlawful employment discrimination by private sector  
2 employers and by state or local government employers.

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

8 The point of this scheme is to work out  
9 disputes before they go to the federal courts. In FY  
10 17, the EEOC received approximately 300 thousand calls  
11 and requests for information from people who wanted to  
12 know about the laws we enforce and about filing  
13 charges.

14 As a result of that, we ultimately took in  
15 84,254 charges of employment discrimination directly.  
16 And this does not include the number that were filed  
17 with the state and local civil rights agencies.

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

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

25 In terms of litigation, we can only file

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1 lawsuits in a very small number of the charges where  
2 we find reasonable cause to believe that there was  
3 discrimination.

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

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

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

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

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

23 First of all, before the MeToo movement  
24 started, when Acting Chair Lipnic took over at the  
25 EEOC, she was frankly horrified to look at our docket,

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1 and to see the pervasiveness of harassment of all  
2 kinds, including sexual harassment in the workplace.

3 You know, unfortunately we've been privy  
4 to a lot of the information that's sort of becoming  
5 public in the last year.

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

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

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

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

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

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1 because of the timing.

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

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

10 We issued reasonable cause findings in  
11 1200 charges involving harassment in '18, as compared  
12 to 970 in '17. And we settled through conciliation,  
13 350 charges, representing a 43 percent increase.

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

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

23 And again, when we resolve these cases, a  
24 fair number of which we have resolved, we are focusing  
25 on equitable relief on changing practices, and not

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1 only on getting money.

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

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

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

10 MS. MIASKOFF: Thank you very much.

11 CHAIR LHAMON: Secretary Duncan?

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

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

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

24 You might say this is preposterous. This  
25 would never happen. This is impossible. Well, this is

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1 actual -- this is an actual case.

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

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

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

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

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

21 Not surprisingly, they were  
22 disproportionately black and brown boys. People don't  
23 like to talk about their school to prison pipeline,  
24 but it's real. For us to learn that starts at three  
25 years old and four years old, was devastating.

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1           Two stories I want to tell about myself  
2           that I'm not proud of, but it's important that we  
3           raise brutal truths. I've been at Chicago public  
4           schools over a four-year period, we've worked very  
5           hard to increase the number of kids taking and passing  
6           AP classes.

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

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

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

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

25          Final story, I was really worried about

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1 the school to prison pipeline. Something I always  
2 thought about.

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

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

9 A couple of weeks I heard back. They had  
10 broken down the data. And the Police Officers' shifts,  
11 there are three time periods, there's 12:00 at night  
12 to 8:00 in the morning. There's 8:00 in the morning to  
13 4:00 in the afternoon, and then 4:00 in the afternoon  
14 until 12:00 at night.

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

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

22 In all those situations, there's a lot of  
23 work to follow to change those cultures and change  
24 those norms. But, I tell those stories, Madam Chair,  
25 to say that we have to have, we desperately need a

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1 strong federal commitment to civil rights enforcement  
2 to do two things.

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

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

12 We talk a lot, and we should talk a lot  
13 about President Johnson signing the Civil Rights Act  
14 in 1964. But, we don't talk enough about President  
15 Nixon signed the Title 9. A game changer in 1972.

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

22 Once the curtain of charity closes on this  
23 current administration, we're going to have a lot of  
24 hard work to do at the federal level to reclaim that  
25 rich and important legacy.

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1                   Final thing I'll say Madam Chair, just on  
2 a personal level, I want to thank you for your  
3 extraordinary leadership. You are an amazing champion.

4                   You are one of the most important civil  
5 rights leaders in the country. You made me and our  
6 team better.

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

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

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

16                  CHAIR LHAMON: Thank you. Secretary Leon  
17 Rodriguez?

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

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

25                  Prior to serving as the Director of the

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1 Office for Civil Rights, I was the Chief of Staff for  
2 the Civil Rights Division at the Department of  
3 Justice.

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

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

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

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

25 Anybody who's served in the Department of

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1 Health and Human Services Office for Civil Rights  
2 knows that I was particularly obsessed with one prior  
3 leader of the Office for Civil Rights. Actually if --  
4 as Madam Chair knows, our agencies used to be one  
5 agency.

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

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

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

25 I think all of us who serve in positions

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1 as leaders of offices for civil rights, need to heed  
2 the example of Secretary Panetta. Whether we are  
3 Democrats or Republicans, we need to heed his example,  
4 and understand that no matter what our leaders'  
5 political positions maybe, our duty is to enforce the  
6 law.

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

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

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

23 And in particular, we also announced that  
24 for the first time that in that environment,  
25 discrimination based on transgender status was itself

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1 a form of gender discrimination.

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

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

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

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

24 And so it's the same thing as the mission  
25 of the Department of Health and Human Services'

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1 mission. It is to improve the health status access to  
2 social services for all Americans.

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

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

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

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

18 Thank you.

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

22 It looks like Commissioner Heriot, you  
23 have a question?

24 COMMISSIONER HERIOT: I just want to clear  
25 up any misimpression that this is the first

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1 administration not to cooperate with this Commission.

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

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

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

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

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

20 MR. RODRIGUEZ: Rodriguez.

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

24 CHAIR LHAMON: Commissioner Narasaki?

25 COMMISSIONER NARASAKI: Madam Chair, I was

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1 just kind of overcome with the events that have  
2 happened earlier this week. And I thought, if you  
3 don't mind, if we would just take a few seconds to  
4 recognize the deaths in the Synagogue in Pittsburgh  
5 and the two African Americans in Kentucky.

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

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

13 Just a few seconds.

14 (Moment of silence.)

15 CHAIR LHAMON: Sure.

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

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

23 So, I am very excited, Acting Director  
24 Leen, that you are focusing on the issue of  
25 disabilities. I very much agree that it's an area that

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1 has a lot of work to be done.

2 Particularily in corporations to make sure  
3 that people with disabilities are given the full  
4 opportunity to contribute their talents. And to be  
5 able to make their way in the world.

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

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

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

22 In the past I understand that OFCCP  
23 investigations have often found that while a  
24 contractor might have a plan, they rarely had a plan  
25 that didn't have significant violations.

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1           Because it is very technical, they're  
2 required to look at a lot of data for all races. They  
3 need to evaluate their hiring against their actual  
4 recruitment. And they need to make sure they're  
5 evaluating all job categories.

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

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

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

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

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

24           And I'm hoping, in the last couple of  
25 years it's gone down to about a thousand or so per

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1 list, or per year. And I'm hoping to increase that to  
2 about 3500, which would include the focused reviews  
3 and then the compliance checks we're also looking at  
4 doing.

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

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

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

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

25 So, that's -- we are focusing on that.

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1 That's something that we have to address to really  
2 ensure comprehensive compliance.

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

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

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

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

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

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

23 So, does that answer your question?

24 COMMISSIONER NARASAKI: That helps. Thank  
25 you. Also, and you may not have this data with you, so

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1 feel free to tell me that you can submit it later.

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

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

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

10 COMMISSIONER NARASAKI: Um-hum.

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

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

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

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

25 You know, so our goal, and we're going to

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1 be actually publishing a directive on this at some  
2 point. Our goal is to take the best aspects of what's  
3 called active case management, which is really the  
4 Bush Administration approach, which had more audits.

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

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

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

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

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

25 And if we find a disparity, more than two

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1 standard deviations, we still will go onsite. We will  
2 review that. We will send supplemental information  
3 requests. And we will enforce.

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

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

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

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

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

22 COMMISSIONER NARASAKI: So, along those  
23 case -- along with those big cases, the Department of  
24 Labor recently rescinded a settlement with Microsoft  
25 to resolve an investigation after a finding that the

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1 tech company had paid women in engineering and other  
2 unspecified tech jobs less than their male coworkers,  
3 and passed them over for promotions.

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

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

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

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

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

25 We do look at the numbers. And we're

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1 trying to make sure that the numbers, the stats, are  
2 similar with the different regions.

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

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

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

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

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

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

25 They respond. That's reviewed both by the

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1           Region, and the national office, to ensure that we  
2           have quality control.

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

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

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

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

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

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

25                      One, we expect 100 percent prospective

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1 relief. We're not going to agree to a settlement which  
2 allows discrimination to continue.

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

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

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

12 MR. LEEN: Oh, I'm sorry.

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

15 CHAIR LHAMON: Do other people first.

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

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

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

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

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1 a lot of things.

2 CHAIR LHAMON: We appreciate it.  
3 Commissioner Yaki?

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

16 And I think at some point the amount of  
17 information that the Department provided to us in  
18 response to our interrogatories is a testament to  
19 their tolerance for a lot of what we were trying to do  
20 and the lack thereof of this administration in  
21 responding to what is really a non-targeted, but just  
22 very basic exploration of their duties as agencies and  
23 enforcement to our rights is, actually, in my view,  
24 quite astonishing given the fact that throughout the  
25 time when I was on the small number end of it, a 6-2

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1 majority, with both Republican and Democratic  
2 administrations, I do not really remember at all the  
3 scope and lack of cooperation that we've seen in this  
4 hearing, especially with regard to an issue that we  
5 cannot really raise here.

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

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

23 MR. DUNCAN: Sir, I think we always have to  
24 go back to sort of first principles and values. I  
25 talked about the two core things, the Department of

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1 Education which I think fundamentally has to be, must  
2 be, a civil rights agency, has to do is to ensure  
3 everyone, everyone, the right to have a high-quality  
4 education, to allow them to fulfill their  
5 extraordinary potential.

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

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

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

23 There's some fundamental things in terms  
24 of our students, psychological and social and  
25 emotional safety, that have to be building blocks

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1 before we can start to talk about AP Chemistry and  
2 Physics. And we deny those opportunities when children  
3 are literally just trying to survive. We're denying  
4 them a high-quality education. So we address that. We  
5 have to address that. We have to make sure every  
6 single child in this country is safe, is cared for,  
7 and then has the ability, is free of fear and then  
8 they have the ability to talk about those higher level  
9 learning opportunities.

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

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

15 CHAIR LHAMON: That's not happening.

16 COMMISSIONER KLADNEY: Things change.

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

20 MR. LEEN: Yes.

21 COMMISSIONER KLADNEY: I've been reading  
22 the Congressional Research Report from 2005 and I was  
23 wondering how has the Department of Labor progressed  
24 in investigating those types of cases? Have they or  
25 haven't they progressed?

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1 MR. LEEN: Well, I can't comment directly  
2 on that because that's not my area, you know, with  
3 OFCCP, so I'm here on behalf of the Department of  
4 Labor, not OFCCP, but --

5 COMMISSIONER KLADNEY: So you don't know.

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

13 But on the one hand, someone like my  
14 daughter, for example, has very severe autism, may  
15 only be able to get a job with a sub-minimum wage. It  
16 is possible. That may be her only opportunity. On the  
17 other hand, and the other approach and I'm very  
18 cognizant of this because I have seen a lot of  
19 discrimination against individuals with disability. It  
20 is a segregated work environment. It's not integrated.  
21 They are being paid less and a lot of times those  
22 employees are doing full work. I mean they should be  
23 paid at least the minimum wage. So we're struggling  
24 with that issue, too. And so is OFCCP because we are  
25 still looking -- we do not want to see, obviously,

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1 discrimination against individuals with disability and  
2 that is an encoded provision, essentially, that allows  
3 individuals with disabilities to be paid less than  
4 others. So that would be my general comment on that  
5 topic.

6 COMMISSIONER KLADNEY: Thank you. Ms.  
7 Miaskoff. I'm sorry, I have a name nobody can  
8 pronounce.

9 MS. MIASKOFF: Don't worry about it.

10 COMMISSIONER KLADNEY: So the sexual  
11 harassment guidance from your Department is 20 years  
12 old.

13 MS. MIASKOFF: Right.

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

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

19 COMMISSIONER KLADNEY: Still being reviewed  
20 by OMB?

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

23 COMMISSIONER KLADNEY: How long has that  
24 been?

25 MS. MIASKOFF: Well, there's been some back

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1 and forth and conversation, but it's obviously been  
2 about nine months or so.

3 COMMISSIONER KLADNEY: How many pages is  
4 it?

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

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

10 MS. MIASKOFF: I do not.

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

13 MS. MIASKOFF: I really don't know.

14 COMMISSIONER KLADNEY: So that it is a  
15 possibility.

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

18 COMMISSIONER KLADNEY: Thank you.

19 CHAIR LHAMON: Madam Vice Chair?

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

22 This question is for Assistant Secretary  
23 Greene. You pointed out the power of Secretary-  
24 initiated cases in combating policies and practices  
25 that harm large numbers of people. And you pointed out

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1 to us that tight budgets make it challenging to  
2 respond effectively to individual complaints and all  
3 of that makes sense.

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

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

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

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

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1 broad authority.

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

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

13 I would say in my time at the Department,  
14 Secretary-initiated cases, we've probably never had  
15 more than 20 at any given time, probably averaging  
16 somewhere in the 10 or 12 range. It all depends. And  
17 again, depending on how big the case is, if you have a  
18 handful of big cases, you know, that may be why you  
19 have a lower number at any given time than another  
20 time where you may have more, but they may not be as  
21 resource intensive. But they are, again, really based  
22 on the resources we have. I'm pleased that we are  
23 becoming more efficient in how we handle the  
24 individual cases. So I'm hoping we can take on more of  
25 this work.

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1 CHAIR LHAMON: I have a question that I'd  
2 love for all of you to try to speak to. Several of you  
3 have spoken very compellingly about the difficulty of  
4 managing your resources as against the very broad  
5 charges that each of the agencies that lead or lead  
6 has. And a couple of you have talked about challenges  
7 and trying to make sure that you have consistent  
8 results across offices and that your offices achieve  
9 the results that you wanted to.

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

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

24 MR. RODRIGUEZ: Yeah, I really appreciate  
25 the opportunity --

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1 CHAIR LHAMON: I think you need to turn  
2 your microphone on so we can get the transcript.

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

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

21 And so both in terms of how we were rating  
22 our employees, but then also in terms of how we lead  
23 them and how we spoke to them, we emphasized the  
24 importance. And the results started coming. I was  
25 ultimately there just short of three years, in the

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1 sense that we were starting to really do the kinds of  
2 cases that I thought and that our leadership team  
3 thought we should be doing.

4 CHAIR LHAMON: Ms. Miaskoff.

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

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

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

22 And we've also implemented a process where  
23 with litigation certain percentage, I guess, of  
24 litigation from each district actually goes to the  
25 Commission now under -- that is under the priorities

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1 for them to review.

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

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

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

23 So we're looking at adopting sort of a  
24 combined index matrix that we're working on that does  
25 still give some reward for going through a case and

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1 closing it where you find a company that's doing the  
2 right thing, but that also rewards more the bigger  
3 cases. Because we remain committed to the large,  
4 systemic compensation cases. That's still going to be  
5 what -- we're still looking for those big cases. In  
6 fact, we're trying to do it better by focusing on  
7 likely violators. So that's in a general sense what  
8 we're trying to do.

9 CHAIR LHAMON: Thank you.

10 MR. GREENE: In the time I've been at HUD I  
11 think we've really over the many years have often had  
12 sort of a tug-of-war over the issues of volume and  
13 getting cases done on a timely basis and achieving the  
14 optimal outcomes for individuals in those cases. They  
15 are not mutually exclusive and certainly when the Fair  
16 Housing Act was passed and Congress charged us with  
17 completing cases within 100 days, the expectation was  
18 that we would get justice for people within 100 days.

19 So I've seen many different ways of  
20 managing these metrics over the years. I actually  
21 think that currently we've probably managed to balance  
22 them best in recent years, in part by shifting how we  
23 allocate our resources. We've actually had a team  
24 effort working on our age case inventory which for the  
25 last several years has brought down that inventory and

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1 has allowed other investigators to focus on the newer  
2 cases and ensure that those cases don't age.

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

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

24 CHAIR LHAMON: I imagine that's no easy  
25 task.

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1 MS. MIASKOFF: I just wanted to add, just  
2 to pick up on what you've been saying. We've also seen  
3 a real uptick at the state and local agencies, very  
4 significant. And we actually have one professional  
5 full time in every office now devoted to managing that  
6 relationship and looking over those cases and doing  
7 spot checks and sufficiency reviews, etcetera.

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

20 And then what we do after that is people  
21 go into an interview with one of our intake people and  
22 the results of that process has actually been a  
23 decline in the charges filed, but because of that we  
24 have more time to focus on ones that really state  
25 claims and we're seeing an increase in our rate of

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1 merits resolutions. So we're trying to get more time  
2 to focus on the serious cases.

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

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

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

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

24 Secondly, the issue of volume versus time,  
25 whatever, just to add one other issue that we haven't

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1 talked about is during our time, we saw our complaints  
2 more than double, go from about 5,000 a year to  
3 10,000. And my personal belief it wasn't that there  
4 was that much more nefarious things, more nefarious  
5 things happening across the country. I think there was  
6 a sense that our Office of Civil Rights was open for  
7 business. And that increased work load was an  
8 extraordinary strain on you and your team and we felt  
9 that in D.C., and we felt that in our regional offices  
10 across the country. We fought hard to increase the  
11 number of attorneys were trying to handle those cases  
12 in a thoughtful and fair and efficient manner.

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

19 Secondly, you do have to set some  
20 priorities because the volume, again, for better or  
21 worse is large. One concrete example was our sexual  
22 harassment task force which was an administration-wide  
23 commitment. So yes, the Department of Education at the  
24 table, but DOJ, the President, the Vice President all  
25 working extraordinarily hard together, given the fact

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1 that decade after decade, survey after survey, 20  
2 percent of women on campus report that they're  
3 sexually harassed. That's a staggering number that  
4 again, it's easier not to talk about that, sweep it  
5 under the rug, but that reality was one that we tried  
6 to take on in a very important way.

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

22 I've been thinking a lot about it, and if  
23 you're a medical doctor, you have to take a  
24 Hippocratic Oath to do no harm. I've been wondering  
25 what's the educational equivalent to that, to do no

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1       harm.

2                   CHAIR LHAMON: Thank you. Several of you  
3       have spoken to the value of working across agencies  
4       and working with each other including on this panel  
5       now, and so I appreciate that.

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

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

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

25                  I met with the ACLU and I met with a lot

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

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

17 MR. LEEN: Also, we worked with the Women's  
18 Bureau and we said put together a model policy for us  
19 and so we're going to be doing that with VETS. We said  
20 put together -- one thing we're concerned about is  
21 USERRA violations and also discrimination against  
22 veterans. So we asked them to put together a list of  
23 model policies that we could ask employers to adopt  
24 and then also with ODEP, we're trying to have five to  
25 ten policies that would be helpful for individuals

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1 with disabilities. And I would like to do that across  
2 the Government. So we're very committed to inter-  
3 agency work and we're proud of what we're doing.

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

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

18 We also work with other agencies,  
19 Department of Treasury and IRS on tax credit issues,  
20 not as regularly as we do with the Department of  
21 Justice. And then we've been working on the White  
22 House Initiative on Asian-American and Pacific  
23 Islanders, which has created some opportunities for  
24 coordination with other agencies on how they're  
25 pursuing those issues.

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1           Where I think we all can do more and where  
2 I want to do more is in some of these areas like  
3 performance metrics and also looking at how different  
4 agencies manage resources, what information  
5 technology, several of us are doing investigations.  
6 So there's probably a lot to learn. I think we're  
7 quite busy with the day-to-day work that that kind of  
8 coordination doesn't happen as frequently as it  
9 should, but hearing some of the things other folks are  
10 doing, I'm inclined to do more of that.

11           CHAIR LHAMON: Thank you.

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

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

21           Finally, in my office, the Office of Legal  
22 Counsel, we have a Coordination Division. We have a  
23 group of attorneys whose full-time job is to work with  
24 other agencies and to see what's going on at the  
25 Federal Government and other work place regulations,

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1 laws, policy, that impact the way things are done in  
2 the work place in a way that could clash sometimes  
3 with the civil rights laws.

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

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

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

21 All of those missions are infinitely more  
22 powerful if they are done in coordination. First of  
23 all, the legal authorities are common. They're  
24 interlocked one from the other. But precisely because  
25 a lot of times the first impulse will say the thing

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1 you're asking us to do is too hard. It is too  
2 inconvenient. It costs too much. The idea of having a  
3 coordinated and unified front led by the Department of  
4 Justice is a very, very powerful arrangement for the  
5 civil rights community in the Federal Government.

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

16 CHAIR LHAMON: Commissioner Narasaki, you  
17 had another question?

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

23 It's been noted that some of the  
24 guidelines and resources used to be available on HUD's  
25 website, for example, around LGBTQ resources have been

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1 removed.

2 Can you talk about what HUD will be  
3 continuing to do? Does that signal a change in  
4 policies around protecting LGBTQ?

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

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

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

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

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1 that.

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

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

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

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

25 MR. LEEN: I want to be clear. It's not a

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1 license to discriminate and I've been raising it in  
2 all my speeches to contractors that they need to  
3 continue enforcing the -- internally, and then we will  
4 enforce the anti-discrimination provisions related to  
5 gender identity and sexual orientation which are in  
6 our regulations and we remain committed to.

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

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

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1 beliefs and conduct. It looked at whether you were of  
2 the same religion.

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

23 But I told them, you know, if you get a  
24 religious exemption request, this is basically what  
25 the Directive says, they have to be treated with

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1 respect. It will be provided to the National Office.  
2 We will share it with our regional and national  
3 solicitors and the position that we've taken is if the  
4 law requires that we grant the exemption, we will. And  
5 if it doesn't, we won't. There's no policy aspect to  
6 that.

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

12 CHAIR LHAMON: Commissioner Kirsanow has a  
13 question?

14 COMMISSIONER NARASAKI: Thank you.

15 MR. LEEN: You're welcome.

16 CHAIR LHAMON: Commissioner Kirsanow?

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

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

24 COMMISSIONER KLADNEY: I appreciate that.

25 COMMISSIONER KIRSANOW: Well, due

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1 diligence, wow.

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

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

17 Thank you, Madam Chair.

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

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

25 Secretary Duncan, I was intrigued by your

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

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

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

18 There's a larger issue of when you have a  
19 volume of complaints, do we have enough staff to  
20 resolve those and that's a budgetary and we asked  
21 every year for increased resources to do that. Again,  
22 it's extraordinarily disheartening to me to see this  
23 current administration cutting those resources,  
24 dismantling that, walking away from that. But to have  
25 thoughtful, smart policy makers at the table whose

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1 life work is to protect civil rights and to enhance  
2 them, there's no dollar figure for that. It's free.

3 VICE CHAIR TIMMONS-GOODSON: Thank you.

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

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

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

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

21 CHAIR LHAMON: Okay, we'll come back to  
22 order now, as it is now 10:51. We're a little bit  
23 tardy.

24 **PANEL TWO:**

25 **CURRENT AND FORMER FEDERAL AGENCY OFFICIALS**

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1 CHAIR LHAMON: We're going to proceed with  
2 our second panel of current and former federal agency  
3 officials. In the order in which they will speak, our  
4 panelists are Lilian Dorka, now Director of the  
5 External Civil Rights Compliance Office at the U.S.  
6 Environmental Protection Agency and who was my  
7 colleague at the Office for Civil Rights at the  
8 Department of Education; then Harvey Johnson, Deputy  
9 Assistant Secretary of Resolution Management at the  
10 U.S. Department of Veterans Affairs; Winona Lake-  
11 Scott, Acting Deputy Assistant Secretary for Civil  
12 Rights at the U.S. Department of Agriculture; Veronica  
13 Venture, Deputy Officer for Civil Rights and Civil  
14 Liberties at the U.S. Department of Homeland Security;  
15 and Robert Driscoll, Former Deputy Assistant Attorney  
16 General at the Civil Rights Division at the U.S.  
17 Department of Justice and current member at McGlinchey  
18 Stafford.

19 Ms. Dorka, please begin.

20 MS. DORKA: Good morning, Commissioners and  
21 fellow panelists. My name is Lilian Dorka and I am the  
22 Director of EPA's External Civil Rights Compliance  
23 Office and I thank you for the privilege of appearing  
24 before you today to tell our story and to tell you how  
25 far we've come so that we can ensure that we can

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1 effectively accomplish the mission of EPA, the  
2 protection of human health and the environment, to  
3 make sure that that is available for all persons in  
4 the United States, regardless of race, color, national  
5 origin, disability, sex, or age.

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

20 Finally, over the last three years we have  
21 dedicated very specific and focused resources to make  
22 sure that we strengthen our own staff within our Civil  
23 Rights Office to make sure they have the knowledge,  
24 skills, and abilities they need in order to accomplish  
25 their challenging mission -- our challenging mission.

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1           Like many other federal Civil Rights  
2           Offices, my colleagues, our job is to advance the  
3           mission of our agency through the enforcement of civil  
4           rights and, in our case, to protect the human health  
5           and the environment for all persons in the United  
6           States and we do this, primarily, through complaint  
7           investigations but also through proactive reviews and  
8           technical assistance, community engagement, and policy  
9           formulation.

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

16           Improving the strategic docket management  
17           of our office is critical. That accountability measure  
18           was critical because we had carried such a large over-  
19           aged case docket. So while continuing to receive new  
20           complaints, we absolutely had to address this. We  
21           issued a Case Resolution Manual, the first of its kind  
22           for external civil rights at EPA, within the last  
23           three years. We also issued a strategic plan for  
24           external civil rights at EPA, which had not been done  
25           in many years. And we issued a compliance toolkit that

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1 explains the relevant civil rights legal standards and  
2 how they apply in the environmental context. These  
3 documents together help EPA recipients, as well as EPA  
4 staff and the public at large, understand how ECRCO  
5 undertakes its civil rights mission, including how it  
6 processes and investigates civil rights complaints.

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

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

21 Proactive compliance programs are also  
22 extremely important in terms of achieving our mission.  
23 They help to complement and to reinforce even the same  
24 basic principles and investigative procedures that we  
25 carry out in our pending investigations. We are very

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1 cognizant of the fact that we had a big over-aged  
2 caseload and we take that very seriously. We put in  
3 place the tools that we needed to effectively resolve  
4 them.

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

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

14 We have also, rather than initiate new  
15 cases through compliance reviews, given the number of  
16 cases we had pending, done some very, very interesting  
17 proactive endeavors. We looked at all of the cases  
18 that we had under investigation and the new cases that  
19 we were receiving and we instituted within those  
20 cases, we included a review -- even though it wasn't  
21 raised in the complaint -- a review of that  
22 recipient's foundational nondiscrimination program to  
23 ensure they had in place the grievance procedures, the  
24 coordinator, all of the notices, et cetera, and, in  
25 addition, that they were ensuring access for persons

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1 with limited English proficiency, persons with  
2 disabilities. We felt very strongly that without those  
3 foundational programs in place we really couldn't go  
4 much further. We had to address these issues in those  
5 cases. So essentially, we opened many compliance  
6 reviews through the investigation and resolution of  
7 all of our pending complaints.

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

21 CHAIR LHAMON: Thanks very much.

22 MS. DORKA: Thank you.

23 CHAIR LHAMON: Mr. Johnson.

24 MR. JOHNSON: Good morning Madam Chair,  
25 members of the Commission, distinguished guest, and

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1 colleagues. Thank you for this opportunity to appear  
2 before the Commission and tell the story on behalf of  
3 the Veterans Affairs.

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

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

16 CHAIR LHAMON: Thanks.

17 MR. JOHNSON: -- with regards to this.

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

25 So I believe the data tells the narrative.

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

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

20               One of the areas that I'm looking at  
21 closely is intersectionality. This is a term that I  
22 started discussing with millennials because they first  
23 brought it to my attention. And one of them said, and  
24 this is something that just sticks with me, don't put  
25 us in a class. And she happened to be a minority

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1 female. And she said, instead, understand my journey.  
2 Understand my mindset because it may be different from  
3 other minority classes. Her particular journey was  
4 unique to her.

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

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

20 The other thing I look at is unconscious  
21 bias because I think, to a degree, we all have it. You  
22 know it's the affinity, the like me bias. I would like  
23 to treat people from Philadelphia, my hometown, a  
24 certain way because we have an affinity or a  
25 connection. I don't mean to discriminate from anybody

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1 that's not from there, however, I have to recognize  
2 that certain affinity biases are present and  
3 sometimes, again, it's unconscious, sometimes  
4 conscious. So we make sure that we train actively on  
5 conscious and unconscious bias.

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

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

21 I was told a story by one of my harassment  
22 professionals who has a kindergartener who was being  
23 harassed. And then I said, what did you do about it?  
24 And she said, I went and met with the principal. I  
25 said, was that a quick meeting? She said, yes; as soon

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1 as I alerted the principal I got in to meet with him.

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

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

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

20 Thank you. Thank you for listening to me.

21 CHAIR LHAMON: Thank you. Ms. Scott.

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

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1 Agriculture, hereinafter, USDA.

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

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

25 Doing right means treating all people

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

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

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

19 In addition to continuing to enforce  
20 compliance with all existing civil rights laws,  
21 regulations, and executive orders, Secretary Purdue  
22 directed the strengthening of civil rights management  
23 functions at USDA. Under Secretary Purdue's  
24 leadership, the Department has taken several  
25 significant steps to promote accountability by

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1 reducing bureaucratic barriers to civil rights. These  
2 efforts have resulted in more efficient operations and  
3 additional efforts are underway to strengthen civil  
4 rights management functions across the Department.

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

22 Currently, my office is in the process of  
23 collaborating with the mission areas and the staff  
24 offices to incorporate meaningful strategies and  
25 measures into a civil rights strategic plan in support

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1 of the Secretary's eight priorities.

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

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

23 During this same period, my office  
24 decreased the number of days to process program  
25 complaints from 450 to 292, which represents an

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1 increase in timeliness of 65 percent. Consistent with  
2 best practices for complaint processing in the federal  
3 government, our process has three stages. The first is  
4 the intake stage. The second stage is the  
5 investigation. And the third is the adjudication  
6 stage.

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

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

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

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1 In addition, our office --

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

4 MS. LAKE SCOTT: Okay, thank you.

5 CHAIR LHAMON: Ms. Venture.

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

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

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1 liaison for DHS to the public, as well as the public  
2 back to DHS.

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

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

17 So we handle complaints of discrimination  
18 and also do the adjudication of that as well. So for  
19 instance last year we, in terms of my office, the  
20 Complaints Management Adjudication Section, we got  
21 about 12,307 complaints into the system -- I'm sorry --  
22 -- 1,200, not 12,000 -- 1,237 complaints and we closed  
23 1,247 complaints for the year.

24 So we are also unique in that we do,  
25 besides doing the workforce, contractors to ensure

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1 compliance with the EEO and other laws, we do talk  
2 about what we do externally I think is the bigger  
3 issue for us at the moment. We definitely have some  
4 work in terms of our Immigration Section, our FEMA  
5 emergency benefits and disaster, and things like that.

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

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

23 So of course in CRCL we processed 4,201  
24 pieces of incoming correspondence from the public.  
25 That means we opened 743 complaints from the public

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1 and closed 749 complaints during the investigative  
2 process in our external complaints process. Usually,  
3 we give the Department of -- DHS's OIG the right of  
4 first refusal for any complaints that would come in.  
5 So then they turn them back to us for investigation.  
6 Sometimes they keep them. For instance, there was a  
7 letter from Congress that had asked us to look into  
8 what loosely termed the travel ban back in January of  
9 2017. The Office of the Inspector General gave us a  
10 piece of that complaint. So they did the initial  
11 investigation and then we did the piece that was  
12 relevant to civil rights and civil liberties.

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

21 So our Community Engagement Program is we  
22 are in 18 cities around the country. So quarterly or  
23 somewhat, sometimes three or four times a year, our  
24 folks travel on the road to engage with communities  
25 about issues that are affecting them in terms of DHS.

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1 So we hear -- we engage with our federal partners. So  
2 usually, the U.S. Attorney is there, state and local  
3 law enforcement, DHS, other entities as well, to  
4 explore information, to build a trust of the  
5 communities, and to explore community-based solutions  
6 to Homeland Security issues. So we promote respect for  
7 the rule of law in terms of civil rights and civil  
8 liberties.

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

16 So I know two of the questions that were  
17 posed were talking priorities and pressing issues. So  
18 we are in line with the Secretary's priorities. But  
19 some of the things that we are focusing on this year,  
20 we do classified and unclassified intelligence  
21 projects, so projects we work with the intelligence  
22 community on those. We are using the use of social  
23 media and biometric data in intelligence, vetting, and  
24 law enforcement, one of the big areas of concern for  
25 us, and investigations, of course, into family

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1 separation and family reunification. So we have a  
2 large complaint going on about that right now.

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

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

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

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

24 CHAIR LHAMON: Thanks very much.

25 Mr. Driscoll.

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

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

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

18 I think a lot of Americans and the popular  
19 media fail to be precise when they are discussing  
20 federal civil rights enforcement. The term civil  
21 rights, in kind of the broader political context, can  
22 be used as a shorthand for race relations, kind of  
23 progressive politics, immigrants' rights. And there is  
24 some intersection with all of those issues. It's  
25 important to remember, and I think the panels today

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1 have done a great job of this, that federal civil  
2 rights enforcement is a law enforcement function, not  
3 necessarily any kind of partisan catchphrase. And so  
4 even though it receives a lot more attention in a lot  
5 of ways, federal civil rights enforcement, is no  
6 different than tax, environmental, or federal  
7 contracting as a body of law. There is a set of  
8 statutes. There is a constitution. There are specific  
9 texts that govern what enforcers do. It's not a blank  
10 slate upon which federal civil rights attorneys are  
11 free to pursue their own political preferences or  
12 particularize a vision of justice.

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

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1 into reality.

2 And to take an example, former Senator Tom  
3 Harkin, now retired, and Majority Leader Bob Dole, who  
4 was actually a law partner of mine for a while, you  
5 know they were the primary architects of the ADA in  
6 1990. But it's the Disability Rights Section of Civil  
7 Rights, the Offices of Civil Rights of all the various  
8 cabinet agencies that are kind of the unheralded  
9 masons and laborers that turned that blueprint into a  
10 reality. The ADA is nothing but words on a page to a  
11 wheelchair-bound citizen until the curb cuts come to  
12 her neighborhood, in particular.

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

21 Before turning to more controversial  
22 topics, because I have the opportunity so why not, or  
23 talking about Kate Bakers, or transgender bathrooms,  
24 or things that create controversy today, it is  
25 important to recognize that some of the most important

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1 work, civil rights work that is done in the country  
2 has nothing to do with our political differences but,  
3 rather, rule of law that tries to make our  
4 intellectual agreements, statutory promises, and  
5 constitutional convictions a reality for all of us.

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

22 Similarly, successes in human trafficking,  
23 rights of developmentally disabled people, service  
24 persons, veterans rights go unheralded not because the  
25 enforcement isn't happening, necessarily, but because

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1 no one disagrees that enforcement should happen,  
2 unlike some other more controversial topics. And  
3 that's a good thing.

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

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

24 As I have alluded to previously,  
25 conservatives, including conservative civil rights

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1 lawyers, such as myself, tend to feel bound by  
2 statutory and constitutional text. As such, advocacy  
3 groups and others that want, in the absence of  
4 statutory authority, to advance certain issues -- I'll  
5 just pick transgender rights, since it's the one  
6 that's on my mind lately, are sometimes disappointed.  
7 I'm sure there's a member of this panel or members of  
8 the group today who are disappointed with some of the  
9 current federal civil rights enforcers.

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

15 I recall back in the early 2000s, when I  
16 was responding to congressional inquiries as a Deputy  
17 Assistant Attorney General about whether the Civil  
18 Rights Division would respond to cases of violence  
19 against gay students in public schools under  
20 interpretation of Title IX that we, as a Department,  
21 ended up not advancing because we did not think it was  
22 proper legally. And I responded to Congress that the  
23 Division would happily bring such cases if Congress  
24 would give us the authority to do so but that we  
25 currently didn't have it.

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1           And you compare now, there's obviously a  
2 conservative President -- or a Republican President  
3 and a conservative Attorney General, let me put it  
4 that way, and the DOJ is prosecuting hate crimes based  
5 on sexual orientation. I looked it up today. They  
6 indicted I think six or eight people for sexual  
7 orientation-based hate crimes. Why? Passage of the  
8 2009 Matthew Shepard Act explicitly covers such  
9 crimes.

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

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

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

21           Well, I will jump in, since they are not  
22 jumping in. A challenge that I read in your statements  
23 and heard from your testimony this morning is how to  
24 do the job that is very broad in its scope in the  
25 jurisdiction of your offices with sometimes very small

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1       staffs. Ms. Dorka, you have 11 or 12 people, depending  
2       on whether all your positions are filled in your  
3       office and an extraordinarily large charge. And I  
4       think that's certainly also true for the Department of  
5       Agriculture, the VA, and except with respect to  
6       Section 504, Ms. Venture, your office doesn't have  
7       enforcement responsibility at all. It has advisory  
8       responsibility.

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

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

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

22                   Ms. Dorka.

23                   MS. DORKA: I'll go for it.

24                   It is a challenge and it is also a  
25       challenge not only to address all of the cases, but to

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1 address them in a timely manner. And for us, it is  
2 particularly a challenge because, unlike your former  
3 office, my former office, we actually have within our  
4 regulations very specific timeframes.

5 CHAIR LHAMON: Yes.

6 MS. DORKA: So we must resolve cases within  
7 180 days. We must make jurisdictional decisions within  
8 20 days. And yes, that is challenging, which is why  
9 you have to I think address that challenge through a  
10 number of ways -- training and development of staff.  
11 We cannot afford to have any staff member onboard who  
12 doesn't know the regulations through and through, that  
13 doesn't understand the Case Resolution Manual and how  
14 to take a complaint from Step A through Step Z.

15 So we've really, really put a big, big  
16 focus on that. We did competency assessments for each  
17 employee. They assessed themselves. Their supervisors  
18 assessed them. We came up with a framework that  
19 defines the competencies that each person should have  
20 at their grade level and for their position, and we  
21 have challenges ourselves to do better. So everyone  
22 now has in place an individual development plan that  
23 focuses on their areas of strengths and also on the  
24 areas of development that need more focus. And they  
25 are all very different but that's good. You want a

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1 staff with diverse gifts, and knowledge, and skills.

2 And then, of course, you know you find  
3 other creative ways to effectuate your resolutions. It  
4 was my feeling we weren't taking enough advantage of  
5 the case resolution, the informal resolution of cases  
6 through our ADR process, which we fund through our  
7 office -- our Agency has an ADR office that we go  
8 through. And we have formal mediators and they assist  
9 the parties in developing very strong settlement  
10 agreements between the parties.

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

18 Our Acting Administrator, Andrew Wheeler,  
19 is extremely big on the concept of risk communication.  
20 And having been involved with a lot of these cases, I  
21 really feel, that sometimes there is just a  
22 fundamental lack of communication between recipients  
23 and communities. And bringing folks together to really  
24 talk about commonalities but also to work out how they  
25 can produce better results is critical.

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1                   So I think we've come at it from a number  
2 of different directions.

3                   CHAIR LHAMON: Thank you.

4                   Ms. Venture.

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

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

25                   So when we're doing the investigation,

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

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

17 CHAIR LHAMON: Thank you.

18 Mr. Johnson.

19 MR. JOHNSON: I would say, overall, the  
20 fiscal health of my office is healthy and I say that  
21 because the external complaints resides under the  
22 Office of Resolution Management. The Office of  
23 Resolution Management has 296 employees. I just hired  
24 a new external complaints manager. We brought him  
25 onboard, I should say, last week and I met with him.

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1 That office, while it is small in itself, is able to  
2 leverage when there is a surge in activity from the  
3 headquarters office, the Office of Resolution  
4 Management.

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

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

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

22 Thank you.

23 CHAIR LHAMON: Thank you.

24 Ms. Scott.

25 MS. LAKE SCOTT: In March of 2018,

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1 Secretary Purdue rolled out his One USDA  
2 Reorganization Process that relates to civil rights.  
3 And I indicated before that he had elevated civil  
4 rights to a mission area function. There are nine  
5 mission areas within civil rights. Some of those have  
6 program or external responsibilities and they also  
7 have civil rights offices. They will now have one  
8 civil rights director in each of those nine mission  
9 areas.

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

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

21 CHAIR LHAMON: Thank you very much.

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

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1 MR. DRISCOLL: Right.

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

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

9 CHAIR LHAMON: It is very compelling.

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

18 I do think they've done in large part what  
19 I think one needs to do in a Republican  
20 administration, where some of the more what the  
21 community view as cutting edge issues are not pressed,  
22 with the exception of religion, which you know  
23 depending on one's view. They've done a lot of nuts  
24 and bolts kind of things, you know driving in the  
25 housing section and some other things. I think one

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1 thing a Republican administration should be able to do  
2 is you're not going to spend litigation resources  
3 pushing the envelope bringing so-called high-impact  
4 cases, you should be able to enforce mightily the kind  
5 of core statutory functions you have.

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

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

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1 of study needs to be done as well.

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

13 CHAIR LHAMON: Thank you.

14 Commissioner Narasaki.

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

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

25 MS. VENTURE: So no, partly because it came

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1 down very quickly from the White House. So you know  
2 across DHS, there was not a lot of time for anyone to  
3 really dig into it before it was put into place, no.

4 COMMISSIONER NARASAKI: And the Muslim ban?

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

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

11 MS. VENTURE: Same conditions.

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

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

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

23 MS. VENTURE: So that's still an ongoing  
24 investigation so I wouldn't -- I'm not at liberty to  
25 talk about the actual recommendations at this moment.

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1                   COMMISSIONER NARASAKI: As you know, the  
2 Commission is looking at the issue of detention of  
3 women and children in this situation. So I'm sure  
4 we'll be having further discussions, hopefully, on  
5 this.

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

10                   MS. VENTURE: No.

11                   COMMISSIONER NARASAKI: Okay, let's see.

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

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

23                   COMMISSIONER NARASAKI: Right.

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

25                   COMMISSIONER        NARASAKI:        And        my

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1 understanding that the pilot did not end well because  
2 DHS -- CBP did not allow interviews of the Border  
3 Patrol agents, the line of agents without union  
4 representation there.

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

16 COMMISSIONER NARASAKI: That's good to  
17 hear.

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

24 MS. VENTURE: There are in the sense that  
25 we do not have the ability to enforce. We make

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1 recommendations to say CBP or ICE. So I was talking to  
2 staffers on the Hill about their looking into possibly  
3 giving CRCL the ability to enforce more strongly, if  
4 these are not recommendations; these are here is what  
5 it's going to be. And so of course that means a  
6 legislative fix.

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

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

21 And another study showed that, even before  
22 that, between 2010 and 2016, there were over 33,000  
23 reports of sexual and physical abuse in the detention  
24 centers and less than two percent were investigated.  
25 Given the growing number of people that are being held

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1 under this administration, particularly women and  
2 children, what is CRCL's role? Does it have one?

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

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

11 COMMISSIONER NARASAKI: Oh, I see.

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

17 But also what we have started fairly  
18 recently, in the past six months, is de-confliction  
19 meetings with OIG and all the Office of Professional  
20 Responsibility, different offices around CBP, ICE,  
21 around the Department. So we meet and say and talk  
22 about how if IG is going to doing say a spot  
23 inspection of a detention center, CRCL then does not  
24 need to go. We are sharing information more broadly  
25 with the IG to say if we have just gone to a detention

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1 center, here is what we have found. So they don't have  
2 to recreate the wheel or reinvent to go over the same  
3 issues that we have looked at but then they can spend  
4 their resources on other issues, possibly criminal  
5 misconduct and things like that. So we are trying to  
6 do that a little bit better, in terms of information  
7 sharing with IG.

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

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

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

15 CHAIR LHAMON: Yes.

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

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

22 MS. VENTURE: That's in our EEO.

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

25 Then, when you were saying there were

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1 3,000 family separation complaints, is there like one  
2 organization that is frequently helping people that  
3 are making these complaints, or one particular law  
4 firm, or are they all just individuals?

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

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

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

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

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

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

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

23 COMMISSIONER HERIOT: Their choice?

24 MS. VENTURE: Correct, their choice.

25 COMMISSIONER HERIOT: Okay. Do you then

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1 send it to TSA for their group or just if it comes to  
2 you, you look into it?

3 MS. VENTURE: Yes, we look into it.

4 COMMISSIONER HERIOT: Okay.

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

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

10 MS. VENTURE: Not offhand.

11 COMMISSIONER HERIOT: Could you find out  
12 that for me?

13 And FEMA, do you get those too?

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

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

25 COMMISSIONER HERIOT: Okay, thank you.

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1 CHAIR LHAMON: Commissioner Yaki, I  
2 understand you have a question.

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

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

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

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

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

24 MS. VENTURE: So if a person is in  
25 detention and they feel that their civil rights have

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1       been violated, in every detention center there is  
2       information about how to file a complaint with my  
3       office and we try to do it in many languages as well.  
4       And there is a language line that a person can call  
5       and say you know if they speak say K'iche', which is a  
6       rare language, there is someone there to be able to  
7       let them know here's the process, here is where you  
8       file the complaint with the Office of Civil Rights and  
9       Civil Liberties. And then that's when we get the  
10      allegation in and that's how we start the process.

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

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

19               MS. VENTURE: Yes.

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

23               MS. VENTURE: I'm not sure what you mean.  
24      So we have the civil rights laws. Is that what you --

25               COMMISSIONER YAKI: I mean do you apply --

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1 well, it's a very simple question. Do you apply the  
2 laws of the country to which they came from or do you  
3 apply the laws of the United States in examining  
4 whether or not --

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

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

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

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

25 Could you elaborate what your division has

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1 to do with that?

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

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

16 CHAIR LHAMON: Okay, I'm going to turn to -  
17 -

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

24 MS. VENTURE: Yes.

25 COMMISSIONER YAKI: -- so that -- go ahead.

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1 MS. VENTURE: Yes, we do. We have a  
2 language access program. So part of what FEMA has to  
3 do is report to CRCL what their -- how they are  
4 actually involving the public or how they are say, for  
5 instance, investigating complaints of discrimination  
6 brought by the public with disabilities.

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

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

25 CHAIR LHAMON: Thank you. I am going to

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1 turn now to the --

2 COMMISSIONER YAKI: And have you made --

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

5 COMMISSIONER YAKI: I'm sorry. Go ahead.

6 CHAIR LHAMON: Thanks.

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

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

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

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

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

24 And then I've read the pieces that you've  
25 written and how you've talked about the fact that

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1 civil rights enforcement, it's not written -- and  
2 policy is not written with a free hand, that you are  
3 bound by constitutional and statutory text.

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

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

18 You know I think that what may differ from  
19 kind of administration to administration may be the  
20 answers you would get in terms of no, we can't do that  
21 -- no, we cannot achieve that policy and through  
22 litigation or through regulation necessarily, we may  
23 have to ask for a statutory fix or an amendment. But I  
24 think that having civil rights involvement, you know  
25 particularly in the Department of Ed but really every

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1 agency, makes a ton of sense. And I think it would be  
2 good practice to involve folks early on.

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

6 MR. DRISCOLL: Right.

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

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

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

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

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

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

25 COMMISSIONER KLADNEY: Okay, thank you.

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1 CHAIR LHAMON: Commissioner Narasaki, I  
2 understand you have follow-up questions.

3 COMMISSIONER NARASAKI: Yes, Id' like to  
4 give air time to some of our other guests.

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

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

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

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

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1 the report.

2 COMMISSIONER NARASAKI: Great.

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

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

19 In other words, it's not just my 12 FTE  
20 but I can call on any regional office. There is what  
21 we call the Deputy Civil Rights Official, the DCROs  
22 within each regional office or program office and I  
23 can call on them when I need cooperation, or  
24 collaboration, or to know what is going on on the  
25 ground. And very frequently, it is to get better

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1 information on the environmental justice efforts that  
2 are going on because so many of them happen at the  
3 regional level, all of that community involvement,  
4 whether it's super fund or anything else.

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

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

17 MS. DORKA: There was one case in 2017  
18 where we found a violation and because it was a case  
19 that was preexisting for quite a number of years,  
20 rather than take action on what happened 20 years ago,  
21 we decided to defer some of those actions to a more  
22 current complaint that dealt with the same community.  
23 And so we're working with that agency, with that state  
24 agency, to try and reach an informal resolution  
25 agreement.

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1           There are other cases where we've reached  
2 informal resolution agreements, where we haven't made  
3 any findings. That's part of the deal when you enter  
4 into an informal resolution agreement, which is why  
5 sometimes it's more attractive. But we do have at  
6 least three others involving the States of Texas,  
7 Georgia, New Mexico where we've entered into these  
8 agreements that have produced, I think, very, very  
9 good results.

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

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

14           CHAIR LHAMON: Sure.

15           COMMISSIONER NARASAKI: So when the Vice  
16 Chair and I started, the Commission had on its docket  
17 had had a hearing on the civil rights of veterans. And  
18 in working on that, we heard many stories from women  
19 about the challenges of an agency that was used to  
20 having largely men, male veterans and not female  
21 veterans. And so then the healthcare system wasn't  
22 really adequately set up for having women who had  
23 gynecological needs, who when they needed prosthetics,  
24 needed a prosthetic that would fit a woman rather than  
25 a man, a lot of issues around access.

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1 I'm just wondering what progress, because  
2 that was a while ago, I'm wondering what progress has  
3 been made.

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

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

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

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

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1 for you.

2 COMMISSIONER NARASAKI: That would be  
3 great, thank you.

4 CHAIR LHAMON: Commissioner Heriot.

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

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

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

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

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1 does that get routed?

2 MR. JOHNSON: That's a very good question.  
3 Thank you.

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

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

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

25 And I'm working also with the Veterans

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1 Experience Office. They have incredible data that I  
2 am personally -- I just started a partnership with  
3 them that I am starting to uncover --

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

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

7 COMMISSIONER HERIOT: Okay.

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

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

16 MR. JOHNSON: Yes.

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

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

24 COMMISSIONER HERIOT: For any kind of  
25 complaint.

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1 MR. JOHNSON: We take any. We triage it. So  
2 when it comes in, you know that is why our resolution  
3 rate is high because we look at is it one of the nine  
4 categories of discrimination or is it just something  
5 else, conflict, something else.

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

8 MR. JOHNSON: Yes, that intake in triage  
9 comes to my office. We look at it based on what it is.

10 The other one, I still have to say, if  
11 they don't come to the Office of Resolution  
12 Management, ten-to-one they will say something on a  
13 survey and --

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

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

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

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1 listen, listen, and then we intercept here before it  
2 becomes a gross violation.

3 COMMISSIONER HERIOT: Thank you.

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

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

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

15 Thank you very much.

16 CHAIRMAN LHAMON: Okay. Welcome back,  
17 everyone, and thank you for your continued attention  
18 to this important topic. We're going to now proceed  
19 with our third panel of advocate and community experts  
20 in civil rights enforcement. In the order in which  
21 they will speak our panelists are Fatima Goss Graves,  
22 President and CEO of the National Women's Law Center;  
23 Janel George, Senior Policy Advisor at the Learning  
24 Policy Institute; Vanita Gupta, President and CEO of  
25 The Leadership Conference on Civil and Human Rights;:

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1 Joshua Thompson, Senior Attorney at the Pacific Legal  
2 Foundation; John Yang, President and Executive  
3 Director of Asian Americans Advancing Justice, AAJC;  
4 and Burth Lopez, Staff Attorney at the Mexican  
5 American Legal Defense and Educational Fund, MALDEF.

6 So, Ms. Goss Graves, please begin.

7 **PANEL 3 - CIVIL RIGHTS ENFORCEMENT**

8 MS. GOSS GRAVES: Well, thank you for  
9 having me, Chair, and to the entire Commission. My  
10 name is Fatima Goss Graves and I'm President and CEO  
11 of the National Women's Law Center. And for more than  
12 45 years the Law Center has been involved in virtually  
13 every major effort to secure and defend the civil  
14 rights of women and girls in employment, education and  
15 health care and beyond.

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

25 And so it feels like a different moment in

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1 time in that more than ever our federal agencies  
2 should be reaffirming their commitment to ending  
3 systemic inequality and denouncing the range of  
4 systemic forces that undermine all of our lives. And I  
5 really believe that this should be and still can be  
6 the -- a unifying civil rights agenda for this  
7 country.

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

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

24           Just starting with the Department of  
25 Education, some of the things of deep concern to us

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1 include the rescinded guidance that clarified that  
2 Title IX's protections against discrimination based on  
3 gender identity had -- and instead actually initiating  
4 an investigation on whether schools with bathroom  
5 policies that actually affirm transgender people  
6 discriminate against girls.

7 Of deep concern to the Law Center is  
8 rescinding sexual harassment guidance that clarified  
9 the steps that schools must take to address sexual  
10 violence, and entering really confusing interim  
11 guidance that gave students named in harassment claims  
12 more rights than the survivors that have filed the  
13 complaints. And all of the reports that we have been  
14 receiving and from the New York Times and the Wall  
15 Street Journal about what we can expect to come in  
16 Title IX regulations that would codify some of these  
17 changes that ultimately we believe make it harder for  
18 survivors of sexual assault to come forward and  
19 ultimately would make schools less safe. Also the  
20 rescission of guidance on race conscience admission  
21 policies that clarified the ways in which colleges can  
22 ensure diversity in the classrooms. Revising the Case  
23 Processing Manual to allow officials to dismiss  
24 without investigation hundreds of complaints per a new  
25 rule that purportedly goes after people who file

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1 complaints against multiple recipients, but our  
2 concern is that actually this rule is selectively  
3 applied.

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

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

24 Unfortunately, the EEOC's enforcement  
25 efforts and their efforts have been continuously

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1 blocked and threatened by this administration. So for  
2 example, they have put forward and finalized a pay  
3 discrimination rule that would allow their EEO-1 form  
4 to be revised and updated to collect information on  
5 pay data by race and gender and occupational category.

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

11 Similarly, the administration has  
12 inexplicably stalled efforts to update the workplace  
13 sexual harassment guidance that has been underway  
14 since 2016 and at a time when employers are hungry and  
15 desperate for actual specific guidance and rules. We  
16 are getting countless calls from employers; not just  
17 employees, but from employers saying what can we do in  
18 this moment? This is now an issue that we care about  
19 because of our reputation. It's an issue that we care  
20 about because our employees care about and it's an  
21 issue that we are grappling with. Please, please,  
22 please more guidance, EEOC. The OMB has refused to  
23 issue this final guidance for over a year with no  
24 explanation as to why and no estimated date of the  
25 release.

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1 I'm going to pop to the Department of  
2 Labor because I have one minute left, and I will just  
3 say that we have been deeply disappointed with some of  
4 the steps that OFCCP has taken to reverse itself  
5 regarding the key issue of monitoring and enforcing  
6 pay requirements.

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

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

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

25 CHAIRMAN LHAMON: I have to cut you off,

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1 and I apologize.

2 MS. GOSS GRAVES: Okay.

3 CHAIRMAN LHAMON: Thank you.

4 Ms. George?

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

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

21 These papers focus particularly on current  
22 threats by the Trump Administration to rescind federal  
23 guidance on school discipline and the actual  
24 rescission of federal guidance on school diversity.  
25 And we focus on what the likely effects of this

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1 rescission would be. And I want to talk about the  
2 potential consequences of this rescission in part  
3 because this guidance is based on evidence-based  
4 research.

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

23           Since taken office the administration has  
24 withdrawn nearly 600 policy documents regarding K  
25 through 12 and higher education and has rescinded --

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1 is considering rescinding, based on leaked reports and  
2 threats, or delaying implementation of key federal  
3 guidance in regulations issued under the Obama  
4 Administration. And again, I want to focus on two  
5 areas of guidance that are targeted -- are being  
6 targeted by the Trump Administration: school diversity  
7 and school discipline.

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

21 The guidance helped districts understand  
22 legally sound strategies for supporting integration,  
23 which a number of districts since have successfully  
24 used, but the rescission of the diversity guidance is  
25 particularly alarming given the trends we're seeing of

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1 re-segregation in our public schools. Data shows that  
2 in 2010 about 40 percent of African American students  
3 nationwide attended schools in which students of color  
4 constituted 90 percent or more of the total. About  
5 half as many African American students are in  
6 integrated schools as was true in the late 1980s.  
7 Without this guidance districts will not have the  
8 valuable information including best practices about  
9 how to advance integration and we could see these  
10 trends of re-segregation persist.

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

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

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1 practices that fuel these kind of disparities.

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

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

24 Thank you again for this opportunity to  
25 testify and I'm happy to answer any questions.

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1 CHAIRMAN LHAMON: Thank you very much.

2 Ms. Gupta?

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

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

18 The division was -- the Civil Rights  
19 Division of the Justice Department was formed by the  
20 passage of the landmark Civil Rights Act in 1957 and  
21 it was charged with upholding the civil and  
22 constitutional rights of all people in America. And  
23 while different political administrations have  
24 different policy priorities, as is their purview, the  
25 duty to enforce the law is not discretionary. That

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1 tradition unfortunately has eroded.

2 As my colleague Fatima Goss Graves has  
3 said, we now have a president who has emboldened and  
4 enabled the forces of hate and division in this  
5 country, and the division -- the Justice Department  
6 has had an attorney general during the first part of  
7 the tenure of the Trump Administration, Attorney  
8 General Sessions, who has actively undermined the work  
9 of talented career lawyers and professionals who serve  
10 regardless of the political administration and who are  
11 committed to fulfilling their duty mandated by  
12 Congress, which is to rigorously enforce our federal  
13 civil rights laws. They deserve the commitment to  
14 civil rights that the Federal Government made 60 years  
15 ago.

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

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

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1 cases.

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

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

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

23 There's been systematic withdrawal of any  
24 number of guidances, some of which my colleagues  
25 before me have attested to. They are too lengthy to

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1 name. The Leadership Conference has done a full  
2 timeline of all of the rollbacks of civil rights  
3 across administrations that we will be entering into  
4 the record, and you can look at those through that.

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

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

19 There's also been policy involvement by  
20 the Justice Department and a concern about  
21 inappropriate involvement of the Justice Department  
22 with White House policy on the Voter Suppression  
23 Commission led by Vice President Pence and Secretary  
24 of State Kris Kobach and concern about unlawful or  
25 inappropriate involvement of the Justice Department in

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1 adding a citizenship question to the '20 Census using  
2 the Voting Rights Act enforcement as the  
3 justification. There's now been ample evidence to show  
4 that Commerce Secretary Wilbur Ross used that as a  
5 predicate, as a ruse to get that question added.

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

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

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

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1 a party that was negotiated between the City of  
2 Chicago and the Chicago Police Department.

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

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

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

24 In closing, my written comments provide a  
25 lot of areas of information and investigation for the

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1 Commission and I appreciate the opportunity today.  
2 Thank you.

3 CHAIRMAN LHAMON: Thank you very much.

4 Mr. Thompson?

5 MR. THOMPSON: Thank you to the Commission.  
6 I'm Joshua Thompson, a senior attorney at Pacific  
7 Legal Foundation. My remarks today will address two  
8 areas of civil rights enforcement where unintended  
9 consequences stem from the over-enforcement of our  
10 nation's civil rights laws.

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

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

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

25 Shortly after the *Sandoval* decision the

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

13 In addition to the voluminous evidence  
14 gathering needed to establish an illegal disparate  
15 impact plausible disparate impact claims can be raised  
16 from any host of benign policies or practices. As the  
17 Supreme Court has noted, racial disparities can often  
18 simply be caused by the laws of chance and marshaling  
19 finite agency resources to forbid non-discriminatory  
20 disparate impacts cannot be the best way to enforce or  
21 nation's civil rights laws. In my written remarks I  
22 outline a number of examples of how disparate impact  
23 -- over-enforcement of disparate impacts has actually  
24 led to discrimination against traditionally targeted  
25 communities.

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1                   Secondly, I'd like to talk about  
2                   desegregation orders. The greatest success of the  
3                   Federal Government in terms of civil rights  
4                   enforcement has been in ending the segregation of the  
5                   nation's public schools. The Department of Justice's  
6                   efforts to break down racial barriers to schools have  
7                   given millions of children opportunity to receive a  
8                   quality education, but as of Section V of the Voting  
9                   Rights Act the continued enforcement of decades-old  
10                  desegregation orders is not without costs.

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

19                  Take the example of Edmund Lee. Edmund Lee  
20                  is an African American boy who lives in St. Louis. He  
21                  attended on of the city's premier charter schools. His  
22                  family, desperate to leave inner-city St. Louis, saved  
23                  enough to buy a home in the suburbs. Edmund's mother,  
24                  Lashika White, inquired at the charter school as to  
25                  whether Edmund could continue to attend. She was

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1 willing to make the half-hour drive every morning if  
2 it meant he could continue attending his school. She  
3 was informed that moving to the suburbs meant that he  
4 could no longer attend the school, but not because of  
5 the geographic limitation. It was simply because  
6 Edmund was black.

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

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

19 I represented Edmund and his mother in a  
20 lawsuit challenging the racial discrimination  
21 perpetuated by this decades-old desegregation lawsuit.  
22 Ultimately the 8th Circuit held that the settlement  
23 agreement did not bind charter schools where Edmund  
24 was attending, thereby allowing him to attend his  
25 prior charter school, but the prohibition on black

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1 children attending St. Louis' magnet schools remains  
2 to this day.

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

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

24 Other examples are plentiful. In  
25 Huntsville, Alabama the Alabama Accountability Act

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1 permits students to transfer from failing schools into  
2 non-failing schools, however, a 50 year-old  
3 desegregation case prevents such transfer if it were  
4 to upset the racial balance at either school.  
5 Similarly, a decades-old desegregation order in a  
6 Little Rock, Arkansas suburb prevents black and  
7 Hispanic children from transferring out of a failing  
8 school if doing so would upset the ideal racial  
9 composition of the receiving school.

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

19 Strategic enforcement of civil rights is  
20 very much needed in this country, however, it's  
21 important that our civil rights enforcers are using  
22 their limited resources in the best way possible. As  
23 times and circumstances change our civil rights  
24 priorities must change. As the Commission evaluates  
25 the best ways to maximize the benefits of civil rights

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1 enforcement, it should be mindful of the costs  
2 associated with focusing resources on non-mandated  
3 disparate impact regulations under Title VI as well as  
4 the decades-old desegregation orders that often work  
5 to the detriment of the nation's most needy children.  
6 Thank you.

7 CHAIRMAN LHAMON: Thank you, Mr. Thompson.  
8 Mr. Yang?

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

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

21 Before we start, I think it's important to  
22 understand the Asian American population in the United  
23 States. The Asian American population in the United  
24 States has grown significantly in the last 17 years  
25 since the 2000 Census. We've grown by about 70

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1 percent, and of that growth part of what we need to  
2 understand is that the Asian American community is an  
3 immigrant community. Over 90 percent of our community  
4 are immigrants or the children of immigrants. So when  
5 we're talking about civil rights enforcement and what  
6 civil rights needs the Asian American community has,  
7 in some ways they could boil down to stereotypes  
8 regarding our community, the lack of data about our  
9 community, and language access for our community.

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

13 The first topic is immigration. I think  
14 it's important to understand how this plays out  
15 because the rhetoric that we have seen and the  
16 xenophobic sentiment that we have in society today are  
17 causing Asian Americans and other immigrants not to  
18 report civil rights violations. So as a result, we are  
19 seeing that Asian Americans feel more threatened and  
20 more vulnerable in a way that we have not seen in the  
21 past. With respect to specific immigration policies,  
22 there are a few that are worth noting. Obviously,  
23 there's a lot in the news. Much of it is in the way of  
24 policy that really does not fall under this  
25 Commission's jurisdiction, but a few that certainly

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1 this Commission should take note of.

2 One is the politicization of immigration  
3 court judges. Immigration court judges under changed  
4 policies, now have quotas with respect to how many  
5 cases they see -- for which they seek dispositions,  
6 with respect to the processes that they can use to  
7 reach those dispositions, results in civil rights  
8 violations or the inability to have due process for  
9 these immigrants.

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

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

24 And what that has resulted in is, among  
25 other things, that USCIS is calling ICE, the

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1 immigration enforcement operations, to pick up  
2 applicants that are presenting themselves to  
3 immigration interviews. They are denying applications  
4 for relatively small discrepancies without giving  
5 applicants any opportunity to renew or fix them.  
6 Notices to Appear in every instance where an  
7 immigration benefit request is denied is -- are issued  
8 in a way that obviously makes these immigrants  
9 vulnerable.

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

24 All of this really affects the trust that  
25 immigrants, and especially Asian Americans have in the

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1 government in terms of approaching it with respect to  
2 some of these services.

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

15 On affirmative action, the simple message  
16 is that the Department of Justice is doing something  
17 that the Asian American community does not want. The  
18 Asian American community supports affirmative action,  
19 notwithstanding the current DOJ's position on  
20 affirmative action. We recently conducted a survey,  
21 led by AAPI Data and APIAVote, that showed that over  
22 60 percent of the Asian American population supports  
23 affirmative action. Obviously, everyone has seen in  
24 the media that there are some vocal opponents to  
25 affirmative action, but that does not represent the

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1 majority opinion of Asian Americans or Chinese  
2 Americans.

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

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

21 So the fundamental summary that I would  
22 offer is unfortunately this particular administration  
23 has moved us backwards rather than forward with  
24 respect to civil rights. There are many issues for  
25 which we need help from this administration enforcing

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1 our civil rights, especially in the Asian American  
2 community, and that has not been done to date. Thank  
3 you very much for allowing me to testify.

4 CHAIRMAN LHAMON: Thank you.

5 Mr. Lopez?

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

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

23 The federal role in civil rights  
24 enforcement has become even more important in the  
25 years following the Supreme Court's decision in

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1 Alexander v. Sandoval, which in most instances has  
2 effectively curtailed the ability of private litigants  
3 to enforce civil rights under a theory of disparate  
4 impact discrimination.

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

14 In the area of employment the Federal  
15 Government plays a vital role in protecting health and  
16 safety of workers in the workplace. The need for  
17 federal enforcement in the -- of the Occupational  
18 Health and Safety, or OSHA standards is paramount  
19 considering that in 2016 there were over 5,000  
20 workplace-related deaths and 2.9 million injuries and  
21 illnesses on the job. Of these 900,000 individuals  
22 required some time away from the job and 120,000 of  
23 those individuals identified as Hispanic or Latino.  
24 Yet under the Trump Administration OSHA enforcement  
25 has seen an accelerated decline, both in the number of

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1 overall enforcement units, which is the metric used by  
2 the agency to monitor its enforcement activity, and in  
3 the total number of OSHA inspectors who were available  
4 to carry out workplace inspections.

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

15 The proposed regulations would have  
16 positively impacted millions of employees especially  
17 managers in the food services and retail sectors who  
18 work long hours but are under the current rule exempt  
19 from receiving overtime pay. Before the rule went  
20 into effect, however, several states and business  
21 organizations filed lawsuits to block the rule's  
22 implementation. The Department of Labor initially  
23 defended the rule, however, the Trump Administration  
24 reversed course and the Department of Labor abandoned  
25 its defense of the rule which was ultimately blocked

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1 by the U.S. District Court in the Eastern District of  
2 Texas.

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

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

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

22 The administration claims that proposed  
23 restructuring will help ensure everyone working on K-  
24 12 issues will consider the needs of English learners,  
25 however, it is unlikely that such a change will

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1 improve the access to equitable educational  
2 opportunities for English learners whose unique needs  
3 are already often sidelined. And this is especially  
4 true in areas such as the southeastern part of the  
5 United States where the number of K-12 English  
6 learners has increased.

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

18 The current administration prefers to side  
19 with jurisdictions that are attempting to roll back  
20 voting rights protections going so far, for example,  
21 as Vanita mentioned, in filing briefs supporting  
22 Texas' efforts towards stricter voter ID laws. And  
23 these are but a few examples of the administration's  
24 attempted rollback of important civil rights  
25 protections through its redefinition of enforcement

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1 priorities, in some instances it's complete abdication  
2 of its responsibility to enforce civil rights law.

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

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

19 As folks are thinking about their  
20 questions, I'll ask each of the panelists to speak to  
21 what it is that you think the federal civil rights  
22 agencies should be doing now. I've heard very  
23 significant concern from you about what is happening  
24 and if you could speak to what you would like to see  
25 happen from this administration in this time now with

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1 the agencies. And in particular in the first two  
2 panels that we heard from today we heard quite a bit  
3 of commentary about enforcing the law as it is as  
4 distinct from the law we might wish it were. Can you  
5 speak to what it is that you would like the agencies  
6 to do understanding that they are enforcing the law as  
7 it is written and interpreted by the courts.

8 Ms. George?

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

15 So they recommended this focus on data  
16 including analyzing data by type of school and by the  
17 percentage of racial minorities to obtain a better  
18 picture of educational disparities such as access to  
19 advanced course work. It also recommends that the  
20 Department of Justice actively investigate its open  
21 desegregation cases, many of which have actually lied  
22 -- have laid heavily dormant for years, and monitor  
23 data such as test scores and for the states and  
24 districts involved in these desegregation cases. Such  
25 action would help to ensure that all students have

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1 access to the lifelong benefits that racially diverse  
2 learning environments offer.

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

11 CHAIRMAN LHAMON: Thank you.

12 Ms. Goss Graves?

13 MS. GOSS GRAVES: So one of the things that  
14 I think would be really useful right now is to have,  
15 either together or separately, the heads of each of  
16 the civil rights enforcement agencies communicate very  
17 strongly the values around why they're in the business  
18 of enforcing our civil rights laws and that the  
19 various institutions that they have jurisdiction over,  
20 that they have critical obligations that continue no  
21 matter the public narrative. And because I think that  
22 there -- I think that there's a real opportunity for  
23 some bully pulpit moments that could help to unify  
24 people, but also again remind these institutions in  
25 important ways.

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1           And I will just tell you we -- at the Law  
2 Center we run the TIME'S UP Legal Defense Fund, and  
3 we've heard from about 3,700 people since January 1st  
4 with instances of harassment and related retaliation,  
5 and almost all of those harassment complaints come  
6 with a retaliation complaint, like people were trying  
7 to use their systems and then they experienced  
8 retaliation that they did. So there are sort of basic  
9 and longstanding concerns and a real worry that the  
10 wrong communication is going out there.

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

22           CHAIRMAN LHAMON: Thank you.

23           Ms. Gupta?

24           MS. GUPTA: Yes, just picking up on  
25 Fatima's last point on the transparency issue, I think

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1 it's really important that the public have access to  
2 critical data on civil rights enforcement. Across  
3 agencies I think there are a set of metrics that  
4 agencies can use to -- for the public to talk about  
5 what's happening in terms of the number of new  
6 investigations that have been opened, cases that are  
7 closed without a finding, consent decrees that the  
8 Justice Department has entered; I'm speaking for the  
9 Justice Department Civil Rights Division, but this  
10 would apply to other offices of civil rights at other  
11 agencies, the out-of-court settlements that the  
12 Justice Department has signed, statements of interest  
13 that have been entered by the Justice Department,  
14 guidances issued or rescinded that sought to enforce  
15 civil rights or clarify the law since guidances  
16 themselves don't create new rights.

17 And the data should be made available so  
18 that the public understands kind of the ebbs and flows  
19 of enforcement while -- simply because the mandate of  
20 these agencies is to operate and enforce the laws that  
21 are on the books regardless of political  
22 administration. And I think that transparency would go  
23 a long way. And I -- you know, I think it is really  
24 important that these agencies are able to state their  
25 law enforcement objectives and goals and mandates.

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1 There needs to be a lot more oversight over them and  
2 to really document the enforcement levels and how they  
3 ebb and flow with changing political administrations  
4 because that is not supposed to happen per the mandate  
5 of Congress.

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

12 CHAIRMAN LHAMON: Thank you.

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

24 CHAIRMAN LHAMON: Thank you.

25 MR. THOMPSON: Thank you. Consistent with

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1 my comments I would say that our civil rights laws and  
2 our civil rights enforcement need to be focusing on  
3 rooting out and smoking out intentional  
4 discrimination. I think too often our disparate impact  
5 over-enforcement can lead to intentional  
6 discrimination.

7 And one comment piggybacking on the  
8 discussion of integration of the schools. Elaborating  
9 on what's happening in Hartford right now, it's a sad  
10 story where my black and Hispanic clients are not able  
11 to get into the integrated schools because they are  
12 black and Hispanic. And these schools are at sometimes  
13 40 percent, 60 percent capacity, but in the name of  
14 integration they have to leave those seats open and  
15 they are denied the opportunity to attend the quality  
16 schools. But what schools are they relegated to? Well,  
17 they're relegated to neighborhood schools that are  
18 almost overwhelmingly 100 percent minority. So the  
19 efforts to integrate the quality schools leaves the  
20 children suffering in this city and I do not think  
21 that our civil rights laws should be focusing on  
22 integration when they are in fact discriminating  
23 against the very people that need protection under the  
24 civil rights laws.

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

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1 go ahead.

2 MS. GUPTA: Could I just follow up on my  
3 co-panelist's comment? First of all, it isn't clear to  
4 me what is meant by 'over-enforcement of disparate  
5 impact.' The Supreme Court in twenty -- as recently as  
6 2016, I believe; maybe it was 2015, decided in the  
7 Inclusive Communities case very clearly that disparate  
8 impact is a lawful standard and is an important one to  
9 use for the Federal Government to ensure that there  
10 isn't discrimination that whether intentionally or  
11 inadvertently is having an impact on particular  
12 protected classes of people in this country.

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

19 And in terms of integration as a goal for  
20 educational opportunity, Brown v. Board of Education  
21 made very clear that integration and integrated  
22 schools and desegregating them is a duty and mandate  
23 the Justice Department took very seriously. These are  
24 all consent decrees that are lodged with federal  
25 courts that make their independent determinations of

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1 whether a district should be declared unitary or not  
2 and it is a very serious fact finding effort.

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

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

16 CHAIRMAN LHAMON: Thank you.

17 I was struck and interested by how many of  
18 you focused on the bully pulpit or transparency in  
19 data. And those are obviously very important tools.  
20 I'm wondering if you are saying that about the  
21 existing tools in the federal civil rights agencies or  
22 if there are other tools that you think that they  
23 need, other tools that you think they should be using,  
24 different ways to enforce it, or if in fact the  
25 principal tools that you would like to see used in

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1 this time to secure federal civil rights enforcement  
2 are the messaging and signaling tools.

3 MS. GUPTA: I can --

4 CHAIRMAN LHAMON: Ms. Gupta?

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

19 CHAIRMAN LHAMON: Thank you.

20 Ms. Graves?

21 MS. GOSS GRAVES: So in the area of sex  
22 discrimination in house and number of agencies this  
23 administration has put itself at a disadvantage in  
24 enforcing the existing complaints that it is getting.  
25 And so by doing things like changing the compliance

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1 manual that make it easier to wholesale dismiss whole  
2 categories of complaints that you're receiving -- so  
3 these are individuals who are trying to find their way  
4 oftentimes by themselves and who have been told for  
5 many years we're open for business, come to us if you  
6 have a civil rights concern, and then they get what  
7 looks like to them a form letter saying that your  
8 concern is unimportant.

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

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

24           CHAIRMAN LHAMON: Thank you.

25           Ms. George?

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

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

20 So again I would emphasize that the tools  
21 are available and it's important to understand that  
22 these tools are not just political tools. These are  
23 tools based on research and evidence and we can't  
24 undermine or ignore the evidence of what students need  
25 to succeed.

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1 CHAIRMAN LHAMON: Thank you.

2 I think, Mr. Yang --

3 (Simultaneous speaking.)

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

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

21 And I think, to pick up on another theme,  
22 there is this notion of how these guidances are being  
23 changed without any evidence suggesting the need for  
24 the change. And that's where for us the census comes  
25 into play is that there has been no demonstrated need

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1 for a citizenship question. We know now from the  
2 evidence that's been developed that it's just a sheer  
3 pretext as to the need for a citizenship question. So  
4 what we are left with is these made-up stories for a  
5 need for a change in policy where there's no change  
6 that's necessary.

7 CHAIRMAN LHAMON: Thanks very much

8 Commissioner Narasaki?

9 COMMISSIONER NARASAKI: Thank you, Madam  
10 Chair.

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

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

24 I'm wondering what kind of examples, what  
25 kind of cases under this rule are being kicked out and

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1 should we be concerned?

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

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

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

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1 enforced, right?

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

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

19 And so other panelists mentioned the case  
20 of Alexander v. Sandoval. And to put it I guess in a  
21 little bit of non-technical legal speak it's  
22 effectively foreclosed a private right of action for a  
23 lot of these kind of complaints. So instead people are  
24 left with filing complaints with the Office of Civil  
25 Rights. For instance, these high rates a lot of

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1 parents might file a school discipline complaint  
2 saying I believe my child has been discriminated  
3 against.

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

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

20 COMMISSIONER NARASAKI: Thank you. Ms. Goss  
21 Graves, we've heard reports that the Trump  
22 Administration wants to create a legal definition of  
23 sex as a biological immutable condition determined by  
24 genitalia at birth. Are there concerns with this  
25 definition? And if so, what are the implications?

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1 MS. GOSS GRAVES: We have deep concerns  
2 about the effort that was reported, I guess it was  
3 only a week ago. Whether that definition is limited to  
4 HHS or is a definition that's adopted throughout  
5 agencies, we think it's inconsistent with what  
6 scientists have said and the way that medicine is  
7 actually approaching the issue of sex, but it's also  
8 totally in opposite of the law that has developed over  
9 time.

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

19 So our courts over time have understood  
20 that sex and sex discrimination includes not just  
21 treating people differently based on biological  
22 considerations, but based on social constructs around  
23 them and sex stereotyping and a whole body of law  
24 developed around that. And that's why you've seen case  
25 after case where courts have made clear that gender

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1 identity discrimination is a form of sex stereotyping  
2 and a form of sex discrimination. And that's why  
3 you've had multiple courts of appeal say the same  
4 about sexual orientation. So citing virtually nothing  
5 is my understanding, and this is how -- what you end  
6 up happening.

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

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

20 And so to go back to what maybe is a theme of my  
21 remarks today is the messages that we are sending  
22 right now have real implication for people as they are  
23 moving in and out of their world. And it is never a  
24 good idea for people to be left with this deep feeling  
25 that they do not feel unsafe.

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1                   COMMISSIONER NARASAKI: Well, related to  
2                   that I believe that there is a belief that Section  
3                   1557 of the Affordable Care Act which covers  
4                   discrimination based against LGBTQ might be weakened  
5                   or removed. And how important is that prohibition of  
6                   health care? A recent Center for American Progress  
7                   study found that one in four transgender respondents  
8                   avoided doctors' offices out of fear of  
9                   discrimination. And the enforcement so far under that  
10                  act has found that a -- far over a majority of the  
11                  complaints are actually not related to transition,  
12                  which is the issue that raises concerns from some  
13                  religious communities, but actual just straight up  
14                  discrimination.

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

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1 the provision of health care.

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

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

17 And now what we've been hearing from HHS  
18 is they're -- that they have plans to take that rule  
19 and limit it some terrible way, limit the sex  
20 discrimination provision in some terrible way. You  
21 know, 1557 of the Affordable Care Act, that health  
22 care rights law, it still exists whether -- it existed  
23 before there was a rule and it will exist after there  
24 is a rule. The only question is are they out there  
25 confusing people and encouraging them to engage in

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1 discrimination and doing things that run totally  
2 opposite to where the huge weight of the law has been?

3 COMMISSIONER NARASAKI: Okay. And, Ms.  
4 Gupta, I wanted to ask you, there have been a number  
5 of stories about the fact that in some of the position  
6 changing or positions taken by the Civil Rights  
7 Division of the Department of Justice that career  
8 staff who would normally under historic processes be  
9 signing are not. And I'm wondering what the  
10 implications of that is? What are we to make of that?

11 MS. GUPTA: Yes, there are several cases  
12 where there's been a change in litigating position  
13 without any change in factual conditions on the  
14 ground, and those changes of position have been  
15 signaled in pleadings that have had no career lawyers  
16 in the signature block. And that is an unprecedented  
17 set of circumstances and signals to the outside world  
18 that understands the Byzantine nature perhaps of the  
19 Justice Department that the career men and women who  
20 are there to enforce the law regardless of political  
21 administration were quite uncomfortable with the  
22 change of position and that the pleading that got  
23 filed was a purely political decision.

24 And the danger really is that the Justice  
25 Department career men and women who enforce the law

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1 day in and out for the Civil Rights Division are  
2 supposed to be doing that, as I said, really following  
3 the facts in the law regardless of the political tide.  
4 It's a core duty as they're law enforcement officers  
5 representing the United States Government.

6 And so that kind -- those kinds of  
7 pleadings that get filed without career lawyers in the  
8 signature block I think really signal the degree to  
9 which political decisions are being made against the  
10 recommendations or without the buy-in of the career  
11 lawyers.

12 And just to -- there's also another  
13 example of that, which is a little different than not  
14 having career lawyers in the signature blocks, and  
15 that is the example of the Harvard investigation that  
16 the Civil Rights Division is now conducting. It is  
17 being conducted out of the political front office and  
18 the Educational Opportunities Section is -- does not  
19 have a lawyer on that matter. The position of the  
20 Justice Department investigating, doing an original  
21 investigation into a higher education institution in  
22 the context of race-conscience admissions is also  
23 unprecedented and it suggests that the career lawyers  
24 did not recommend that this investigation be lodged  
25 and that is being done for political reasons.

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1                   COMMISSIONER NARASAKI: Thank you. I  
2 probably pushed the envelope as far as I can with the  
3 Chair, so I will stop.

4                   (Laughter.)

5                   CHAIRMAN LHAMON: Thank you.

6                   Madam Vice Chair?

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

9                   This is for Ms. Gupta and others that  
10 might wish to chime in.

11                  But, Ms. Gupta, you made the point very  
12 convincingly in your materials that civil rights  
13 enforcement has always been and should always be a  
14 bipartisan tradition. And one of our other panelists,  
15 or maybe even several of them, earlier set out for us  
16 the various federal civil rights legislation and the  
17 different administrations responsible for it. And so  
18 as we try to come up with ideas about what should be  
19 done, what could be done with federal civil rights  
20 enforcement, it seems that that might be a solution,  
21 returning in some way to bipartisan -- that bipartisan  
22 tradition with regard to civil rights enforcement. And  
23 I was just wondering if you had any ideas about how it  
24 is that we might somehow return to a bipartisan  
25 tradition in civil rights enforcement.

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1 MS. GUPTA: Well, obviously we're at a time  
2 in this country that is deeply polarized, but the  
3 beauty of having government agencies that have  
4 institutionalized offices of civil rights, say in the  
5 Civil Rights Division of the Justice Department, is  
6 supposed to inoculate these institutions from  
7 politically kind of gerrymandering the very core role  
8 of the Federal Government in enforcing our nation's  
9 civil rights laws.

10 I believe overall as a country we have to  
11 make sure that civil rights enforcement is not viewed  
12 as a Democratic or Republican agenda. It should be a  
13 part of the legal system and, as I said, bipartisan.  
14 And I know through my own relationships with several  
15 Republican and Democratically-appointed heads of the  
16 Civil Rights Division that those were -- that was a  
17 mandate that was taken very seriously.

18 I think that it would help to have some  
19 degree of transparency that tracks whether their  
20 political administrations really have an impact to the  
21 detriment of enforcement. When it goes -- when the  
22 public doesn't have access to that information, when  
23 Congress isn't conducting appropriate oversight or  
24 sufficient oversight, it can alleviate the kind of  
25 responsibility of the heads of these agencies who are

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1 politically-appointed from really seeing their role as  
2 bipartisan or non-partisan.

3 And so I think that's one piece of it. I  
4 think it's important that you all as commissioners are  
5 engaging in this investigation and can take an  
6 objective approach to getting the data that you need  
7 to take this investigation. And I think that the --  
8 there's a bully pulpit role for officials that serve  
9 at these agencies to present this work in a non-  
10 partisan or bipartisan way.

11 And so to me this is part of a bigger  
12 project in America, but certainly oversight and the  
13 ability of these agencies to feel accountable to the  
14 American public, to Congresses that in bipartisan ways  
15 enacted landmark legislation -- I think that's a  
16 really important message as well.

17 VICE CHAIR TIMMONS-GOODSON: Mr. Thompson,  
18 do you have any ideas that you wish to share on how we  
19 might somehow return to that bipartisan tradition  
20 regarding civil rights enforcement?

21 MR. THOMPSON: I appreciate the question.  
22 It's not a topic I'm -- I came here prepared to speak  
23 about, but I thought Ms. Gupta's comments were spot  
24 on.

25 VICE CHAIR TIMMONS-GOODSON: Thank you.

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1 CHAIRMAN LHAMON: Well with that I think  
2 we will save the remaining minutes of this panel and I  
3 -- oh, Commissioner Narasaki, yes?

4 COMMISSIONER NARASAKI: Sorry. I thought we  
5 had run out of time.

6 CHAIRMAN LHAMON: We have three minutes.

7 COMMISSIONER NARASAKI: Okay. One more  
8 minute. Okay.

9 So, Ms. Goss Graves, in your written  
10 testimony you mention that EEOC has had to stop its  
11 pay data collection efforts, or it's been stopped.  
12 Why is this data important? How is it different from  
13 the data that was being collected? What was the point  
14 of trying to get this data?

15 MS. GOSS GRAVES: So the pay data  
16 collection has been halted and has never been sent out  
17 to employers. The goal of it was to add pay onto the  
18 information that's already collected by the EEOC,  
19 which is information around race and gender and  
20 occupation, so it would basically add information on  
21 pay to that.

22 And part of the project of that collection  
23 is twofold: One to give the EEOC more information  
24 about pay practices because it is really a hidden form  
25 of discrimination. Employers have tons of information

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1 about pay, but basically nobody else does employees.  
2 It's very difficult for them to know unless they find  
3 out by accident that they're experiencing pay  
4 discrimination.

5 But the second thing; and I actually think  
6 is the thing I was most hopeful about, is that most  
7 employers are going to actually look at their pay and  
8 look and see if they have a problem before turning it  
9 over to the Federal Government.

10 And so that project of actually examining  
11 your own pay, fixing problems and moving forward with  
12 practices that won't get you in that same bind is one  
13 that we are hoping more employers will actually begin  
14 to adopt.

15 COMMISSIONER NARASAKI: Thank you.

16 CHAIRMAN LHAMON: So with that I thank each  
17 of these panelists. I will say that, as I have said to  
18 the other panels, it's likely that the Commission  
19 staff will have some follow-up questions, and I would  
20 appreciate it if you'd be willing to answer those  
21 questions if the staff do.

22 So then in the meantime very much  
23 appreciate your time and your testimony today. Thank  
24 you very much.

25 We will reconvene at 2:40 for our fourth

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1 panel of the day. Thank you.

2 (Whereupon, the above-entitled matter  
3 went off the record at 2:28 p.m. and resumed at 2:40  
4 p.m.)

5 **PANEL 4: Academic and Legal Experts in**  
6 **Civil Rights Enforcement**

7 CHAIRMAN LHAMON: Okay. I'm going to get us  
8 started for the fourth panel of academic and legal  
9 experts in civil rights enforcement. In the order in  
10 which they will speak, our panelists are Curtis L.  
11 Decker, Executive Director of the National Disability  
12 Rights Network; Aderson Francois, Professor of Law and  
13 Director of Institute for Public Representation, Civil  
14 Rights Clinic, at Georgetown University Law Center;  
15 Kim Kendrick, former Assistant Secretary for Fair  
16 Housing and Equal Opportunity at the U.S. Department  
17 of Housing and Urban Development, and current partner  
18 at Leftwich LLC; R. Shep Melnick, Thomas P. O'Neill,  
19 Jr. Professor of American Politics at Boston College;  
20 Margo Schlanger, Wade H. and Dores M. McCree  
21 Collegiate Professor of Law, University of Michigan  
22 Law School, and my former law school classmate; and  
23 Anthony Varona, Professor of Law, American University,  
24 Washington College of Law.

25 Mr. Decker, please begin.

1 MR. DECKER: Thank you, and thank you for  
2 inviting me to speak. And also, I'm humbled that I am  
3 on the legal scholar academic --

4 CHAIRMAN LHAMON: We're expecting a paper.

5 (Laughter.)

6 MR. DECKER: They must have been out of  
7 seats at the advocate table, so thank you for  
8 including me in this august body.

9 As you said, I'm Curt Decker. I'm the  
10 Executive Director of the National Disability Rights  
11 Network. We're the voluntary membership association of  
12 the 57 protection and advocacy programs that exist in  
13 every state and territory and in the southwest for  
14 Native Americans with disabilities.

15 We are congressionally mandated and  
16 funded, and we enjoy a very strong legal authority,  
17 the full range of legal remedies available to enforce  
18 the civil rights protections or people with  
19 disabilities. And we also enjoy very strong access  
20 authority. We are able to go into any facility, any  
21 school, any workplace where people with disabilities  
22 are involved to investigate abuse, neglect, and other  
23 forms of discrimination.

24 And we are the major enforcer of the large  
25 number of bipartisan-created civil rights protections

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1 for people with disabilities. It's one of the  
2 populations that I think has enjoyed support for  
3 Congress over many decades, a full range of civil  
4 rights protections.

5           However, being on the ground every day, we  
6 know that civil rights protections without enforcement  
7 is really just paper. And so it is absolutely critical  
8 that we on the ground work in partnership with the  
9 federal agencies that have jurisdiction on enforcement  
10 of these many different statutes, and it is one of the  
11 reasons I am here today to talk about that.

12           We have just recently completed a study on  
13 behalf of the National Council on Disability on the  
14 EEOC, the Department the Labor, and the Access Board,  
15 and we're now embarked on a second study to look at  
16 DOJ, HUD, and the FCC on its enforcement -- duties,  
17 enforcement, and actual implementation.

18           We have been around for 40 years, and we  
19 have seen many presidential administrations come and  
20 go, and every one is slightly different and changes  
21 their impact on enforcement. And it's not uncommon for  
22 new administrations to review policies, regulations,  
23 guidance from previous administrations, but the  
24 current administration seems to have taken this to an  
25 extreme level, one clearly targeting the rights and

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1       protections for all minority populations and  
2       especially people with disabilities.

3               For example, in the Department of Justice,  
4       committed to strong enforcement, interpretation, and  
5       oversight of the ADA immigration mandate, as expressed  
6       in the Supreme Court decision in *Olmstead v. LC*, is  
7       questionable. The Department of Justice, during this  
8       administration, has not filed any finding letters in a  
9       case related to community integration, nor has it  
10      filed any amicus briefs in other *Olmstead* litigation  
11      across the country.

12             The Department of Justice withdrew, as I  
13      think you heard, its order to allow for further  
14      discussion of 2016 statement on the application of the  
15      immigration mandate of the ADA and *Olmstead* to state  
16      and local governments, employment service systems, for  
17      persons with disabilities.

18             The Center for Medicare and Medicaid  
19      Services, which plays an important role to ensure that  
20      Medicaid programs facilitate access to community-based  
21      services and supports, pulled prior guidance on when a  
22      Medicaid funding setting is too isolated to meet the  
23      requirements for community-based services. Such  
24      actions call into question the commitment of the  
25      administration to the community integration mandate of

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1 the ADA.

2 At the Department of Labor, also an  
3 important role in coordinating disability employment  
4 policy, and the enforcement of Section 14C -- and let  
5 me remind the Commission, many of my colleagues in the  
6 civil rights community are working very hard to raise  
7 the minimum wage. But, remember, under 14C of the Fair  
8 Labor Standards Act, the disability community can be  
9 paid less than minimum wage, and that's often the  
10 case.

11 There are 500,000 people with disabilities  
12 who receive less than the minimum wage, sometimes as  
13 little as 10 or 30 cents an hour.

14 The extent of the changes by the  
15 Department of Labor are still too early to assess.  
16 However, some shifts are occurring. According to a  
17 recent report by the National Council on Disability  
18 authored by us, there appears to have been a  
19 reprioritization of resources by the Department of  
20 Labor's Wage and Hour Division for targeted strategic  
21 enforcement of Section 14C towards instead compliance  
22 assistance to employers, a much softer approach to  
23 enforcement.

24 Meanwhile, the Department of Labor's  
25 Office of Disability and Employment Policy has reduced

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1 the number of outreach events by 50 percent each in  
2 2017 and 2018, and proposed to reduce the amount of  
3 technical assistance events in 2018 from around 1,700  
4 to 500.

5 In the Department of Education, we see  
6 similar problems. First of all, they have lost nearly  
7 -- the Office of Civil Rights and Education has lost  
8 nearly 70 staffers overall, about 11 percent of its  
9 workforce. These reductions were so drastic that  
10 Congress stepped in, directing more money to  
11 maintaining the staffing levels.

12 The Department of Education amended the  
13 OCR case process manual unilaterally and without  
14 public notice and comment. The changes included new  
15 provisions to mandatorily dismiss certain complaints  
16 and the elimination of complainants' rights to appeal  
17 OCR decisions.

18 It is the legal responsibility and stated  
19 mission of OCR to ensure equal access to education and  
20 to promote educational excellence through vigorous  
21 enforcement of civil rights in our nation's schools.  
22 And when they don't do that, the burden falls on  
23 parents of kids with disabilities.

24 And, lastly, the Trump administration has  
25 formally taken a number of actions which are harming

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1 students of color with disabilities with no indication  
2 that the tide will turn. Just looking at the summer of  
3 2018, the Department of Education delayed previously  
4 approved regulations on equity for students with  
5 disabilities, rescinded guidance on the use of race in  
6 school admissions, and signaled its intent to rescind  
7 a package of guidance documents on school discipline  
8 jointly developed by the Department of Education and  
9 the Department of Justice.

10 Meanwhile, the Department of Justice  
11 rescinded key guidance documents that provide  
12 protections about -- against discrimination for youth  
13 of color in the legal system, explaining that these  
14 actions, the administration has left no doubt of its  
15 intent to roll back civil rights protections.

16 So the disability community is incredibly  
17 concerned about an overall diminishing of aggressive  
18 enforcement on behalf of people with disabilities.

19 Thank you.

20 CHAIRMAN LHAMON: Thank you very much.

21 Professor Francois?

22 PROFESSOR FRANCOIS: Good afternoon, Madam  
23 Chair, and thank you, Commissioners, for the  
24 invitation.

25 I understand that the prior panelists and,

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1 indeed, my colleagues on this panel intend to cover  
2 very specific matters regarding specific issues of  
3 urgency. My hope today is to step back and take a  
4 broader, sort of a more historical view regarding  
5 civil rights enforcement.

6 It is fair to say since at least the 1980s  
7 we have been treated with a certain kind of  
8 phenomenon, pursuant to which civil rights agencies or  
9 civil rights offices become ghost agencies. They  
10 shuffle along with a staff and a budget. But for all  
11 intents and purposes, they cease to function according  
12 to their statutes and regulations.

13 And when these agencies are about to turn  
14 into ghost agencies, there tend to be at least five  
15 warning signs that we know are present. The first is  
16 that the agency leadership is entrusted to individuals  
17 who lack either meaningful experience in civil rights  
18 law or are in fact opposed to robust enforcement of  
19 civil rights law or whose notion of civil rights law  
20 is reduced to a single issue that may be personally  
21 important to that individual.

22 The second is that the mission of the  
23 agency or the division gets reduced or narrowed to a  
24 very, very, very small point that either becomes  
25 meaningless or at worst is the exact opposite of the

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1 agency's mission.

2 The third is that the agency's  
3 professional staff is slowly reduced to the point that  
4 it can no longer function even at a basic level of  
5 competence.

6 The fourth is that the agency's budget  
7 year after year is either zeroed out or reduced, often  
8 with the acquiescence of the agency's own leadership.

9 And, fifth, the agency ultimately cannot  
10 point to the public to any meaningful achievement that  
11 the agency has accomplished other than perhaps issuing  
12 sort of press releases.

13 Judged by these metrics, apart from HUD,  
14 which I understand my colleague Kim Kendrick is going  
15 to speak about, I would submit to the Commission, with  
16 all due respect, that there are three current civil  
17 rights offices that are in danger of becoming ghost  
18 agencies. They're the Department of Labor's Office of  
19 Federal Contract Compliance, the Department of Health  
20 and Human Services' Office of Civil Rights, and the  
21 Department of Education's Office for Civil Rights.

22 Every single one of these offices exhibit  
23 between four or five of these signs. And while the  
24 time doesn't permit me to go into detail into -- into  
25 every single one of them, that much we can say.

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1 Virtually every single one of them have had their  
2 budget reduced. Virtually every single one of them  
3 have had their full-time equivalent staff reduced.  
4 Virtually every single one of them are currently being  
5 led either by individuals who have no experience in  
6 civil rights law or individuals whose prior experience  
7 in civil rights law gives us no confidence that these  
8 agencies will survive.

9 This is true for HHS OCR, OFCC, as well as  
10 DOD OCR. But perhaps the most troubling warning sign  
11 is that the main federal agency that is designed to  
12 serve as the watchdog for these agencies, namely DOJ's  
13 Federal Coordination and Compliance Division,  
14 essentially has ceased to function, even by its own  
15 public admission.

16 Again, if one even were to look at it as a  
17 single example, the Office of Federal Contract  
18 Compliance at the Department of Labor, the two main --  
19 main work that the office has done is to publish  
20 guidance for contractors, which it is supposed to  
21 supervise, that are essentially referred to as a  
22 contractor's bill of rights.

23 The second -- the second man position that  
24 is taken, it has issued guidance for its auditors,  
25 essentially giving it green light to engage in a form

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1 of discrimination by insisting that when it audits  
2 companies in terms of the new obligation, it ought to  
3 give great weight to the company's religious freedom  
4 or beliefs or act of conscience.

5 And as I'm sure perhaps the Commission has  
6 heard already from others on the panel, OCR  
7 essentially has started a brand-new office or section  
8 within OCR that is dedicated to conscience and  
9 religious liberty.

10 Now, of course, the most obvious  
11 consequence of these agencies becoming ghost agencies  
12 is that the communities that these -- they are  
13 designed to serve do not get a measure of justice that  
14 they deserve. But I want to suggest in the short time  
15 that I have left that in fact there are four larger,  
16 long-term and more worrying consequences that the  
17 Commission ought to be concerned about.

18 The first is that when this agency is  
19 behaving this way, they result in a loss of  
20 institutional loss of memory. They essentially forget  
21 how to do civil rights work.

22 The second one is that there is a loss of  
23 deterrence effect. That is, if in fact you signal to  
24 the market that you are no longer in the business of  
25 civil rights enforcement, as some of these agencies

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1 have done, essentially certain actors don't have any  
2 incentive to behave. And, in fact, when you do go  
3 after them, it becomes more expensive for you to go  
4 after them, precisely because they haven't been  
5 deterred.

6 The third is a loss of doctrinal  
7 development. The fact of the matter is, each of these  
8 agencies have a tremendously important role to play in  
9 the way that doctrine in their particular area  
10 develops, because courts tend to give them far more  
11 leeway in the course of litigation. And the moment  
12 that they step out from enforcing, that role cannot be  
13 fully fulfilled by private litigants, so we lose, if  
14 you will, the way the doctrine itself develops.

15 And the fourth, which I think is  
16 potentially the most consequential result of this lack  
17 of enforcement of these agencies when they become  
18 ghost agencies, is that they are in fact used as  
19 examples by those perhaps who don't favor civil rights  
20 enforcement as the perfect demonstration of why civil  
21 rights agencies are a waste of time.

22 In other words, the more you basically  
23 hollow out the agency, the more they become ghost  
24 agencies, the more they start functioning according to  
25 enforcement role, even though they were driven that

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1 way purposely by those who were charged with that.

2 The more these agencies then are held up  
3 as an example as to why we need to cut them further,  
4 so in time it becomes something of a vicious cycle. I  
5 do believe that it is important to focus, as the  
6 Commission is doing, on the specific rules and  
7 regulations and action that these agencies are doing.

8 But I also believe that it is equally  
9 important to understand the larger pattern in which  
10 what we are seeing is the hollowing out of an entire  
11 sublevel of civil rights enforcement. The three that I  
12 mentioned having -- being the most obvious one,  
13 perhaps the only one that rivals any of these  
14 agencies, is HUD.

15 Thank you.

16 CHAIRMAN LHAMON: Thank you.

17 Ms. Kendrick?

18 MS. KENDRICK: Good afternoon to the Chair  
19 and the other Commissioners. My name is Kim Kendrick,  
20 and I am an attorney who practices law in the District  
21 of Columbia. Prior to joining my firm, I served as the  
22 Assistant Secretary for Fair Housing and Equal  
23 Opportunity at the U.S. Department of Housing and  
24 Urban Development, from September 2005 until  
25 January 20, 2009.

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1           Prior to joining HUD in 2004 as a  
2 political appointee, I served the District of Columbia  
3 Housing Authority as its General Counsel, and then as  
4 a Regional Director responsible for managing and  
5 maintaining over 3,000 units of public housing.

6           Prior to joining the Housing Authority, I  
7 spent eight years as a career employee in HUD's Office  
8 of General Counsel. All together I have spent 18 of my  
9 37 years in legal career working for HUD or working on  
10 HUD issues, HUD programs, HUD's policies and rules.

11           Since my departure from the U.S.  
12 Department of Housing and Urban Development, I have  
13 kept abreast of the work that HUD undertakes. In  
14 addition to occasionally being retained by clients to  
15 represent their interests before HUD, I also follow  
16 with great interest the policies and practices of the  
17 Fair Housing and Equal Opportunity Office.

18           While I am humbled to join this particular  
19 panel of academics and legal experts, I like to  
20 consider myself a former federal agency official and  
21 offer my opinions here today based on my current  
22 observations that I have gleaned from the media or  
23 other writings regarding HUD's enforcement efforts,  
24 and most significantly from the experience that I  
25 gained during my four years as the Assistant Secretary

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1 for Fair Housing and Equal Opportunity.

2 I am sure that Bryan Greene, who spoke to  
3 you this morning, provided you with a deep background  
4 on the office of FHEO and its enforcement protocols  
5 and policies. So I will dive directly into the  
6 questions that you have presented for our comments.

7 As the former Assistant Secretary for  
8 FHEO, I was charged with the enforcement of several  
9 federal laws associated with housing and federal  
10 programs that receive federal dollars, the most  
11 formidable of which is the Fair Housing Act. After the  
12 Voting Rights Act, I consider the Fair Housing Act to  
13 be the most significant civil rights tool available to  
14 the federal government and to the people of the United  
15 States who are protected by this Act because of their  
16 race, color, national origin, sex, religion, familial  
17 status, or disability.

18 I say this with such emphasis because I  
19 believe that providing fair housing to all provides  
20 more than just housing to the person -- more than  
21 housing. A person who can purchase a home of her  
22 choice at a fair rate without discrimination not only  
23 can provide opportunities for minorities to close the  
24 racial wealth gap; it can provide opportunities for  
25 better educational opportunities, which is also

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1 another way to close the wealth gap between races.

2 Thus, as a federal civil rights officer, I  
3 took great effort to enforce the laws outlined by the  
4 Fair Housing Act. I certainly expect anyone who holds  
5 a civil rights position in the federal government,  
6 even if he does not believe as deeply in the laws as I  
7 do, that they should be held accountable for enforcing  
8 the applicable laws, including the regulations as they  
9 were intended, without interference of politics.

10 I am happy to say that the current  
11 assistant fair housing secretary certainly feels as I  
12 do; she has said so in public.

13 There are certain several evaluation  
14 approach that we can take in measuring the  
15 effectiveness of the work of our civil rights offices.  
16 For example, one could take the 7,600 complaints that  
17 were filed with HUD during fiscal year 2018 as a sign  
18 that HUD is doing well in communicating its message  
19 that it is available to enforce the Fair Housing Act.

20 However, before you can take -- make that  
21 assessment, you have to take a look at the enforcement  
22 history. How many complaints were filed in fiscal  
23 years 2017, '16, and '15? In addition to looking at  
24 the number of complaints filed, you have to also take  
25 a look at the type of complaints that were filed, the

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1 percentage. Were they race complaints? Were they  
2 disability? And, again, take a look again, if three  
3 years is a good gauge, to compare the percentage of  
4 cases and categories that were filed.

5 If it appears that the agency has received  
6 increased numbers of a particular -- it could mean  
7 that the determination -- discrimination is up in that  
8 area or could mean one particular factor impacted a  
9 number of cases in a particular category.

10 For example, during 2005, before I became  
11 Assistant Secretary, Hurricane Katrina hit and  
12 certainly impacted this country in a great way. And we  
13 received a number of fair housing complaints based on  
14 race because of the discriminatory actions of some  
15 communities outside of New Orleans and based on  
16 disability because of the inaccessibility of the  
17 mobile homes that were made available by the  
18 government to the hard-hit communities.

19 Thus, one could say that fiscal year 2005  
20 was an anomaly because of the influence of the  
21 hurricanes.

22 Since I'm running out of time, I'm going  
23 to let my testimony show you what I'm going to --  
24 first, I'm going to talk about priorities, policy and  
25 priorities. I certainly hate to sit here today and say

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1 that the policy priorities for any civil rights  
2 organization should be at this time. However, I can  
3 say that if I could go back in time, I would have done  
4 more to focus on systemic issues as opposed to  
5 focusing on the number of complaints that FHEO filed  
6 each year.

7 During my time at FHEO, we were often  
8 criticized because we did not receive or investigate  
9 complaints. In an effort to address such complaints,  
10 we spend a lot of time trying to get complaints, which  
11 I think was a big waste of time.

12 Instead, we should have focused our  
13 efforts on more systemic issues, such as mortgage  
14 lending. We started a Mortgage Lending Division and  
15 that -- the impact of the fair -- of the Mortgage  
16 Lending Division was significant in that it was -- you  
17 were able to take a few people, an economist, the  
18 lawyers, to sit back and take a look at what was  
19 happening in the federal banks to determine if they  
20 were discriminating in issuing mortgages, denying  
21 mortgage applications, and providing interest --  
22 providing -- what types of interest rates they were  
23 providing.

24 This division had small successes that  
25 impacted a large number of holders, mortgage holders

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1 and applicants. Most importantly, the impact could be  
2 felt because discriminatory practices declined. They  
3 did not go away, but they certainly declined.

4 We could have a greater impact if we  
5 directed more resources to divisions such as that, and  
6 to impact -- the fair lending investigations could  
7 certainly have a greater impact than a few fair  
8 housing complaints that have been serviced by -- that  
9 could be serviced by other fair housing agencies or  
10 even by the private sector.

11 Without -- I will save most of what I have  
12 to say for questions. But HUD could take most of its  
13 efforts and look at systemic cases instead of these  
14 individual complaints, because individual complaints,  
15 we hear a lot about dogs and cats and service animals.

16 And while that is very important, I  
17 certainly -- not to Mr. Decker, but talking about  
18 hamsters and gerbils is really not as important as  
19 talk about mortgage and fair lending and affirmatively  
20 furthering fair housing.

21 So I defer my 13 seconds.

22 CHAIRMAN LHAMON: Thank you very much.

23 Professor Melnick?

24 PROFESSOR MELNICK: Thank you. I'm Shep  
25 Melnick. I teach political science at Boston College,

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1 which I think makes me the only non-lawyer on this  
2 panel.

3 I will limit my comments to what I know  
4 best, which is enforcement of Title VI and Title IX by  
5 the Office for Civil Rights in the Department of  
6 Education, and I want to emphasize two points.

7 The first is that much of the heated  
8 debate over enforcement of civil rights laws is really  
9 not about enforcement at all. For decades, Democrats  
10 have accused Republicans of failing to enforce civil  
11 rights laws, Republicans have accused Democratic  
12 administrations of regulatory overreach and  
13 administrative bullying, but in reality these are  
14 often disputes about the proper way to interpret  
15 ambiguities in civil rights laws, not about the extent  
16 to which established rules and laws have been  
17 adequately enforced.

18 Recognizing the distinction between  
19 underlying legal standards on the one hand and  
20 enforcement of these standards on the other I think  
21 will help clarify many of the things we have been  
22 debating.

23 My second point is that the peculiar  
24 process by which the Office for Civil Rights and the  
25 Department of Education formulates and enforces its

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1 rules not only contributes to this confusion but also  
2 deprives the entire regulatory regime of transparency,  
3 clarity, and ultimately legitimacy.

4 This is not the fault of the Trump  
5 administration. It was not the fault of the Obama  
6 administration. It was a product of a very long series  
7 of judicial and administrative decisions made with  
8 very little attention to their long-term significance.

9 To understand why enforcement is so often  
10 disguised -- or subterranean form of policy-making, I  
11 think it's necessary to appreciate three peculiar  
12 features of regulation under Title VI and Title IX.

13 First, OCR's aversion to rule-making.  
14 Under Title VI and Title IX, federal agencies are  
15 authorized to issue regulations about the obligations  
16 of recipients of federal funds. This, of course, is  
17 subject to the Administrative Procedures Act notice  
18 and comment rulemaking procedures.

19 For decades, this Commission has  
20 criticized OCR for its failure to announce clear  
21 general rules on many topics. OCR has responded to  
22 this criticism, but it has done so by issuing guidance  
23 and basically evading the commands of the  
24 Administrative Procedures Act in issuing unilateral  
25 Dear Colleague Letters rather than actual rules.

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1           The biggest problem with this approach is  
2           it provides little opportunity for public  
3           participation or for adequate information-gathering by  
4           the agency.

5           The Dear Colleague Letter strategy is  
6           based on what I call transparent fiction; namely, that  
7           these DCLs do not mandate anything new. For example,  
8           the 2011 sexual harassment rules DCL claimed that  
9           there -- this is no new policy here. Meanwhile, the  
10          White House, I think quite correctly, said this was  
11          path-breaking. Those two things can't both be true.

12          Another problem with a Dear Colleague  
13          Letter is that their legal status remains ambiguous.  
14          Are they mere suggestions, or are they legally  
15          binding? When asked that question in 2014, two Obama  
16          administration officials said they were not legally  
17          binding. A third, Assistant Secretary LHAMON, said  
18          they are.

19                 CHAIRMAN LHAMON: Just for the record,  
20                 that's not correct, but --

21                 PROFESSOR MELNICK: Oh, okay. Well, correct  
22                 that in my -- I'd like to hear more about that.

23                 So does enforcing civil rights laws mean  
24                 requiring schools to follow each and every command of  
25                 lengthy Dear Colleague Letters, or does it mean

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1 something else? There's a huge gap between the two, so  
2 this is no minor matter.

3 Second, enforcement sanctions. When these  
4 laws were enacted, they were seen as administrative  
5 alternatives to judicial enforcement. We could very  
6 expeditiously cut off federal funds and not have to  
7 wait on extended litigation in order to punish those  
8 who discriminate.

9 But, of course, before long it became  
10 clear that termination of federal funds was too  
11 administratively cumbersome and too politically  
12 perilous to employ. In fact, the total number of  
13 terminations under Title IX is exactly zero over 45  
14 years. So termination has become an empty threat.

15 What puts teeth into enforcement? It has  
16 been implied judicial rights of action in court, the  
17 threat of injunctions, and monetary damages.

18 The result of this is a process I have  
19 called institutional leapfrogging, in which both  
20 agencies -- courts and then agencies take small steps,  
21 building upon each other, ending up with the  
22 incremental growth that no one has really thought  
23 about the consequences of what this means.

24 But what happens when OCR goes beyond what  
25 the Supreme Court has said in its interpretation of

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1 these statutes? That is what happened with sexual  
2 harassment. Unable to rely either on the funding  
3 cutoff or judicial enforcement, OCR turned each  
4 individual complaint into a high publicized lengthy  
5 and costly investigation of the entire institution.  
6 These investigations were designed to threaten the  
7 college's reputation and impose so many burdens on the  
8 school it would sign a legally binding agreement.

9 In short, the process was the punishment.  
10 And in some circumstances, what was signed went well  
11 beyond anything OCR had put into its informal  
12 guidelines.

13 Third point. Policy-making through  
14 complaint investigation. A central feature of civil  
15 rights regulation of OCR is the intense focus on  
16 resolving all individual complaints that come through  
17 the door. I realize now that this is true of many  
18 other agencies as well, but the key statutes do not  
19 require this.

20 This was a product of a long-running Adams  
21 v. Richardson litigation. In most cases, these  
22 investigations -- this means in practice that in most  
23 cases investigations and resolution agreement remain  
24 confidential, outside of public view.

25 As UNC law professor Catherine Kim has

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1 noted, this not only limits judicial review, but it  
2 has precluded the public's ability to exercise  
3 meaningful checks on audit.

4 What can be done? We can attack this  
5 underlying problem from two directions. First, more  
6 use of notice and comment rulemaking. Secretary of  
7 Education DeVos has promised that the era of rule by  
8 letter is over. I hope she is right. It would at least  
9 let me point to one thing the Trump administration has  
10 done right.

11 Second, more transparency in the  
12 resolution of individual complaints. Here it was the  
13 Obama administration that has taken the lead, at least  
14 selectively. Why not start with the presumption that  
15 all of these agreements should be made public unless  
16 there are compelling reasons to the contrary?

17 An important first step in this direction  
18 would have been make public the details of the large  
19 number of complaints filed by a few hyperactive  
20 individuals. For example, in 2016, a single individual  
21 filed 6,157 Title IX complaints. Why not make these  
22 public, who filed them, and how they were resolved?

23 In short, I urge this Commission to  
24 recommend changes to the process OCR uses to address  
25 civil rights issues in order to promote a more open,

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1 thoughtful, and civil discussion of these important  
2 matters.

3 Thank you.

4 CHAIRMAN LHAMON: Thank you.

5 Professor Schlanger?

6 PROFESSOR SCHLANGER: Thank you very much,  
7 Madam Chair and Commissioners. I maybe bring together  
8 both of the strands on this -- on this panel, because  
9 I am both an academic and a former federal official. I  
10 used to run the DHS Office for Civil Rights and Civil  
11 Liberties as its presidentially appointed head, and I  
12 had the privilege to serve with about 100 staff,  
13 trying to do something very different than you have  
14 been hearing about all day.

15 The chief mission of the non-EEO side of  
16 the CRCL shop was to try to induce, advise, and  
17 otherwise influence DHS itself -- not to deal with the  
18 folks who DHS gives grants to, not to deal with the  
19 non-federal partners, but to actually be a civil  
20 rights office inside the agency, an internal agency  
21 watchdog.

22 That is a very different role than you've  
23 been hearing about all day, and it's a very highly  
24 constrained role. But that's the role that I want to  
25 talk to you about because I think it's a really

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1 important function that OCRs can play, and  
2 occasionally even, not just at DHS, do play, in some  
3 other agencies.

4 I have written about this at length, and I  
5 think possibly you have gotten some of that material  
6 in your briefing. So I'm going to refer you to a very  
7 long law review article that goes into great depth  
8 about all of this.

9 But as a quick piece of background, the  
10 chief threat to the mission of an agency -- an  
11 internal -- OCR agency watchdog are threats to its  
12 influence, because after all the agency is trying to  
13 influence its own self. The possible civil rights  
14 violator is its own colleagues. And threats to its  
15 commitment, because one way to deal with the problem  
16 posed by vigorous civil rights activity inside an  
17 agency is to co-opt it and make it not as interested  
18 in civil rights anymore.

19 And so those are the twin threats to  
20 watchdog OCRs. And Congress has -- with respect to  
21 both CRCL and a couple of similar, though much  
22 smaller, offices within the intelligence community --  
23 responded to this by saying that OCR, watchdog OCRs  
24 need to have four really crucial aspects to their  
25 influence. They need to have information. They need to

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1 have a right of consultation. They need to have a  
2 voice that is external to the agency; they need to  
3 have an ability to talk to the outside world without  
4 the superintendents of their own agency. And they need  
5 to have adequate resources.

6 I'm going to add one to that. They need to  
7 have some ability to safeguard their own  
8 investigations as well, so -- which is to say a  
9 modicum of freestanding authority, not merely  
10 influence.

11 And so Congress has done that, but it has  
12 not been a wholesale success. I believe you heard from  
13 my former EEO deputy, who is a current employee at  
14 DHS, this morning about some of the challenges faced  
15 by CRCL.

16 And my understanding of what has been  
17 going on in the current administration, and also, to  
18 be frank, my -- my knowledge of what went on in every  
19 administration prior to that where CRCL has been  
20 around, which is about 15 years, is that there are  
21 ever-present threats to each one of those aspects of  
22 influence.

23 And so I urge the Commission to make some  
24 recommendations that deal with those threats, and I  
25 have spelled those recommendations out in a little bit

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1 more detail in my written testimony. But the basic  
2 idea is this. Watchdog OCRs need a guarantee that they  
3 can get the information they need. They need not to  
4 have to engage in a bureaucratic tussle over every  
5 request for information, where they try to persuade  
6 the very organization that they are investigating,  
7 that that organization should come forward with the  
8 needed information.

9 They need a right to that information, and  
10 they need it to be enforceable. Not in court. You  
11 can't sue your own secretary in court. That would be  
12 ridiculous. But enforceable by some method of, for  
13 example, a report to Congress when -- when the agency  
14 says no.

15 They need required consultation. There  
16 needs to be a system where consultation is not merely  
17 urged but actually required, and I have some  
18 recommendations about how that could actually be made  
19 real.

20 They need an independent voice. I was  
21 authorized to file reports in Congress, and I had an  
22 understanding with my front office that they did not  
23 edit my reports. But they did have to clear them,  
24 which is almost the same as editing but not quite the  
25 same as editing.

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1           And so we engaged in a pretty protracted  
2 negotiation over every one of those reports. That's  
3 insane. So what should be done, as is done with some  
4 other offices inside federal agencies, what should be  
5 done is that watchdog OCRs should have authority to  
6 file reports without those reports being edited by  
7 their -- the agency that is the agency they are  
8 actually trying to help regulate. So they need that.

9           They need some degree of resource  
10 independence, again, for the exact same reason. How  
11 would HUD civil rights work, if the very agencies that  
12 it was trying to enforce against had control over its  
13 budget? I venture to guess less well, and that's true  
14 at DHS and all of the other agencies, too.

15           And so I have a recommendation not about  
16 what resources are needed, but at least that allowing  
17 the watchdog OCRs to say themselves independently what  
18 resources are needed for Congress then to evaluate,  
19 rather than having to funnel that through their  
20 secretary and through OMB.

21           And, finally, they need some modicum of  
22 actual authority. And this is not unheard of. This is  
23 not unheard of, but it's close to unheard of. There  
24 are tiny little aspects where watchdog OCRs have some  
25 little bit of authority, not just to advise but

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1 actually to say, yeah, you have to do that.

2 And so I have some recommendations about  
3 when that might actually be augmented, where it has to  
4 do with small individual matters that are not central  
5 to the agency's mission and where it has to do with  
6 safeguarding of the ability and the completion, the  
7 ability to complete an investigation. And so I run  
8 through that as well.

9 I guess I want to close in 30 seconds with  
10 just one point, which is that in the current climate,  
11 it is not clear to me that any of this will work. I  
12 just -- I want to just be clear about that. This is an  
13 internal office. If there is a department that is  
14 insisting on orphaning children at the border, if  
15 there is a department that is insisting on engaging in  
16 Islamophobic -- may I have 15 more seconds, just to  
17 finish this up?

18 CHAIRMAN LHAMON: Fifteen seconds.

19 PROFESSOR SCHLANGER: Thank you. That is  
20 insisting on Islamophobic screening protocols, if  
21 there is a department where violations of civil rights  
22 are at the core of what it sees as its role, then an  
23 internal civil rights office is -- might be able to  
24 slow that down, might be able to make it more  
25 embarrassing, but is not going to be able to reverse

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1 it.

2 That said -- that said, it might be able  
3 to reverse some things at the edges. And even in less  
4 high profile or maybe a more civil rights kind of an  
5 environment, the kinds of recommendations that I have  
6 made I think would stand watchdog OCRs in very good  
7 stead and really improve their functioning in the  
8 federal system.

9 Thank you.

10 CHAIRMAN LHAMON: Thank you.

11 Dean Varona?

12 DEAN VARONA: Thank you, Madam Chair. My  
13 name is Tony Varona, and I'm on the faculty of the  
14 American University Washington College of Law. It is  
15 an honor to join you, to join all of you and all of my  
16 colleagues on the -- on this panel.

17 I come to you today not just as a law  
18 professor, but also as an openly gay Latino immigrant  
19 and naturalized citizen who, with his family at the  
20 age of three, sought and found refuge and a better  
21 life in this great nation from our native country of  
22 Cuba.

23 The theme of today's briefing captures so  
24 much of what distresses Americans like me in this  
25 moment. It also begs the question of what it is that

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1 we mean when we talk about civil rights. We could  
2 certainly look at the Constitution, at the Bill of  
3 Rights, at the Declaration, at all of the wonderful  
4 things that The Reverend Dr. Martin Luther King said.  
5 We can go back to the social contract as postulated by  
6 Rousseau and Locke.

7 And what we can conclude is that we are  
8 not talking about regulatory minutiae or esoteric  
9 points of legal theory when we discuss whether the  
10 federal government is satisfying its duty to advance  
11 civil rights. Instead, what we are talking about is  
12 our very identity and moral infrastructure as  
13 Americans and how it is that we will treat one  
14 another. Civil rights, then, undergird civilization  
15 itself.

16 The late Mr. Rogers, whose neighborhood in  
17 Pittsburgh was lacerated last Saturday morning, in the  
18 sacred space that is the Tree of Life Synagogue,  
19 understood all of this very well. Fred Rogers'  
20 trademark was, "Won't you be my neighbor?" A question  
21 that was at the same time mundane and revolutionary.

22 His concept of neighborliness is central  
23 to our notion of what it means to be an American, and  
24 how it is that we should respect and promote civil  
25 rights.

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1 Another of Fred Rogers' oft-quoted maxims  
2 is that we should look for the helpers, he said, in  
3 times of trouble and fear. You, the U.S. Commission on  
4 Civil Rights, the rightfully called conscience of the  
5 nation on civil rights, are preeminent among those  
6 federal helpers who safeguard and promote the civil  
7 rights of all Americans.

8 But as you note, there are scores of  
9 federal civil rights offices that are important civil  
10 rights helpers, too. Many agencies have earned hard-  
11 fought reputations as civil rights champions for our  
12 nation's most vulnerable populations.

13 But recently many of these same agencies  
14 have done an about face. Key federal agencies now are  
15 aggressively undermining the recognition and  
16 protection of the civil rights of millions of  
17 Americans that depend on them.

18 The retrenchment and even antagonism of  
19 federal government civil rights enforcement efforts is  
20 exemplified vividly through the lens focused on the  
21 LGBT community, which is significant both in its size  
22 and in our vulnerability.

23 For many years, through both Democratic  
24 and Republican administrations, agencies throughout  
25 the federal government have responded to the bias and

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1 harassment faced by LGBT people with meaningful  
2 measures aimed at enforcing and protecting our basic  
3 civil rights.

4 But then came the Trump administration and  
5 what appears to be a deliberate weaponization of  
6 regulatory homophobia and transphobia as a means to  
7 repay and motivate Mr. Trump's base.

8 The Departments of Justice and Education  
9 rescinded the 2016 Dear Colleague Letter protecting  
10 transgender schoolchildren, despite the decisions of  
11 five federal circuit courts of appeal holding that  
12 anti-trans discrimination is illegal sex  
13 discrimination.

14 The Department of Education has gone as  
15 far as saying not only that it will not pursue the  
16 complaints of transgender students pertaining to  
17 school accommodations, but it will outright reject  
18 them.

19 The Justice Department now insists that  
20 Title VII does not prohibit discrimination on the  
21 basis of sexual orientation or gender identity,  
22 thereby contradicting the expert agency -- the EEOC's  
23 repeated conclusions to the contrary, which are in  
24 harmony with the holdings of countless courts.

25 The Justice Department further has argued

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1 in favor of an aggressive and overbroad interpretation  
2 of the First Amendment's free exercise clause and  
3 permitting anti-LGBTQ bias.

4 LGBT inclusive language has been stripped  
5 from agency websites across the federal government.  
6 The Washington Post reports that the Trump  
7 administration has forbidden the CDC from even using  
8 the word "transgender" in its budget proposals.

9 The Bureau of Prisons has stripped  
10 protections from transgender inmates, exposing them to  
11 the danger of sexual assault or worse.

12 The Department of Housing and Urban  
13 Development has eliminated resources for LGBTQ people  
14 in homeless shelters despite the high rates of  
15 homelessness among LGBT youth. And HHS, in January,  
16 proposed a new rule that would allow healthcare  
17 providers to discriminate against LGBTQ patients,  
18 solely because of religiously motivated bias.

19 We will be excluded from the 2020 census.  
20 The State Department has ceased granting visas to same  
21 sex partners of foreign NGO employees and diplomats.  
22 President Trump continues to insist that the 15,000  
23 transgender service members who serve their country  
24 admirably must be kicked out. Less than two weeks ago,  
25 a memorandum leaked from HHS, as we have already

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1 heard, calling on agencies that have significant Title  
2 IX enforcement duties to enact a definition of gender  
3 that essentially erases transgender status by  
4 requiring that gender be defined inflexibly and  
5 immutably as sex assigned at birth.

6 CDC Director Robert Redfield expressed  
7 alarm, calling it stigmatizing. Chairwoman LHAMON is  
8 quoted in The New York Times quite accurately stating  
9 that "This policy takes a position that what the  
10 medical community understands about their patients,  
11 what people understand about themselves, is irrelevant  
12 because the government disagrees."

13 There is so much more, but suffice it to  
14 say that the LGBTQ community not only feels  
15 unprotected by much of the federal government, but  
16 altogether besieged and harassed.

17 In conclusion, these issues of decency and  
18 dignity and how we define our national identity  
19 transcend partisan politics. They are why this  
20 Commission's role as the civil rights conscience of  
21 the nation is so important. I urge you to embrace and  
22 build upon that role and to use your authority,  
23 vision, and voice to insist that we, as a nation,  
24 aspire to be our better selves as citizens and as  
25 neighbors.

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1 Thank you very much.

2 CHAIRMAN LHAMON: Thank you very much to  
3 all of the panelists. I am going to open it to  
4 questions from my fellow Commissioners. I understand  
5 that Commissioner Yaki has a question to start us.

6 COMMISSIONER YAKI: Yes. Thank you very  
7 much, Madam Chair.

8 And, first, thank the -- thanks to the  
9 staff for putting a great briefing together. It has  
10 been mesmerizing to say the least for the past six  
11 hours.

12 And thanks to all the panelists who have  
13 made it -- made it so -- I have been on the Commission  
14 for over 13 years. And when I first came on the  
15 Commission, I thought that we had some issues and we  
16 worked and we fought and we disagreed.

17 But I have never been at a point as I have  
18 right now in this, my 13th year, where I feel  
19 completely discouraged, when I want to not listen to  
20 the television or to the radio or read the headlines  
21 that pop up on my -- on my phone about what is going  
22 on, because I cannot quite believe what is happening.

23 And as the Commission -- as the last  
24 speaker just said, we are the conscience for civil  
25 rights in this country. We are the watchdog. We are

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1 also the advisory body. And I know that for one branch  
2 of this government any advice we give is going to fall  
3 on deaf ears. It just is. It just will. I don't think  
4 there is any debate about it whatsoever.

5           Anyone who does debate it is not, obviously,  
6 listening to what our leaders are saying about  
7 caravans of invaders, about the criminals, about other  
8 -- how -- disparaging people by taking away rights, by  
9 rolling back protections about dismantling programs.

10           So the question I have, and I'm glad we're  
11 hearing from academics, because there is a  
12 hypothetical, and you deal with hypotheticals all the  
13 time, or at least you used to when you gave me -- when  
14 you used to give me your exams back in the day -- is  
15 what -- and it's not what are we to do.

16           So we are going to be giving advice,  
17 possibly to one body or one-half of one body of the  
18 legislative branch of government about what they could  
19 do to put their shoulder against the wheel and stop it  
20 from turning and grinding under all the civil rights  
21 gains and all of the protected classes and communities  
22 and people that we have in this country.

23           What are the remedies, what are the  
24 options, what are the -- what are the tactics  
25 available to -- to the Congress or to a body or to one

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1 body of Congress that could make a difference in what  
2 this administration is trying to do?

3 That's my question to you. If you can't  
4 answer it now, write it down, send it to me, I'll read  
5 it, but this is -- this to me is, as I sit here  
6 listening, what it is that we can do and what we can  
7 say. For me, it would be some of the most important  
8 and valuable advice and information that I could get  
9 in terms of taking from what we hear today and moving  
10 it and taking it to the next step.

11 Thank you.

12 DEAN VARONA: I can attempt an answer. I  
13 believe that what you can do, Honorable Commissioners,  
14 is of course remind our government officials, remind  
15 our President, that the bully pulpit that the  
16 President occupies is not intended to be used for  
17 bullying the most vulnerable of our communities.  
18 That's number 1, because you of course have the moral  
19 authority and the moral suasion and the position to  
20 make such an argument.

21 But I would also go further and say that  
22 the government, the federal government, in many  
23 respects at this point is far behind corporate  
24 America. Just yesterday, 56 major corporations  
25 representing 4.8 million employees and 2.4 trillion in

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1 annual revenues came out with what they are calling a  
2 business statement for transgender equality.

3 Now, these are the Who's Who of Corporate  
4 America -- Accenture, Adobe, Altria, Amalgamated. I'm  
5 just looking through the list. Amazon, American  
6 Airlines, Apple, BNY Mellon, Cargill, Citi, Coca-Cola,  
7 Corning, Dow Chemical, Deutsche Bank, DuPont, Levi  
8 Stress, Intel. I won't bore you with the full list. I  
9 will file it with you.

10 But it is 56 major corporations who in  
11 their statement write, "We, the undersigned  
12 businesses, stand with the millions of people in  
13 America who identify as transgender, gender  
14 non-binary, or intersex, and call for all such people  
15 to be treated with the respect and dignity everyone  
16 deserves. We oppose any administrative and legislative  
17 efforts to erase transgender protections through  
18 reinterpretation of existing laws and regulations. We  
19 also fundamentally oppose any policy or regulation  
20 that violates the privacy rights of those that  
21 identify as transgender, gender binary, or intersex.

22 So the point is simply to make the  
23 argument that if this or many of our government  
24 leaders fancy themselves as being at the vanguard of  
25 corporate America, we might want to point out to them

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1 that they are very much not in this area, and that  
2 they need to be led by these 56 major corporations who  
3 have just stood up for fairness and justice.

4 CHAIRMAN LHAMON: Mr. Decker?

5 MR. DECKER: Well, I think we have to  
6 persevere, and I think we just keep fighting, and I  
7 think we look for other avenues to work through  
8 channels to try to see what we can accomplish during  
9 these times.

10 So, for example, we were able to use our  
11 access authority this summer to convince the Office of  
12 Refugee Resettlement to allow us to go into the  
13 detention centers about the separated children to look  
14 for children with disabilities, to see whether those  
15 children were being adequately -- their diagnosis and  
16 their disabilities were being addressed.

17 So there was just a little glimmer of hope  
18 there. We were able to actually access, you know,  
19 those camps through using our existing -- our access  
20 authority.

21 We were able to get a program out of  
22 Congress to try to protect the eight million  
23 beneficiaries of Social Security who have  
24 representative payees who may be being abused or  
25 having their money stolen.

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1           So there is -- I would argue, you know, I  
2 often on the Hill don't talk about civil rights. I  
3 talk about the economic benefit to getting people with  
4 disabilities back to work and ending discrimination  
5 against them in the workplace because they will become  
6 productive citizens, and they will no longer be  
7 depending on benefits and other kinds of services from  
8 the government.

9           That resonates with a certain number of  
10 people in the Congress, and so I think we have to look  
11 at our arguments. We have to get creative. We have to  
12 keep fighting and work through -- I do tell my people  
13 that in a time of this kind of turmoil, everything is  
14 up in the air. Sometimes you have the ability to have  
15 impact on how it lands.

16           CHAIRMAN LHAMON: Professor Melnick?

17           PROFESSOR MELNICK: I'm a political  
18 scientist, so I'm paid to be a pessimist. But I would  
19 say one thing: that this administration is unusual in  
20 the extent to which the rhetoric is so overheated, and  
21 there is a huge gap between what the President says or  
22 Tweets and what government actually does.

23           For example, he tweeted that we were going  
24 to throw transgender people out of the military, and  
25 the Defense Department said, "Well, you know, we're

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1 not -- we're going to take that with a grain of salt."  
2 So I -- one thing I would recommend is not  
3 overreacting to this, what is often really horrible  
4 rhetoric.

5 And I will give one example, and some  
6 people might -- on this panel might disagree with me,  
7 which is the report in The New York Times about the  
8 transgender -- the leak of a proposed regulation. And  
9 then we read over it, that this had erased  
10 transgendered people.

11 Well, I don't think that the power of the  
12 federal government is so great that the leak of a  
13 proposed regulation, we should take that as being such  
14 an assault on us. Let's kind of remember that the  
15 government is just one part of society.

16 And as Tony pointed out, there -- it's not  
17 always the most important part. So maybe we should not  
18 overreact to some of the things that the President,  
19 and other people, the administration say.

20 CHAIRMAN LHAMON: Dr. Schlanger?

21 PROFESSOR SCHLANGER: I just -- there are  
22 things that the federal offices of civil rights need  
23 to get the job done. And if they don't have them, and  
24 this Commission can help them get them, then maybe  
25 that will help now and maybe it will help later. But

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1 it is certainly worth doing.

2 CHAIRMAN LHAMON: Thank you.

3 Commissioner Narasaki?

4 COMMISSIONER NARASAKI: Sorry. I have  
5 questions for a few of you. The first question is to  
6 Mr. Decker. In your statement, you say some DOJ  
7 investigations have been closed with settlements when  
8 -- I'm paraphrasing -- when prior administrations  
9 would have required consent decrees, or something to  
10 that effect. What did you mean and which cases were  
11 you talking about?

12 MR. DECKER: We understand from our  
13 contacts at the Department of Justice that the current  
14 Attorney General is very averse to consent decrees,  
15 and we've seen I think their attempt to try to remove  
16 some consent decrees that were already negotiated  
17 around police issues.

18 And so as a result, when they are settling  
19 cases, and they are settling some cases, they seem to  
20 go for settlement agreements, which are -- you know,  
21 does settle the case, but the consent decrees I think  
22 are stronger, enforceable, and it gives those of us on  
23 the ground the ability to monitor what is going on.

24 So, again, this sort of like softening of  
25 pulling back from really hard enforcement and trying

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1 to take a less strict rule. And I think that is  
2 clearly making it more difficult for those advocates  
3 on the ground to utilize that. Certainly, all that we  
4 talked -- there has been a lot of talk in the previous  
5 panel and here about losing guidances and -- right.

6 The guidances are such, but, remember,  
7 those are the things that we can wave in front of an  
8 employer or a state agency and say, "If you don't  
9 abide by this guidance, then you're going to be  
10 subject to possibly us or the Department of Justice  
11 taking you to court.

12 They are incredibly helpful in making more  
13 efficient the enforcement of these civil rights.

14 COMMISSIONER NARASAKI: Okay. Thank you.

15 And then, Ms. Kendrick, so the further --  
16 I can't -- AFFH --

17 MS. KENDRICK: Affirmatively Furthering --

18 COMMISSIONER NARASAKI: Furthering Fair  
19 Housing.

20 MS. KENDRICK: -- Fair Housing.

21 COMMISSIONER NARASAKI: These acronyms get  
22 to me. So it appears that HUD will not be  
23 aggressively implementing that. So what could HUD do,  
24 if it's not going to be aggressively trying to enforce  
25 that?

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1                   We understand they are talking about  
2 housing mobility toolkit, resident education housing  
3 vouchers, listening to landlords. What would you be  
4 telling them, okay, if you're not going to be doing  
5 what the prior administration was thinking about  
6 because you dislike them intensely, what could we be  
7 saying maybe you could consider doing?

8                   MS. KENDRICK: Instead of enforcing, using  
9 enforcement tools, education. Because it's important  
10 that, you know, whether you get to where you want to  
11 go through litigation or you get through it by  
12 education, it's certainly important that communities  
13 understand what affirmatively furthering fair housing  
14 is and what it is not.

15                   So using the tools to educate the  
16 communities about what they should be doing under the  
17 statute, because it's a statutory requirement, is  
18 important. If you're not going to go out and enforce,  
19 you're not going to go out and do the inspections,  
20 you're not going to review plans right now, then go  
21 out and educate the communities.

22                   Now, I am certainly one of those people  
23 who want to believe that people want to do right,  
24 communities want to be better. Then let's let the  
25 communities be better by giving them the tools that

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1 they need through education, guidance, policy  
2 statements, if we're not going to have a rule.

3 CHAIRMAN LHAMON: May I just follow up on  
4 that? And I will -- I'm not cutting you off.

5 COMMISSIONER NARASAKI: Okay. You scared me  
6 there.

7 CHAIRMAN LHAMON: Sorry.

8 COMMISSIONER NARASAKI: I have so much more  
9 to go.

10 CHAIRMAN LHAMON: Is your interest in  
11 education given where we are, or is your interest in  
12 education -- would that be sufficient, do you think?  
13 I'm surprised at that respond given that it's five  
14 decades since the Fair Housing Act has been enacted,  
15 and the community desire to affirmatively further fair  
16 housing either has or has not been present over those  
17 five decades, but the requirement has been.

18 And so if we are a place where we're not  
19 planning to enforce but we are hoping to rely on  
20 education as a way to get us there, that feels like a  
21 faint hope to me and I'm just curious if it does to  
22 you and you're grasping at that straw because it's the  
23 one available.

24 MS. KENDRICK: It's not. It's -- when I was  
25 there, and I guess -- I said I tried. It was one of

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1 those things I tried to get a rule out, couldn't get a  
2 rule out before I left. We ran out of time.

3 And so if we had given the communities  
4 tools 50 years ago, what does affirmatively furthering  
5 fair housing mean? It means different things to  
6 different communities at different times. What does it  
7 mean? What should it mean?

8 If we had given them those tools, we had  
9 educated them 50 years ago, we wouldn't be sitting  
10 here talking about using these tools to enforce right  
11 now. And I think that those of us who were -- and I  
12 take blame, too -- not a lot.

13 (Laughter.)

14 CHAIRMAN LHAMON: That if we had taken the  
15 time 50 years ago to explain, what does affirmatively  
16 furthering fair housing mean, because the communities  
17 wanted that information. We go; we do the  
18 investigations; we say you're not affirmatively  
19 furthering fair housing here in Pittsburgh. You say  
20 you're not affirmatively furthering fair housing here  
21 in D.C., but it means different things, and what does  
22 it mean?

23 CHAIRMAN LHAMON: So I take the point that  
24 guidance is in itself a useful end and there may be  
25 another tool.

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1                   But I'm sorry, I've cut you off.  
2 Commissioner Narasaki?

3                   COMMISSIONER NARASAKI: It's okay. So I  
4 see Professor Francois, but I have a couple of things  
5 before she cuts me off, but I will circle back to you  
6 if she lets me have time.

7                   So I do want to respond to Professor  
8 Melnick, because you talk about not overreacting. But  
9 I have to say when the President of your country tries  
10 to erase your very existence, I don't think there is  
11 an overreaction to that. That, in a democracy, is very  
12 powerful.

13                   I know after 9/11 when President Bush  
14 stood up and said, "You should not blame all Muslims,"  
15 that meant everything to the Muslim community. Of  
16 course, the policies afterwards, unfortunately,  
17 undermined some of that, but the fact that he did that  
18 was incredibly comforting to my staff who were under  
19 attack.

20                   So I just want to say that be careful when  
21 you say that, because there is a lot of power there.

22                   So end of lecture.

23                   PROFESSOR SCHLANGER: Can I just say --

24                   COMMISSIONER NARASAKI: Professor Schlanger  
25 -- you're going to take up my time, and I don't want

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1 to be rude, but she is going to bang the gavel on me.

2 So, Professor Schlanger, thank you so much  
3 for laying out actual recommendations, because we are  
4 always begging for a roadmap. And I will date myself  
5 by saying that I was around leading an organization  
6 opposing the creation of the Department of Homeland  
7 Security because we were concerned about this issue,  
8 about this kind of power and the intermixing of  
9 immigration services with this.

10 So, and the office was set up because of  
11 that concern. So it is great to be checking in now to  
12 say what is not working. And I feel that you have  
13 given us a really solid roadmap to follow, so I just  
14 wanted to -- I know you got cut off, so I just wanted  
15 to give you a few seconds if there were some other  
16 things you wanted to explain to us about why your  
17 recommendations were so important.

18 PROFESSOR SCHLANGER: I think I should say  
19 thank you because I think it was your organization  
20 that created CRCL, and I think it was a good move. I  
21 think it was helpful, not overwhelmingly helpful, not  
22 solving the problem.

23 COMMISSIONER NARASAKI: Yes. Sadly, we have  
24 found out not sufficiently helpful.

25 PROFESSOR SCHLANGER: Not sufficiently

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1 helpful, but better than nothing, and I think that's  
2 what we try to do, right? What I would say about an  
3 office like CRCL -- and to be clear, CRCL is not the  
4 only one. A bunch of the intelligence community  
5 elements have civil liberties offices. The Department  
6 of Agriculture has a watchdog OCR in some respects.  
7 It is not -- it is not a singular model.

8 I just don't think people have spent  
9 enough time thinking about how different that is than  
10 what happens in the Department of Education, what  
11 happens in the Department of Justice, what happens --  
12 right?

13 It's a very different model, and I think  
14 that some real thinking about it, and how do you let  
15 it play this role, being very careful always that if  
16 you -- to balance influence, the threat of influence,  
17 the threat of impotence, right, and the threat of  
18 cooptation, and just being very conscious of that.

19 And so I think that the statute that I  
20 understand perhaps you helped write, that runs through  
21 what is needed, that I have pointed to in my  
22 testimony, I think that statute lays it out, but it's  
23 toothless. And I think that giving it maybe not like  
24 really sharp teeth, but baby teeth, I think that would  
25 be a really good thing.

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1 COMMISSIONER NARASAKI: Great. Thank you.

2 And with the Chair's indulgence, if I  
3 could let the professor respond.

4 PROFESSOR FRANCOIS: I just wanted to go  
5 back to the HUD point, but I'm happy to defer if in  
6 fact this is something that has already been covered  
7 by a prior panel.

8 With respect to your question about what  
9 could be done and the enforcement, I'm just curious  
10 whether or not we have already covered the Secretary's  
11 power under 3610 this morning, because under 3610 the  
12 Secretary has the power to initiate actions and  
13 complex investigations.

14 And these are particularly powerful  
15 because of the role that the Secretary plays, and it  
16 helps to remember that in 2009 there were 12 such  
17 actions that the Secretary of HUD initiated. In 2010,  
18 there were 10. In 2011, eight. In 2013 and '12, they  
19 averaged 18. And same numbers in general in '15 and  
20 '14.

21 It dropped in '16 because it was an  
22 election year. In 2017, and so far there has only been  
23 one -- just a single one -- and it has pretty sort of  
24 -- it got a lot of play in the news, but it goes to  
25 the point that I was trying to make. It matters when

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1 the Secretary initiates these actions because the  
2 Department plays an outside role in the way the law  
3 develops.

4 The fact of the matter is the very first  
5 federal civil rights agency that was defund -- and  
6 almost killed off was the EEOC in the early '80s. And  
7 when that happened, you could actually track very  
8 specifically how the number of cases where the EEOC  
9 appeared in federal court as a party simply dropped  
10 precipitously.

11 And as a result, it led for a while to the  
12 freezing of development of Title VII, and I think the  
13 same thing is happening in HUD. So my suggestion would  
14 be, and of course there is no way to enforce it, what  
15 could the Secretary do other -- do other than these  
16 actions?

17 I think there is this tremendously  
18 powerful tool that the Secretary himself has at his  
19 disposal, but clearly they decided not to use it.

20 CHAIRMAN LHAMON: Thank you.

21 VICE CHAIR TIMMONS-GOODSON: Ms. Kendrick,  
22 you're looking puzzled. And Professor Francois was  
23 getting at what -- was saying what I was trying to get  
24 at in an earlier question. When you have limited  
25 resources, doesn't it make more sense to go --

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1 something systemically that will take care of  
2 situations as opposed to one at a time, individual.

3 But your -- the response that I got from  
4 the other HUD person didn't -- anyway, didn't click,  
5 but you're looking confused. Is something that he is  
6 saying not making sense?

7 MS. KENDRICK: Oh, no. I used to use  
8 Secretary-initiated actions on a regular basis. But  
9 when you have a Secretary and an administration that  
10 has withdrawn a rule, then to use -- you can't use a  
11 Secretary-initiated action to take actions against  
12 these communities because the Secretary has already  
13 made a decision that he is not going to enforce. So  
14 there is no -- there is no connection there.

15 VICE CHAIR TIMMONS-GOODSON: Okay. Thank  
16 you.

17 MS. KENDRICK: But if you want to, instead  
18 of doing -- and I talked earlier about these -- the  
19 complaints, you know, you focus on all of these  
20 complaints, instead of using these individual  
21 complaints, which are important, especially in  
22 disabilities are very important, use the Secretary-  
23 initiated actions to do investigations on systemic  
24 issues that make a powerful impact across the country.

25 VICE CHAIR TIMMONS-GOODSON: And possibly

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1 more bang for your buck.

2 MS. KENDRICK: Absolutely. Absolutely.

3 VICE CHAIR TIMMONS-GOODSON: With limited  
4 budgets.

5 MS. KENDRICK: Absolutely.

6 MR. DECKER: I would -- yeah, I certainly  
7 agree that systemic action is far more efficient.  
8 However, given what my colleague said, initially, in  
9 the beginning of the administration, a lot of people,  
10 especially in the disability community, said don't  
11 file complaints at DOJ, don't file complaints at OCR.  
12 They all -- they will mangle them; they will be bad.

13 And when we went back and said no, we've  
14 got to file those individual complaints; otherwise,  
15 there won't be any complaints, then that will be  
16 argument for the fact that there is no work. That will  
17 be the argument for decreasing funding. So as much as  
18 I'd like to see systemic work, I do feel like we have  
19 to keep pushing all of those different Office of Civil  
20 Rights with individual cases to maintain -- to  
21 maintain them through this period. Otherwise, I think  
22 they will be hollowed out and gone by the time we have  
23 some different administration in place.

24 CHAIRMAN LHAMON: Thank you. Professor  
25 Francois, I'm mindful of time. I know you have a very

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1 hard stop at 4:00. I believe we might let the rest of  
2 the panel stay a little bit past when we said.

3 So I'd like to ask you a few questions.  
4 You said in your testimony, which I found very  
5 compelling -- and I will say I'm hoping that you will  
6 be able to submit in writing what you shared with us  
7 today because I was trying very hard to track it, but  
8 I'm not sure I did.

9 PROFESSOR FRANCOIS: I don't want to tell  
10 tales out of school, but I didn't get the Commission's  
11 invitation. And one of your colleagues called me  
12 literally Monday night.

13 CHAIRMAN LHAMON: I know. I am so grateful  
14 to her because I sent you the invitation myself, so  
15 I'm so sorry -- we need to have a better address for  
16 you.

17 PROFESSOR FRANCOIS: It went into my spam  
18 folder.

19 CHAIRMAN LHAMON: But if you wouldn't mind  
20 submitting in writing --

21 PROFESSOR FRANCOIS: Absolutely.

22 CHAIRMAN LHAMON: -- that would be  
23 terrific. Thank you.

24 One of the things that -- that you said I  
25 think was that the role of civil rights enforcement

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1 cannot be fulfilled by private litigants. And I -- I  
2 think that's such a crucial piece, and I'm wondering  
3 if you can expand on it, and, in particular, I'm  
4 hoping that Mr. Decker could follow those remarks,  
5 because, Mr. Decker, your organization, as you said,  
6 does so much work every day trying to enforce civil  
7 rights laws. And I heard you make such a strong  
8 argument for the need for federal enforcement in  
9 addition.

10 And so if the two of you can speak to what  
11 it is that the federal government brings to that  
12 enforcement that is not replicatable even by the  
13 valiant efforts of Mr. Decker and his organization, I  
14 would appreciate it.

15 PROFESSOR FRANCOIS: Of course. Obviously,  
16 there is a role for private litigants to play, but  
17 there are a number of reasons why private litigants  
18 were never enough. By definition, private litigants  
19 have few resources. It is actually very difficult for  
20 private litigants to obtain representation because it  
21 simply doesn't pay.

22 Secondly, the private litigants has an  
23 incentive on assembly, so that when they bring a case,  
24 to settle the case according to terms that benefit  
25 them, rather than any term that will benefit the

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1 system overall, but beyond that I think it is  
2 important to understand that when the federal  
3 government said that when these agencies come, they  
4 come into the process with a built-in level of  
5 credibility.

6 They are more likely to be heard. They are  
7 more likely to shape the law. And I do understand that  
8 it is very important for the -- for both sides to play  
9 a role, both private litigants and the government. But  
10 unless the government agencies play an active role in  
11 civil rights enforcement, the law is never going to  
12 develop the way it was originally intended, and public  
13 litigants are unable to carry the load on their own.

14 CHAIRMAN LHAMON: Thank you.

15 MR. DECKER: I agree with most of that, but  
16 I think it's a little -- somewhat more complicated.  
17 Clearly, we have seen litigants try to use, for  
18 example, the ADA for their own purposes and to settle  
19 a case at a very lower level.

20 We actually began intervening in some of  
21 those cases because we were afraid that these class  
22 actions were going to get settled by courts at a very  
23 low level, and so we confused the judges by showing up  
24 saying, "Wait a second. We don't think this is a good  
25 settlement."

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1                   But, again, similar to my colleague at the  
2 end of the table, I think we are now reaching out to  
3 pro bono law firms, and we're reaching out to the  
4 private sector to say this is -- we need you more than  
5 ever.

6                   You're absolutely right. The Department of  
7 Justice coming into our cases is the gorilla in the  
8 room with resources and clout and power and they are  
9 usually extremely important in our cases. They are  
10 disappearing, and so we are just going to have to find  
11 other resources to pull in.

12                   But you're right, we have limited  
13 resources and we're not going to be able to do it  
14 alone. But I'm hopeful that we can turn to the private  
15 Bar at this point in our history to try to get them to  
16 step up to the plate.

17                   CHAIRMAN LHAMON: Thank you.

18                   Professor Schlanger, I echo my fellow  
19 Commissioners. Thanks to you for the very concrete  
20 recommendations that are enormously helpful to us as  
21 we try to imagine what recommendations we ought to  
22 make.

23                   In particular, you talk about the need for  
24 sufficient resources for offices, and I wonder if you  
25 have a view about both internal watchdog OCR offices

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1 and OCRs with other enforcement roles as well, the  
2 impact on those offices of the -- of the repeat  
3 requests to reduce our budgets that we've seen so far  
4 in both budgets proposed in this administration.

5 PROFESSOR SCHLANGER: There is no question  
6 that the budget process is always an internal war,  
7 right? And everybody is sort of asking for resources.  
8 And that's just part of the normal dynamic. That said,  
9 the arguments that OCRs are making for budgets are not  
10 the normal. They are not just normal participants in  
11 that war.

12 They are taking it in a budgetary  
13 environment where agencies -- take DHS -- are getting  
14 massive, massive increases, they are getting these  
15 decreases. So it does seem like it would be useful to  
16 develop some kinds of benchmarks that might be used,  
17 maybe a little bit less for the -- for the watchdog  
18 OCRs, because that's very specific to the agency.

19 But take Title VII. Excuse me. I didn't  
20 mean Title VII; Title VI. I started DHS's first title  
21 VI -- I made the first Title VI hires at main DHS.  
22 That's crazy, right?

23 I mean, like think about how many billions  
24 and billions and billions of dollars are grants, and  
25 we had no Title VI operation at all.

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1                   Now, FEMA had one. I don't mean to pretend  
2                   that there was nothing going on, but FEMA's  
3                   concentration was on the disaster-related grant-  
4                   making, which is not the same as the immigration and  
5                   policing and other kinds of law enforcement-related  
6                   grant-making. And the result has been that there has  
7                   basically -- I did stand up a small office, although I  
8                   don't -- it's suffering now I gather. But it has to be  
9                   that you could come up with a sort of percentage of  
10                  billions of dollars, right? A number per million that  
11                  is the right amount of money for Title VI enforcement.

12                  And it seems to me that that would be a  
13                  valuable enterprise, that there could be a benchmark.  
14                  I don't know what the number would be honestly, having  
15                  experienced how hard it was to try to hire four  
16                  people, which is what I was allowed to try to hire,  
17                  four people for all of those billions of dollars.

18                  I know the number isn't four. All right.  
19                  That I know. But there -- that would be a useful  
20                  exercise, right, so that there would be some external  
21                  reference, so that the OCRs when they are asking for  
22                  more money are not thought to be engaged in the  
23                  ordinary arm wrestle that is the federal budgetary  
24                  process. It would be useful to come up with a  
25                  benchmark.

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1           On the agency -- on the internal side, on  
2           the watchdog side, I think probably a process  
3           improvement is better than a benchmark. I think the  
4           process improvement that I have proposed to you is  
5           that the watchdog OCR gets some independent voice as  
6           to its own budget and its own budget justification,  
7           and I think that probably makes more sense than a, you  
8           know, numbers of people per thousand kind of -- kind  
9           of benchmark.

10           But I do think on Title VI, in particular,  
11           we ought -- at this late stage of Title VI  
12           enforcement, we ought to be able to benchmark that.  
13           And then an agency that doesn't have it could be  
14           scolded and held to account for under resourcing its  
15           Title VI efforts.

16           But I don't know what the benchmark would  
17           be. I think that would be an interesting -- I think  
18           that would be an interesting project for a combination  
19           of budget people and political scientists to try to  
20           come up with that benchmark.

21           CHAIRMAN LHAMON: Professor Melnick, she is  
22           giving you homework, but thank you.

23           I am going to follow up on that with a  
24           question specific to you, but then also I am hoping  
25           that each of the panelists might speak to it. On an

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1 earlier panel, the current person who is leading the  
2 CRCL at DHS said that in response to a very high  
3 volume of complaints that come in on a particular  
4 topic, the office is choosing representational samples  
5 as a way of thinking about how to go after  
6 investigating those particular issues.

7 And the numbers that she cited were I  
8 think approximations, but that there were 3,000  
9 complaints that came in on a particular topic and they  
10 chose a representational sample of 23 to then figure  
11 out what to investigate.

12 And I wonder what you think about that as  
13 an approach to investigating, both in the watchdog  
14 office function where you're not actually adjudicating  
15 the rights of a person in a particular case but trying  
16 to make policy for the office.

17 And then panel-wide I am hoping that you  
18 all can talk about whether that is a wise approach,  
19 where you are trying to adjudicate the rights of a  
20 particular person and the wisdom of that kind of  
21 approach.

22 PROFESSOR SCHLANGER: Right. So three per  
23 thousand seems a little low to me.

24 CHAIRMAN LHAMON: Twenty-three to be fair.

25 PROFESSOR SCHLANGER: What?

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1 CHAIRMAN LHAMON: Twenty-three.

2 PROFESSOR SCHLANGER: Twenty-three. Thank  
3 you. Okay. Right. I think that for a watchdog OCR that  
4 is using complaints as a method of doing two things,  
5 because that's -- that's what is going on, right? The  
6 watchdog OCR uses the complaints as -- one, as a --  
7 kind of a visibility check. It's sort of a fire alarm,  
8 right? Like, if we're getting a complaint that seems  
9 like it's worth looking into, that's one thing.

10 And, number two, it uses it as an external  
11 bolster to its legitimacy. Somebody is complaining  
12 about this. We didn't just make this up, right? This  
13 is -- this is like a real external thing that is  
14 making us look into this. That is the combination of  
15 what is being done by those external complaints.

16 I think that coming up with a system for  
17 picking representative complaints is fine. Honestly, I  
18 actually think you might be able to do -- you would  
19 want to do something systemic in any event, right? So  
20 you would combine a sort of systemic investigation  
21 with some individuated things. So if you're doing a --  
22 if you're doing an individuated -- so if the issue,  
23 for example, is deaths in detention, which is a  
24 burning issue, a burning civil rights issue for DHS,  
25 right, people dying in detention like that's a civil

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1 rights crisis, if people are unnecessarily dying in  
2 detention, you'd want to investigate every one.

3 But if the -- if the problem is bad  
4 medical care in detention, but not deaths in  
5 detention, then you might sort of say, let's look at  
6 what is coming in, let's look at where it's coming in  
7 from, let's look at the kinds of trends, and let's do  
8 something systemic taking account of all of that as a  
9 quasi-empirical sort of base for that systemic  
10 investigation. And that seems to me perfectly  
11 appropriate.

12 CHAIRMAN LHAMON: Thank you.

13 MR. DECKER: Could I -- I also -- again,  
14 not that I'm very happy about the current condition,  
15 but I do think, again, we have to get more creative,  
16 and I think these panels today have been, you know,  
17 incredibly broad. I'm very happy at the way, you know,  
18 Vanita Gupta, The Leadership Conference, is trying to  
19 pull the civil rights community together to think  
20 together.

21 So, for example, the immigration community  
22 is very thrilled that we were able to use our access  
23 authority to get into those detention centers.

24 Prisoner right groups are incredibly  
25 constrained from being -- I can get into prisons. We

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1 have access to any prisoner with a disability, and so  
2 they have been coming to us to work together to see  
3 how we can improve conditions in prisons through the  
4 disability lens. And I'm sure there is a reverse  
5 situation, so trying to piggyback on each other's  
6 strengths and rules to try to, you know, skin this  
7 cat, if you will, as we hope for a change in the  
8 weather I guess.

9 So I'm hoping that we have that kind of  
10 creativity and start thinking about that.

11 CHAIRMAN LHAMON: Thank you.

12 I see that we are right at our time, so  
13 hearing no further thoughts, I thank each of these  
14 panelists. I will say, again, it's likely that our  
15 staff have follow-up questions. I hope that you might  
16 be willing to answer them when we ask you follow-up  
17 questions. And I am so grateful to you for taking your  
18 time and sharing your expertise with us today. So  
19 thank you very much.

20 With that, that will conclude until 5:00  
21 p.m. when we will reopen for public comment. And I  
22 invite folks who are present who are interested to  
23 submit public comment to sign up and to return at 5:00  
24 p.m. Thank you.

25 I am told all participants in the open

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1 public comment period should report back at 4:45 p.m.,  
2 so that we can give you instructions for how to do  
3 that. Thank you.

4 (Whereupon, the above-entitled matter went  
5 off the record at 3:59 p.m. and resumed at 4:58 p.m.)

6 CHAIR LHAMON: Welcome back, everyone.  
7 We're going to now proceed with the open public  
8 comment session.

9 **OPEN PUBLIC COMMENT SESSION**

10 CHAIR LHAMON: A few opening instructions,  
11 which I think have been provided to each participant,  
12 but I'll just say them so we all have them, too.  
13 Please tailor your remarks to the topics of today's  
14 briefing, which is federal civil rights enforcement.  
15 Please state your name for the record.

16 Please note that the U.S. Commission on  
17 Civil Rights has a policy not to defame, degrade, or  
18 intimidate any person.

19 And this comment period is a time for  
20 commissioners to listen, not to engage in questions or  
21 discussion with the presenters. We appreciate your  
22 testimony. We're very eager to hear it. We will not  
23 take your short time with questions or with dialogue.

24 I will be typing fiendishly. And so, when  
25 you're hearing that, it's just because I'm trying to

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1 record what you say.

2 You will have three minutes to speak,  
3 which will be measured by a timer. Please note the box  
4 with the three lights. Here, when the light turns from  
5 green to yellow, that means that one minute remains.  
6 And when the light turns red, you should conclude your  
7 statement. And if you do not conclude, I will conclude  
8 it for you.

9 If you have not finished or you would like  
10 to submit additional information, we encourage you to  
11 do so by mailing or emailing your written submissions  
12 to us at the address provided on your information  
13 sheet by Monday, December 17, 2018 when our record  
14 will close.

15 While waiting for your turn, please sit in  
16 the numbered chair that corresponds to your ticket.  
17 And in order to reduce time between speakers, we ask  
18 you to move forward to microphones before the speaker  
19 in front of you has finished. And a staff member will  
20 direct you when to come forward.

21 If you need to step out briefly before it  
22 is your turn to speak to use the restroom or  
23 otherwise, please let a staff person know so you don't  
24 lose your spot.

25 Sign interpreters will be signing during

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1 the presentation. They are to my right. And if you  
2 have a question, please ask a staff member.

3 And note that some of my fellow  
4 Commissioners, including the Vice Chair, have flights  
5 to catch and so might step out a few minutes early.  
6 We apologize for the interruption. Please do continue  
7 your statement unless I direct you otherwise.

8 And with that, I invite our first speaker  
9 to begin.

10 MS. JACOBS: Madam Chair and members of the  
11 Commission, I'm Lisalyn Jacobs, consultant and adviser  
12 to Ujima Incorporated, the National Center on Violence  
13 Against Women in the Black Community.

14 Ujima is also a member of the National  
15 Task Force to End Sexual and Domestic Violence, a  
16 national coalition that advocates for survivors of  
17 sexual and domestic violence, dating violence, and  
18 stalking at the federal level.

19 Towards the end of my testimony I will  
20 share some coalition concerns regarding the  
21 vulnerability of incarcerated women, the transgender  
22 community, and immigrant survivors. I will also submit  
23 several NTF statements connected to these concerns for  
24 the record.

25 I begin by commending to the Commission's

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1 attention and will be submitting for the record a  
2 recent publication by the Center for Law and Social  
3 Policy, Unjustice: Overcoming the Trump  
4 Administration's Rollbacks on Youth Justice. It raises  
5 several concerns that we share.

6           Regarding juvenile justice, our parent  
7 organization, the D.C. Coalition Against Domestic  
8 Violence, leads a girls' coalition in D.C. We're  
9 concerned by the failure of the administration to  
10 maintain the vital efforts to reform the school-to-  
11 prison pipeline.

12           Without resources, leadership, and the  
13 kind of policy guidance states received under the  
14 previous administration, girls and boys of color will  
15 be at increased and disproportionate risk of school  
16 discipline and being shunted into the prison pipeline.

17           In terms of policing reform, the  
18 Department of Justice has rolled back its work to  
19 improve law enforcement accountability by obtaining  
20 consent decrees with localities where federal  
21 oversight is warranted.

22           We urge the administration to use its  
23 civil rights investigatory power to hold police  
24 departments accountable where appropriate to the end  
25 that communities will be safer and enjoy higher levels

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1 of community trust and engagement with law  
2 enforcement.

3 The Congress should also regularly use its  
4 oversight powers to engage DOJ on this important  
5 issue.

6 Regarding the priorities of the National  
7 Task Force to End Sexual Violence, with respect to  
8 incarcerated women, we commend to the Commission's  
9 attention the Dignity Act, S.1524, worked on by women  
10 reentering from federal incarceration and focused on  
11 improving basic conditions.

12 The NTF is working to get some of  
13 Dignity's provisions enacted as part of the  
14 reauthorization of the Violence Against Women Act,  
15 H.R.6545.

16 Finally, and in the interest of time, we  
17 share with the Commission the NTF statement condemning  
18 the Trump administration's efforts to harm the  
19 transgender community and several statements on the  
20 impact of the Trump administration's immigration and  
21 asylum, and in particular with respect to recent  
22 suggestions, statements that are in support of the  
23 human rights of immigrant survivors of violence.  
24 Thank you so much.

25 CHAIR LHAMON: Thank you. Our second

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1 speaker.

2 MS. MCGERALD: Members of the Commission,  
3 thank you for this opportunity. My name is Katherine  
4 McGerald, and I'm the newly appointed Executive  
5 Director of SurvJustice, a national not-for-profit  
6 organization working to increase the prospect of  
7 justice for survivors of sexual violence.

8 We provide legal assistance to survivors  
9 of sexual violence in campus proceedings, as well as  
10 civil and criminal legal systems. In addition to these  
11 public comments, SurvJustice will submit more detailed  
12 written comments.

13 Title IX was instituted to protect equal  
14 access to education. On September 22, 2017, the  
15 Department of Education issued a new Dear Colleague  
16 letter pertaining to Title IX that weakened Title IX  
17 enforcement and fails to protect survivors' civil  
18 right to access their education.

19 This new policy imposed the following  
20 requirements on schools that weakened Title IX  
21 enforcement and protections for sexual harassment  
22 survivors in many ways, including but not limited to,  
23 one, eliminating the requirement to investigate  
24 assaults or harassments that take place off campus.

25 Think back to your own time in school and

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1       how many things actually occurred off of the campus of  
2       the school, whether it was college, secondary  
3       education, or anything. Off campus assaults or online  
4       harassment wreak just as much havoc on a student's  
5       education as on-campus assaults. It does not require  
6       schools to timely resolve reports of sexual harassment  
7       or violence.

8               Permitting schools to resolve complaints  
9       concerning sexual assaults through mediation. During  
10       my career, I have litigated a significant number of  
11       cases involving sexual violence and intimate partner  
12       violence in family court in New York. I have never  
13       recommended that one of my clients in those situations  
14       utilize mediation.

15               Eliminating the caution against schools  
16       relying on criminal investigations as a substitute for  
17       their own independent investigations and  
18       determinations. Eliminating the prohibition on  
19       permitting a respondent to question a survivor's  
20       sexual history. Eliminating the requirement that  
21       schools provide appellate rights to both parties, if  
22       provided at all, and instead, allowing schools to  
23       provide appellate rights to only the alleged  
24       perpetrator. Eliminating the strong discouragement to  
25       schools from permitting alleged perpetrators to

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1 directly cross examine complainants.

2 As a former prosecutor, I understand the  
3 importance of cross examination. But there are ways to  
4 limit re-traumatization and re-victimization to  
5 survivors of sexual harassment or assault.

6 In closing, I urge this Commission to look  
7 at how the September 2017 Title IX policy changes  
8 weaken Title IX enforcement and fails to protect  
9 survivors' civil right to access their education.

10 Additionally, in the near future, the  
11 current administration's new rules will be unveiled.  
12 And I seek this Commission to seek input about the  
13 impact of the proposed rule. Thank you.

14 CHAIR LHAMON: Thank you. Our third  
15 speaker.

16 MS. DOOLEY: Good afternoon. My name is  
17 Nicole Dooley, and I work as policy counsel at the  
18 NAACP Legal Defense and Educational Fund.

19 Since its founding in 1940, LDF has used  
20 litigation, policy advocacy, public education, and  
21 community organizing strategies to achieve racial  
22 justice and equity in the areas of education, economic  
23 justice, political participation, and criminal  
24 justice.

25 We will submit more extensive written

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1 comments after today's hearing, but I want to give a  
2 brief overview of the effect that the current  
3 administration's attack on civil rights has had on  
4 communities of color.

5 The administration is making a concerted  
6 effort to dismantle diversity efforts from K through  
7 college by withdrawing guidance on the voluntary use  
8 of race to achieve diversity in schools and supporting  
9 a lawsuit challenging the consideration of race in  
10 college admissions.

11 The administration seemingly plans to  
12 withdraw guidance advising schools and districts on  
13 the non-discriminatory administration of school  
14 discipline, a move that will be inconsistent with the  
15 Department of Education's own findings that decades  
16 old racial disparities in school discipline persist.

17 And the department has delayed  
18 implementation of significant disproportionality  
19 regulations, abdicating its responsibility to protect  
20 students from widespread and well-documented race-  
21 based disparities in the identification, placement,  
22 and discipline of students with disabilities.

23 HUD has sought to weaken several roles  
24 aimed at ending discrimination and segregation in  
25 housing. One provides jurisdictions with a roadmap and

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1 tools for compliance with the Fair Housing Act and  
2 included measures for accountability.

3 A second, which was reinstated after a  
4 successful legal challenge to HUD's proposed  
5 suspension, aims to gives families the purchasing  
6 power to move to higher opportunity neighborhoods  
7 instead of being confined as segregated and  
8 impoverished ones by improving the way that the value  
9 of housing vouchers is calculated.

10 The Department of Justice has become this  
11 administration's voter suppression agency, siding with  
12 Texas in an effort to impose a discriminatory photo ID  
13 scheme and with Ohio in an effort to unfairly purge  
14 voters.

15 The administration created a so-called  
16 voter integrity commission, since disbanded after  
17 substantial resistance, to manufacture a record of  
18 voter fraud to both vindicate the president's false  
19 claims of voter fraud and to create an excuse to  
20 suppress the votes of black and Latinx voters.

21 The Department of Justice is also working  
22 to reverse years of advances in criminal justice. It  
23 has, for example, reinstated the long-discredited  
24 policy of harshly punishing individuals who commit low  
25 level, non-violent drug offenses and is trying to

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1       undermine consent decrees into a policing reform, even  
2       those to which DOJ is not a party.

3               These actions are not exhaustive but  
4       illustrative of the broad attack this administration  
5       has undertaken against all civil rights. We ask this  
6       commission to continue its mission of enhancing  
7       enforcement of federal civil rights through robust and  
8       independent fact finding. Thank you.

9               CHAIR LHAMON: Thank you. Next speaker.

10              MS. FERATI: Good afternoon, Commissioners.  
11       My name is Amina Ferati. I serve as Senior Director of  
12       Government Relations and Policy for the Asian and  
13       Pacific Islander American Health Forum.

14              For over 32 years, we at the Health Forum  
15       have sought to improve the health and well-being of  
16       the 23 million and rising Asian Americans, Native  
17       Hawaiians, and Pacific Islanders.

18              We work to advance health access and  
19       protect civil rights and healthcare for communities  
20       who are 60 percent immigrant and 30 percent limited  
21       English proficient. For my testimony today, I will  
22       focus on the intersection of health and civil rights.

23              Concerns about enforcement of civil rights  
24       are nothing new. However, they are substantially  
25       heightened under the current Trump administration. In

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1 particular, we must understand the complex chilling  
2 effect the administration is having with respect to  
3 individual civil rights and access to programs that  
4 they are legally entitled to.

5 At the Health Forum, we work with over 150  
6 partners in 28 states. And we have heard a number of  
7 stories that show the continuing lack of language  
8 access protected by federal civil rights laws for  
9 patients.

10 For example, we heard a story from a young  
11 woman originally from Indonesia who now calls  
12 Pennsylvania home. She has a T visa. She has a T visa  
13 because she survived human trafficking for over ten  
14 years.

15 Despite her experiences, she now has  
16 healthcare through Medicaid, something she should be  
17 able to rely on with strong federal civil rights  
18 protections.

19 However, even when she is able to access  
20 an interpreter using a language line at the doctor's  
21 office, her care is of lower quality than those who  
22 are English speakers. She is often not provided  
23 written instructions for follow-up and other critical  
24 information. This threatens her health and undermines  
25 the quality of her care.

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1           We have also worked with advocates  
2 nationwide over the past several years to enroll one  
3 million Asian Americans, Native Hawaiians, and Pacific  
4 Islanders in 50 languages in Affordable Care Act,  
5 Medicaid, and Children's Health Insurance Program  
6 coverage.

7           We have heard numerous stories from  
8 assisters and patients that language access continues  
9 to be a consistent barrier to getting health insurance  
10 and actually using it.

11           People have often never understood,  
12 limited English proficient people rather often have  
13 never understood when they have received legally  
14 required notices in the mail that impact their  
15 eligibility and enrollment and ability to see a  
16 doctor. This is because the notices are only sent in  
17 English and Spanish. They are not sent in Asian and  
18 Pacific Islander languages.

19           This context now is far more difficult, as  
20 AAPIs and other immigrants are afraid to enroll in  
21 services and access them given the chilling impact  
22 this administration's immigration and other actions  
23 targeting civil rights are having as a result of the  
24 proposed public charge regulation.

25           There are serious questions as well about

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1       how this administration is enforcing federal civil  
2       rights protections when it leaks proposals that seek  
3       to undermine or otherwise eliminate civil rights.

4               These are just some of the examples that  
5       we wanted to provide the Commission. Thank you.

6               CHAIR LHAMON: Thank you.

7               MS. GIBSON: Good evening, Madam Chair and  
8       Commissioners. My name is Candace Gibson. I am the  
9       staff attorney of the National Health Law Program.

10              Founded nearly 50 years ago, the National  
11       Health Law Program protects and advances the health  
12       rights of low-income and underserved individuals and  
13       families. We advocate, educate, and litigate at the  
14       federal and state levels. Thank you for the  
15       opportunity to provide comments today.

16              We are deeply troubled by the current  
17       administration's actions to undermine access to  
18       healthcare for low-income individuals and communities  
19       who already struggle to access care, particularly  
20       those who are from communities of color, including  
21       women of color, people living with disabilities, and  
22       LGBTQ individuals, and the federal protections they  
23       rely on to access care.

24              As one example, the Trump administration  
25       has encouraged states to impose additional barriers to

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1 Medicaid coverage including requiring individuals to  
2 work or complete work-related activities to maintain  
3 their coverage.

4 The administration has also allowed states  
5 to impose premiums on individuals with very low or no  
6 incomes and to punish individuals who do not pay their  
7 premiums by terminating their coverage and locking  
8 them out of Medicaid for up to six months.

9 Not only are these actions illegal but  
10 they are troubling. Low-income people rely on  
11 Medicaid, people like Charles Gresham (phonetic) in  
12 Arkansas, who has several serious health conditions  
13 including asthma, social anxiety, and a seizure order.

14 Medicaid coverage has allowed him to get  
15 the treatment and services he needs. Work  
16 requirements, antithetical to Medicaid's mission of  
17 providing medical assistance to eligible individuals,  
18 threaten his ability to maintain Medicaid coverage and  
19 to stay healthy.

20 In the past two months, over 8,000  
21 Arkansans have already lost their Medicaid coverage  
22 due to these requirements.

23 Further, this administration has approved  
24 similar draconian policies in other states. As of  
25 yesterday, the Department of Health and Human Services

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1 approved Wisconsin's waiver package.

2 In addition, we are concerned that the  
3 Office for Civil Rights at the Department of Health  
4 and Human Services lacks the leadership and resources  
5 needed to enforce federal civil rights protections.

6 In January of this year, the Office for  
7 Civil Rights established a new division, the  
8 Conscience and Religious Freedom Division. The  
9 division will have the authority to investigate and  
10 enforce federal refusal laws that allow providers to  
11 opt out providing the standard of care reproductive  
12 health services.

13 We are concerned that this division will  
14 take away needed resources from the enforcement of  
15 federal protections, such as Section 1557 of the  
16 Affordable Care Act, also known as the Healthcare  
17 Rights Law, which bans discrimination in healthcare,  
18 Title VI, and the Rehabilitation Act.

19 We are also troubled by the  
20 administration's proposed changes to undermine the  
21 healthcare rights law. Combined, these efforts will  
22 decrease access to coverage and care for individuals  
23 who already struggle to obtain the care they need.

24 The National Health Law Program will  
25 continue to protect the civil rights of Medicaid

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1 participants across the country so they can maintain  
2 their access to healthcare free of discrimination.

3 CHAIR LHAMON: Thank you.

4 MS. KEISLING: Thank you, Madam Chair and  
5 Commissioners. I'm Mara Keisling, the Executive  
6 Director of the National Center for Transgender  
7 Equality, advocating on behalf of two million  
8 transgender people in the U.S.

9 We are your neighbors, coworkers, and  
10 family members. And while we have made crucial and  
11 historic strides in visibility, too many of us still  
12 face widespread disrespect, discrimination, and  
13 violence.

14 In a survey we conducted of 28,000  
15 transgender adults, we found that one in three lives  
16 in poverty, one in eight has been homeless in just the  
17 past year, and one-third of those who saw a doctor  
18 were turned away or mistreated. According to another  
19 study, nearly nine in ten transgender students face  
20 routine harassment in school.

21 Such mistreatment touches every community.  
22 Earlier this year a school in Oklahoma was shut down  
23 for two days when a group of parents made violent  
24 online threats against a 12-year-old transgender girl  
25 named Maddy.

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1           On her first day of seventh grade she was  
2           told to use the staff bathroom but hadn't yet been  
3           told where it was. So naturally she used the girls'  
4           room. The threats started immediately and the family  
5           was forced to move away.

6           This extreme case illustrates the climate  
7           of fear endured by trans children and adults and  
8           fostered by this administration. The Trump  
9           administration has waged a constant campaign against  
10          the civil rights of trans people, including students  
11          like Maddy.

12          The administration has rolled back  
13          lifesaving guidance that was specifically requested by  
14          the nation's educators and childcare experts to help  
15          them understand protections for trans students. The  
16          Department of Education is also reportedly now just  
17          throwing out complaints from transgender students.  
18          They have taken the same approach to protections in  
19          employment and healthcare law.

20          And last week we learned that officials  
21          are pushing a coordinated strategy to deny the very  
22          existence of transgender people and erase us from  
23          federal law, requiring us to endure genetic testing  
24          before exercising our rights.

25          Trans people and our families are

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1 increasingly and understandably scared and angry  
2 because of these lawless attacks from the  
3 administration.

4 The president denigrates and attacks  
5 anyone he can paint as different or other, using lies,  
6 fear, and dangerous policies that put lives at risk.  
7 He has targeted asylum seekers, Muslims, survivors of  
8 sexual violence, people of color, women, and, yes,  
9 transgender people.

10 The administration has refused to enforce  
11 or even follow the law, ignoring binding appeals court  
12 precedence. At the same time, it has seized on outlier  
13 rulings from a single district court to justify its  
14 attacks.

15 They have ignored the voices of the  
16 medical community that recognize that trans people are  
17 real and that we should be respected for who we are.  
18 They have brushed off thoughtful, fact-based policies  
19 and court precedent with vague, sweeping memos, or as  
20 was the case for transgender service members, mere  
21 thoughtless tweets.

22 Despite all this, transgender people are  
23 incredibly resilient. Every trans person I know has  
24 lost something. And yet we continue to live as we are,  
25 knowing that the power of our truth is more valuable

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1 than a life in hiding.

2           Though the harm is already, though the  
3 harm already done is inescapable, it is not  
4 irreparable. The federal government has a unique role  
5 in protecting the civil rights of every person in this  
6 country including us.

7           I urge the Commission to stand with the  
8 courts and stand with the people in resisting this  
9 administration's efforts to permanently harm us and  
10 tell the administration that our civil rights won't be  
11 erased and transgender people won't be erased. Thank  
12 you very much.

13           CHAIR LHAMON: Thank you.

14           MS. KEISLING: Sorry about my cold.

15           CHAIR LHAMON: Sorry for you. Next speaker.

16           MS. ADAMS: My name is Amy Adams. I'm from  
17 Stafford County, Virginia. And I am the proud mother  
18 of three children.

19           My middle child, Morgan, is a transgender  
20 girl. That means that while she may have been  
21 designated male at birth, she has consistently  
22 identified as female for as long as she can remember.

23           Morgan transitioned four years ago at ten  
24 when she stopped living life as a boy and started  
25 living as her true self. She has many friends and

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1 family members who support her, as well as teachers  
2 and administrators at her public school who are on her  
3 side.

4 Morgan is a wonderful, amazing, and  
5 beautiful young woman. But because Morgan is  
6 transgender, I can't count on all of the adults in her  
7 life to be on her side.

8 I was forced to confront this sad fact  
9 early last month when Morgan's school had a lockdown  
10 drill to simulate an active shooter situation. My  
11 daughter was in gym class during the safety drill.  
12 And teachers were supposed to bring Morgan and her  
13 fellow students into the locker rooms until the safety  
14 drill was over.

15 Most of the students were quickly taken  
16 into the locker rooms, but my daughter was not.  
17 Instead, Morgan's teachers debated whether my daughter  
18 should go into the boys' locker room or the girls'.  
19 This was a result of the school's decision to exclude  
20 Morgan from using the girls' restrooms or locker  
21 rooms.

22 This drill was supposed to be about  
23 safety, student safety, my daughter's safety. Morgan's  
24 teachers ultimately sent her to sit in the hallway  
25 between the locker rooms. I want to repeat that.

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1 During a safety drill designed to protect Morgan and  
2 her fellow students in case of danger, my daughter was  
3 considered such a threat to her peers that she was  
4 left exposed and defenseless.

5 I don't blame my daughter's teachers. They  
6 weren't trained on how to work with transgender  
7 students. And fortunately since this incident  
8 happened, the school has been working to better  
9 support Morgan. But not all transgender students are  
10 lucky enough to attend schools that can learn from  
11 their mistakes.

12 This administration and Secretary DeVos'  
13 Department of Education have only made things worse  
14 for transgender youth by withdrawing the Obama  
15 administration's critical guidance on supporting  
16 transgender students in schools.

17 Adults, especially those working in  
18 schools, are expected to protect young people. This  
19 was not protection. This was the opposite of  
20 protection, actually putting my daughter in more  
21 danger.

22 Like any parent, I want to protect my  
23 children. Like any parent, I want my children to  
24 learn and grow and thrive at school. Unlike many  
25 parents, though, I am forced to watch as my daughter's

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1 civil rights are ignored and cast aside.

2 My daughter, Morgan, is 14. She wants to  
3 be a makeup artist when she's older. She is beautiful  
4 and hilarious and the strongest person I know. She is  
5 known as a leader at her school, always getting good  
6 grades and eager to help her peers.

7 Her peers love her and support her  
8 completely. And the education system failed her. The  
9 federal government failed her, just like it is failing  
10 transgender young people in schools across this  
11 country. Thank you.

12 CHAIR LHAMON: Thank you. The next speaker.

13 MS. MORITSUGU: Thank you. Good afternoon.

14 My name is Erica Moritsugu. I'm here on behalf of  
15 the Anti-Defamation League. Madam Chair and  
16 Commissioners, thank you for holding this briefing.

17 Over the years, the Commission has done  
18 trailblazing work on so many core issues for ADL,  
19 including hate crime response, campus antisemitism,  
20 civil rights, LGBTQ equality, and religious freedom.  
21 We've been honored to work in partnership with the  
22 Commission on these and other issues.

23 I'd like to use my time to try to elevate  
24 two issues for the Commission. First, ADL has been a  
25 leader in promoting effective response to hate crimes.

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1           In the aftermath of the murder of 11 Jews  
2           in a synagogue in Pittsburgh last Shabbat, the single  
3           worst incident of antisemitism in U.S. history, we  
4           wanted to emphasize that the Department of Justice and  
5           the FBI have done very good work in enforcing federal  
6           hate crime laws and in investigating a wide range of  
7           hate crimes in America, including several involving  
8           victims targeted for no other reason than their gender  
9           identify.

10           But the best way to address hate crimes is  
11           to address hate. The ADL has long argued that  
12           America's leaders must use their bully pulpits to call  
13           out hate. The language that our leaders use and the  
14           issues they prioritize affect how we treat one  
15           another, just like the laws they pass and implement.  
16           And on this, the administration has to date fallen  
17           short of what we have come to expect and what this  
18           nation needs.

19           The federal government cannot effectively  
20           address hate crimes if it is at the same time  
21           scapegoating Muslims, denigrating Hispanics,  
22           demonizing refugees and other marginalized communities  
23           through their words and actions, through policy and  
24           executive actions, promoting regulatory changes, and  
25           filing briefs that negatively impact the LGBTQ

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1 communities, especially the transgender community.

2 Second, the administration has repeatedly  
3 spoken about the importance of religious freedom. But  
4 it is promoting an unrecognizable redefinition of  
5 religious freedom, one in which the notion of  
6 religious liberty is no longer a shield to protect  
7 individual and institutional religious freedom, but  
8 instead is a sword designed to thwart anti-  
9 discrimination laws protecting women, LGBTQ equality,  
10 and religious minorities.

11 In the name of religious freedom, we have  
12 seen this administration promote government-funded  
13 employment discrimination, restrict access to health  
14 services, and attempt to restrict the rights of  
15 transgender Americans in the military, in public  
16 schools, in the workplace, and in prisons.

17 Again, we are very grateful that the  
18 Commission is examining these and other issues today.  
19 ADL intends to file more complete comments for your  
20 consideration in the coming weeks. Thank you.

21 CHAIR LHAMON: Thanks very much. The next  
22 speaker.

23 MR. KYE: Members of the Commission, thank  
24 you for the opportunity to comment today. My name is  
25 Peter Kye. And I am a law and policy associate at the

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1 Poverty & Race Research Action Council, a national  
2 civil rights policy organization based here in  
3 Washington, D.C.

4 We are working to ensure that there is  
5 robust fair housing enforcement and oversight and are  
6 greatly concerned about the current direction of  
7 federal fair housing policy.

8 First, we are deeply concerned about  
9 potential changes to the 2015 Affirmatively Furthering  
10 Fair Housing rule. The AFFH rule established a  
11 valuable oversight mechanism and planning framework to  
12 help HUD grantees meet their statutory duty to take  
13 proactive steps to dismantle entrenched patterns of  
14 segregation, discrimination, and disinvestment.

15 This rule has already benefitted many  
16 communities around the country. Unfortunately, the  
17 suspension of this rule in January and HUD's intent to  
18 revise it undermine this critically important tool for  
19 advancing fair housing.

20 While the rule is suspended, there is  
21 little HUD oversight of fair housing planning. Keeping  
22 the rule intact and restoring its implementation is  
23 critically important to achieving the aims of the Fair  
24 Housing Act.

25 HUD's intent to revisit its disparate

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1 impact rule is also troubling. This regulation  
2 formalized the long-held interpretation by HUD in  
3 courts that disparate impact claims may be brought  
4 under the Fair Housing Act.

5 Disparate impact liability is essential to  
6 fair housing enforcement. Without it, there will be  
7 major obstacles to attacking subtle but pervasive  
8 housing-related discrimination, as well as implicit  
9 structural biases in the housing market.

10 Revising the rule could unduly weaken the  
11 definition of discriminatory effect, the burden-  
12 shaping framework and more, making it more difficult  
13 to address the discriminatory effects of housing  
14 practices and the reinforcement of segregation. We  
15 urge HUD to leave the rule intact.

16 We are also concerned about inadequate  
17 staffing and funding of HUD's Office of Fair Housing  
18 and Equal Opportunity. FHEO's staff play a vital role  
19 in enforcing the Fair Housing Act, providing guidance,  
20 and ensuring that housing and community development  
21 programs are administered in a way that promotes  
22 diverse, inclusive communities.

23 Despite the critical importance of FHEO,  
24 it has been chronically underfunded and staffing  
25 levels continue to decline, severely limiting the

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1 ability of the federal government to effectively  
2 enforce fair housing protections.

3 We call for a robust funding of FHEO and  
4 increased staffing so that the office can have the  
5 resources and capacity it needs.

6 Finally, there is a need to address the  
7 role of federal housing programs in perpetuating and  
8 exacerbating racial and economic segregation in the  
9 United States.

10 For example, many aspects of the  
11 administration of the housing choice voucher program  
12 prevent voucher holders from exercising true housing  
13 choice. As a result, voucher holders are  
14 disproportionately concentrated in poor and racially  
15 segregated neighborhoods that lack quality schools,  
16 jobs, and other opportunities.

17 The consequences of this type of  
18 segregation are devastating and contribute to wide  
19 racial disparities in education, health, and other  
20 areas. More must be done to ensure that the citing of  
21 affordable housing is balanced and that residents have  
22 true housing choice.

23 We urge the Commission to carefully  
24 examine the enforcement of fair housing protections.

25 Thank you.

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1 CHAIR LHAMON: Thanks very much. The next  
2 speaker.

3 MS. DAVIDSON: Madam Chair and members of  
4 the Commission, my name is Jess Davidson. And I'm the  
5 Executive Director of End Rape on Campus, a national  
6 non-profit organization that seeks to end a world free  
7 from sexual violence and education through direct  
8 support for survivors and their families, prevention  
9 education, and policy reform. Thank you so much for  
10 having me today.

11 I'm also a survivor of campus sexual  
12 assault who is dependent on the civil rights afforded  
13 to me under Title IX. I know that I'm not alone.  
14 Three million college students will be sexually  
15 assaulted this fall. This is unacceptable. And it  
16 isn't even the entire story.

17 Sexual assault in education isn't just  
18 about college campuses like that on which my  
19 organization focuses, but also future leaders like  
20 students in elementary school.

21 Approximately 40 to 60 percent of black  
22 girls report coercive sexual conduct before they turn  
23 18. And 78 percent of transgender or gender non-  
24 conforming children are sexually harassed in grades K  
25 through 12.

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1           There are civil rights protections put in  
2 place to protect students. And yet this administration  
3 is determined to rip those rights away.

4           Civil rights violations do not happen in a  
5 vacuum. As human beings, we live at intersections. At  
6 EROC we believe passionately that Title IX's strict  
7 enforcement, including with its intersections with  
8 other civil rights laws, is the federal government's  
9 moral and legal imperative.

10           Title II should be built for survivors. A  
11 student's history of depression or anxiety or other  
12 disability should not be used to discredit their  
13 report of sexual violence.

14           Title VI should also be built for  
15 survivors. Race, color, and national origin should  
16 never be grounds to discredit survivors of sexual  
17 assault in classrooms, in the workplace, or online.

18           Experienced advocates have looked on in  
19 horror as this administration has staged an  
20 intentional attack on civil rights protections for  
21 students, particularly students of color, students  
22 with disabilities, and transgender and gender non-  
23 conforming students. To attack those students is to  
24 attack survivors.

25           Students with disabilities experience

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1 assault at two times the rate of students without  
2 disabilities. And nearly one in four transgender,  
3 genderqueer, or gender non-conforming students  
4 experience sexual violence during their undergraduate  
5 education.

6 Meanwhile, this administration is not  
7 seeking to protect those students further, but doing  
8 everything it can to erase civil rights for these very  
9 students. But these violations, this violence is not a  
10 foregone conclusion.

11 I'm here today to respectfully request  
12 that this Commission investigates the Department of  
13 Education's recent and impending decision making on  
14 rescinding previous guidance on Title IX enforcement  
15 and replacing it with a dangerous regulation that will  
16 chill reporting and prevent students everywhere from  
17 being able to access their civil rights under Title  
18 IX, including an egregious lack of survivor inclusion  
19 in the stakeholder engagement process, to which my  
20 organization can further attest, and a policy  
21 decision-making process that is based on rape myths  
22 and false sex stereotypes, ensuring Title IX and its  
23 sister civil rights laws, Title II, Title VI, and  
24 Title VII are protected as a civil rights issue and a  
25 human rights issue. Thank you very much.

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1 CHAIR LHAMON: Thank you.

2 MS. CARROLL: Good evening. And thank you  
3 for the opportunity to address this committee. My name  
4 is Michelle Carroll. And I am the current Associate  
5 Director of External Programs with End Rape on Campus.  
6 And prior to joining EROC, I was the Director of  
7 Campus Projects with the New York State Coalition  
8 Against Sexual Assault.

9 I am here to speak to you about the  
10 importance of the government's leadership and  
11 enforcement of Title IX, Title II, and Title VI and  
12 how these civil rights protections can be the  
13 difference between a student finishing their education  
14 and a student dropping out due to discrimination  
15 and/or violence.

16 It is the government's role to ensure that  
17 all students are safe during their educations,  
18 including our K through 12, college students, and grad  
19 scholars. This role is referenced in numerous Dear  
20 Colleague letters from the Department of Education's  
21 Office of Civil Rights, including the 2001, 2010, and  
22 2011 Dear Colleague letters.

23 This expectation has been taken seriously  
24 by previous administrations. And the government's  
25 leadership on preventing and addressing gender and

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1 race discrimination has successfully signaled to  
2 communities, K through 12 schools, and our colleges  
3 the seriousness of the short-term and long-term  
4 effects of gender, sex, and race discrimination.

5 Thirty-one percent of college students  
6 will drop out after experiencing sex discrimination  
7 and/or sexual violence. That percentage is higher for  
8 vulnerable student populations.

9 Additionally, a single instance of sexual  
10 violence can cost upwards of \$200,000 for medical  
11 costs, mental health costs, student fees, et cetera.  
12 Consider the lifetime costs of victimization for  
13 students who are assaulted in middle school or  
14 elementary school.

15 And as we continue to move into the new  
16 age of social media, the government must continue to  
17 provide leadership on the importance of online  
18 harassment and how these instances of harassment can  
19 rise to the level of gender, sex, and race  
20 discrimination, thus following a student from their  
21 desk at home to their homeroom classroom.

22 The government's leadership on these  
23 issues, as evidenced by federal guidance, and its role  
24 as an accountability measure has enabled community  
25 organizations to confidently offer their expertise to

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1 schools and colleges, thus building local  
2 collaborative decision-making bodies dedicated to  
3 combining the community's medical, mental health, and  
4 criminal justice services available to help students  
5 stay in school after experienced discrimination.

6 In my previous role with the New York  
7 State Coalition, I witnessed how over 200 colleges  
8 have partnered with our local rape crisis programs to  
9 provide prevention training and direct services to  
10 students.

11 Additionally, New York has seen a rise in  
12 the development of sexual assault response teams and  
13 college consortiums that meet to discuss their  
14 community's resources and how best to ensure that  
15 students have access to all the community can offer.

16 In the 2011 Dear Colleague letter, the  
17 government recognized how education is the great  
18 equalizer and that the government's role in preventing  
19 and addressing harassment is a key function of its  
20 preservation of student rights.

21 This committee has an incredible role in  
22 preserving our students' rights to an education. And I  
23 commend the committee for the work so far. Thank you.

24 CHAIR LHAMON: Thank you.

25 MS. JACKSON: Thank you. Good evening,

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1 Madam Chair and members of the Commission. It is an  
2 honor to testify today before the U.S. Commission on  
3 Civil Rights on the important topic of federal civil  
4 rights enforcement.

5 My name is Toni Michelle Jackson. I am a  
6 Deputy Attorney General in the Office of the Attorney  
7 General for the District of Columbia.

8 Our office is charged with conducting the  
9 law business of the District and with protecting the  
10 public interest. In that vein, we have worked very  
11 hard over the last four years to develop a public  
12 interest litigation practice that is responsive to the  
13 needs of our residents.

14 I want to highlight, while there are many,  
15 I want to highlight two today, two key areas in which  
16 the lack of federal enforcement or the rollbacks in  
17 enforcement are having an outsized effect on District  
18 residents.

19 First, a pressing issue for District  
20 residents is housing. And housing discrimination in  
21 particular is a barrier to opportunity.

22 Among other documented discrimination in  
23 the housing market, the Center for Investigative  
24 Reporting has uncovered racial disparities in mortgage  
25 lending in the District. But to assess potential

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1 claims, we need among other things detailed  
2 information about credit scores, loan-to-value ratios,  
3 and debt-to-income ratios.

4 Under the Home Mortgage Disclosure Act,  
5 the Consumer Financial Protection Bureau has the power  
6 and indeed previously promulgated regulations to  
7 require that kind of detailed reporting from banks,  
8 which our office could have used to enforce local and  
9 federal protections against housing discrimination.

10 But under Mick Mulvaney, the CFPB backed a  
11 law that exempts 85 percent of banks and almost 50  
12 percent of other mortgage lenders from providing this  
13 comprehensive information.

14 The failure to require detailed reporting  
15 limits the federal government's ability to uncover  
16 disparities in mortgage lending based on race and  
17 national origin. And it impedes the ability of the  
18 District to ensure that mortgage lending is fair. The  
19 abdication of the federal government's information  
20 enforcing function is not unique.

21 Second, the administration's push to  
22 redefine sex in civil rights laws to include only  
23 biological sex threatens the District's already  
24 marginalized transgender community.

25 A 2015 study of District employers showed

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1 that almost half would prefer to hire a less qualified  
2 cisgender person than a more qualified transgender  
3 applicant.

4 Moreover, hate crimes are on the rise in  
5 the District. They nearly tripled between 2015 and  
6 2017. And one of the biggest increases we are  
7 currently seeing is in crimes based on gender  
8 identity.

9 Thankfully, the District has the Human  
10 Rights Act. But the federal government's resources are  
11 not comparable to what the District has. And we need  
12 greater and more strategic enforcement on the federal  
13 level to ensure that our residents are fully  
14 protected. Thank you for your time.

15 CHAIR LHAMON: Thank you very much. The  
16 next speaker.

17 MR. HAILES: Madam Chair, Commissioners,  
18 staff, certainly appreciate the opportunity to testify  
19 before the Commission.

20 I'm Edward A. Hailes Jr. I'm a Managing  
21 Director and General Counsel for Advancement Project,  
22 a national civil rights and racial justice action tank  
23 that works on the ground in support of local  
24 organizing informed by careful legal reasoning and  
25 strategic communications.

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1           We're engaged in a thousand points of  
2 fight around the country where effective federal civil  
3 rights enforcement would be helpful. I just want to  
4 lift up one particular concern today and supplement  
5 this statement with additional information before your  
6 stated deadline.

7           Advancement Project is nearly 20 years  
8 old. And right after we were founded, we coauthored a  
9 report. It was a groundbreaking report with the  
10 Harvard Civil Rights Project entitled Opportunities  
11 Suspended.

12           This document identified and named the  
13 school-to-prison pipeline, the policies and practices  
14 that push children out of school and on a pathway to  
15 prison, and outlined its harmful effects specifically  
16 upon black and brown children, students with  
17 disabilities, and other groups of marginalized  
18 children.

19           And in nearly 20 years of our existence,  
20 we have worked with various community partners across  
21 the country to dismantle the egregious civil rights  
22 violation known as the school-to-prison pipeline.

23           In July 2016, Advancement Project along  
24 with our partner, DeSoto County Parents and Students  
25 for Justice, filed a new supporting letter documenting

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1 the continuation of discriminatory discipline  
2 practices in DeSoto County, which is a school district  
3 in Hernando, Mississippi.

4 The letter supplemented information sent  
5 to the U.S. Department of Education and came months  
6 after the Department opened a formal investigation in  
7 response to a complaint filed on behalf of students  
8 and parents in 2015. The letter pointed out the major  
9 instances in which the discriminatory discipline  
10 policy impacted black students there.

11 And what we have learned more recently,  
12 according to the U.S. Department of Education's Office  
13 for Civil Rights website, as of September 30, 2018,  
14 there are 1,556 pending Title VI cases currently under  
15 investigation at elementary, secondary, and post-  
16 secondary schools. There are 328 discipline cases.

17 In March 2018, the U.S. Department of  
18 Education's Office for Civil Rights issued a revised  
19 case processing manual designed to, quote/unquote,  
20 help the office better manage its docket,  
21 investigations, and resolution.

22 A particular provision in that statement  
23 now has resulted in over 500 disability rights  
24 complaints being dismissed, leading to concerns that  
25 more effective oversight and federal guidance is

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1 needed. Thank you very much.

2 CHAIR LHAMON: Thank you.

3 MS. KING: My name is Liz King, and I am  
4 the Director of the Education Program at the  
5 Leadership Conference on Civil and Human Rights in  
6 Washington, D.C., a coalition charged by our diverse  
7 membership of more than 200 national organizations to  
8 promote and protect the civil and human rights of all  
9 persons in the United States.

10 I appreciate the Commission's willingness  
11 to hear from the public on this critically important  
12 topic. Issues of civil rights enforcement are not  
13 simply interesting legal puzzles or fodder for  
14 academic debates. This is about the actual lived  
15 experiences of children in our nation's schools every  
16 day.

17 This Commission has the responsibility to  
18 ensure that federal civil rights laws and federal  
19 civil rights enforcement are meaningfully ensuring  
20 equal opportunity for students and preventing the  
21 discrimination that limits the potential of children  
22 of color, children with disabilities, girls, students  
23 who are LGBTQ, Native American, immigrants, religious  
24 minorities, or English learners.

25 It is critically important that the

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1 Commission understand the need for a continued federal  
2 enforcement where areas of federal law and the U.S.  
3 Constitution are concerned.

4 While children are dependent on the  
5 educators and other adults around them every day for  
6 their safety and fair treatment, it is irresponsible  
7 and inconsistent with the laws themselves to suggest  
8 that these federal obligations can be fulfilled by  
9 state and local leaders alone.

10 The civil rights community and the  
11 marginalized people we represent have learned over and  
12 over and over again that without necessary  
13 intervention from federal civil rights enforcement  
14 agencies, rights are undermined and opportunities are  
15 lost.

16 What we have seen from the U.S. Department  
17 of Education over the past 22 months is a failure to  
18 execute the legal and moral responsibility of the  
19 agency.

20 The rescission of the transgender student  
21 guidance, the rescission of the sexual assault  
22 guidance, the changes to the case processing manual,  
23 the limitations on considering data in the context of  
24 investigations, the rescission of guidance on  
25 diversity at the K-12 and higher education levels, the

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1 delay of the significant disproportionality rule, and  
2 other actions both public and hidden have demonstrated  
3 that Secretary DeVos and the department she leads are  
4 unwilling or unable to fulfill their responsibility to  
5 protect students from discrimination and enforce  
6 federal law.

7 The Commission must take note and take  
8 action on behalf of our children and our laws. Thank  
9 you.

10 CHAIR LHAMON: Thank you.

11 MS. GARCIA: Good evening. My name is Lynda  
12 Garcia, and I am the Policing Campaign Director at the  
13 Leadership Conference on Civil and Human Rights. Prior  
14 to this role, I served as a trial attorney in the  
15 Department of Justice Civil Rights Division where my  
16 work focused on pattern-or-practice investigations of  
17 police departments and the enforcement of consent  
18 decrees.

19 Today the Commission asked whether the  
20 federal government is meeting its obligation to  
21 vindicate and protect civil rights. In the context of  
22 addressing systemic police misconduct, the answer is  
23 no.

24 As part of any pattern-or-practice  
25 investigation, investigators speak with hundreds of

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1 community members and police officers. During my time  
2 at the Department of Justice, I heard from community  
3 members who would tell stories of being slammed  
4 against a wall and searched just when walking home  
5 from work or to the corner store to buy milk.

6 I would hear that police used excessive  
7 force from applying handcuffs too tightly just to  
8 cause pain to tasering children in schools for minor  
9 misbehaviors.

10 And I listened to mothers who told their  
11 stories of identifying their children's bodies after  
12 they had been shot and killed by a police officer.  
13 Excuse me.

14 I also listened to officers. And they  
15 shared stories of working within a system where their  
16 performance is measured by metrics that incentivize  
17 stopping, searching, and arresting people many times  
18 without regard to civil rights.

19 They spoke of broken accountability  
20 systems that do little to address officer misconduct,  
21 thereby delegitimizing those officers who go to work  
22 every day to try and help the communities that they  
23 serve.

24 The consent decrees that the Department of  
25 Justice negotiates to fix these sorts of problems,

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1 like the ones in New Orleans, Ferguson, and Baltimore,  
2 promote sustainable, constitutional, and effective  
3 policing by reforming the policies, practices,  
4 training, and accountability systems in police  
5 departments.

6 They give communities a meaningful voice  
7 in the process and in developing the policies and  
8 practices for their police departments.

9 When communities view police and the  
10 process as legitimate, they start to work with police  
11 departments and cooperate with them to address serious  
12 crime, thereby improving public safety.

13 The current administration is, for lack of  
14 a better word, hostile towards this work. Attorney  
15 General Sessions has stated that, quote, it is not the  
16 responsibility of the federal government to manage  
17 non-federal law enforcement, unquote.

18 Yet the department has tried to stand in  
19 the way of police reform at the local level as well,  
20 most recently by urging a federal court not to enter a  
21 consent decree that was negotiated between the  
22 Illinois Attorney General and the City of Chicago.

23 This work is under threat. And without  
24 pattern-or-practice investigations, communities across  
25 the country will continue to be impacted by police

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1 misconduct while the federal government abdicates its  
2 duty to address this injustice, which warrants the  
3 oversight of this Commission. Thank you.

4 CHAIR LHAMON: Thanks very much.

5 MR. SOTO: Good evening. Thank you to the  
6 Commission for having this opportunity for all of us  
7 to testify. My name is Jorge Andres Soto. And I'm with  
8 the National Fair Housing Alliance. I'm Director of  
9 Public Policy there.

10 The National Fair Housing Alliance is a  
11 national civil rights organization dedicated to ending  
12 housing discrimination and made up of local non-profit  
13 fair housing organizations that do intakes and  
14 investigations of victims of discrimination in their  
15 own communities.

16 Fifty years after the Fair Housing Act  
17 made housing discrimination illegal, acts of housing  
18 discrimination still occur every day. And while often  
19 these go undetected and underreported, housing  
20 discrimination is still a huge obstacle for many.

21 The importance of private enforcement of  
22 the federal Fair Housing Act cannot be overstated for  
23 this and many other reasons.

24 Every year NFHA collects, and that's our  
25 short name, NFHA collects data from both private fair

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1 housing organizations and government agencies across  
2 the country that receive and address fair housing  
3 complaints from the public.

4 In 2017, there were over 2,800, I'm sorry,  
5 28,000 reported complaints of housing discrimination  
6 across the country. Seventy-one percent of those were  
7 addressed by private non-profit fair housing groups as  
8 compared to complaints processed by HUD, local and  
9 state fair housing agencies, and the Department of  
10 Justice.

11 Increasingly, acts of discrimination are  
12 taking on more subtle forms. And while overt housing  
13 discrimination still occurs, it is masked by housing  
14 providers offering false information, quoting  
15 different prices, providing an inferior product or  
16 amenities, or applying different standards of  
17 qualification criteria.

18 Without private enforcement that utilizes  
19 testing investigation tools, subtle discrimination  
20 would permeate rentals, sales, lending, and insurance  
21 markets to a greater degree and relatively unchecked.

22 In terms of HUD's administrative  
23 challenges when enforcing the Fair Housing Act, its  
24 enforcement regularly exceeds the 100-day deadline set  
25 forth in its own regulations for each complaint that's

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1 submitted to HUD.

2 Indeed, HUD has decreased its average  
3 complaint investigation time. And we commend it for  
4 that. However, this trend must continue in order to  
5 ensure that victims have faith that HUD will resolve  
6 their issues and not be done so in a way that pushes  
7 legitimate complaints to the side for the purpose of  
8 expediency.

9 HUD also lacks the effective oversight of  
10 state fair housing assistance program participants,  
11 which it relies upon to work through its case load. By  
12 statute, HUD is authorized to refer complaints it  
13 receives to state and local civil rights agencies that  
14 enforce a substantively equivalent fair housing law to  
15 the Fair Housing Act, the federal Fair Housing Act.

16 However, investigation protocols and cause  
17 determination policies often widely vary across  
18 participating agencies and can conflict with the  
19 standards set forth by the Fair Housing Act itself.

20 HUD also has undermined the work of  
21 private fair housing organizations through its failure  
22 to effectively administer the Fair Housing Initiatives  
23 Program, which provides grants to private non-profit  
24 fair housing organizations to investigate complaints  
25 and educate the marketplace about fair housing laws.

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1           For the last several years, HUD has  
2 delayed the release of the Notice of Funding  
3 Availability for this program and has derailed three  
4 year enforcement grants which require reapplication  
5 each year.

6           The result has been dozens of private non-  
7 profit fair housing organizations temporarily ceasing  
8 operation of their services and actually letting go  
9 experienced staff as a result of all of these  
10 mismanagements.

11           To address these issues, HUD must request  
12 additional resources for fair housing enforcement  
13 staff from Congress, conduct an independent oversight  
14 audit of the Fair Housing Assistance Program, and  
15 revise existing regulations to ensure HUD hands over,  
16 complaints that HUD hands over to state and local  
17 agencies are appropriately adjudicated and that --

18           CHAIR LHAMON: I need to stop you. I'm  
19 sorry.

20           MR. SOTO: Yes.

21           CHAIR LHAMON: But thank you very much.

22           MR. SOTO: Thank you.

23           DR. YOUNG: Hi. Good afternoon. My name is  
24 Lih Young. Thanks to the Commission we're still here -

25 -

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1 CHAIR LHAMON: Thank you.

2 DR. YOUNG: -- to hear my message. And I  
3 think that's very important. And I've been here since  
4 this morning, 8:30. So you've got to know how  
5 important your job is.

6 And I want to go back to this this  
7 morning. All the message you talk about is really the  
8 data and knowledge is you asked how they want to help  
9 you and whether that you know that data and knowledge  
10 is so far incorrect.

11 Incorrect information is always there by  
12 all the agencies, by all their staff, by all the  
13 police. So you've got to know if this is gives you a  
14 false message, your remedy will be wrong.

15 So I hope you go back to re-research the  
16 data and reexamine that information whether it's  
17 correct or not, not as an agency or lower court or  
18 lower government agency. Give it to the maybe Census  
19 Bureau or something. That is not called data. It's  
20 true. But you have to compare whether the data used is  
21 correct or not.

22 And other education funding or social  
23 program funding, they are not, do their purpose. They  
24 are not for education purpose. They are not for free  
25 lunch purpose. They are not for Social Security

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1 benefit for elderly or for somebody, or if you say the  
2 jail, that's not for public safety purpose.

3 So you must compare to see what they are  
4 doing wrong or let's send people to the jail just to  
5 give them the provision of their sleeping or their  
6 food. And that's called torture and murdering.

7 So we know this society is very bad. And  
8 the most important now is the police and Department of  
9 Justice. They are being ordered wrong, yeah. They are  
10 real negative productivity, negative.

11 Sorry, you are not try to think,  
12 unemployment lower is good. That's a negative. It's  
13 getting worse. So you have to think about all this  
14 negative.

15 So this is important for your children,  
16 for your sibling, for your elderly. And I see a lot of  
17 time the elderly are separated. They are not a couple.  
18 They are separated, send them to a different kind of  
19 rehab or nursing home. And they don't give them food.  
20 Instead they may be forced injection and murder them,  
21 because I know my family have just experienced.

22 So I tell someone, especially now, you  
23 know it's PPP, public permit, partnership. This is  
24 propaganda everywhere from the local to federal to  
25 global, and then including education or non-profit

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1 organization.

2 So just to turn our society around you've  
3 got to examine those.

4 CHAIR LHAMON: Thank you very much.

5 DR. YOUNG: And I will submit my testimony  
6 and give this more detail later.

7 CHAIR LHAMON: Thank you very much. Next  
8 speaker.

9 DR. YOUNG: Please read carefully. Thank  
10 you.

11 MR. HERRING: Ladies and gentlemen of the  
12 Commission, I'm Mark Herring, the Attorney General of  
13 Virginia, here tonight on behalf of the people of  
14 Virginia, as well as several fellow state Attorneys  
15 General who intend to submit supplemental written  
16 comments.

17 It's a particular honor for me to address  
18 this body because my great-uncle, Robert S. Rankin,  
19 served on this Commission from 1960 to 1976. And the  
20 Commission's library bears his name.

21 Over the last several decades, individual  
22 Americans and state governments have been able to rely  
23 on the federal government as a partner in the shared  
24 mission to secure and vindicate civil rights. Sadly it  
25 seems this reliance and expectation is no longer well

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1           founded and this relationship is fracturing.

2                       One of President Trump's first executive  
3 orders attempted to enact a Muslim ban that violated  
4 the constitutional rights of many living in our nation  
5 and raised fear among American Muslims and other  
6 minority communities that they could find themselves  
7 the next target of government sanctioned and mandated  
8 discrimination.

9                       These fears have proven well founded as we  
10 have witnessed further efforts to undermine cherished  
11 civil rights, including deeply troubling talk in  
12 recent days about executive orders to nullify the 14th  
13 Amendment and birthright citizenship.

14                      The Department of Education under  
15 Secretary Betsy DeVos is trying to undo years of  
16 progress led by Chairwoman Lhamon and others to combat  
17 sexual violence on college campuses and ensure the  
18 right to pursue an education in a safe and equal  
19 environment.

20                      The CFPB and HUD have reversed or rolled  
21 back rules and regulations that ensure minorities are  
22 not subjected to unconstitutional discrimination when  
23 trying to secure housing or loans.

24                      And this administration is currently  
25 presiding over one of the most frightening surges in

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1 antisemitism and white supremacist violence in recent  
2 memory.

3 And where the peddlers of hate and  
4 violence should have been met with swift consequences  
5 and clear condemnation from political and community  
6 leaders, too often they instead have heard  
7 indifference, equivocation, tacit approval, or worse.

8 My colleagues and I have successfully sued  
9 to block many of the most egregious moves by this  
10 administration, relying on the courts to protect our  
11 citizens' rights from actions by the federal  
12 government.

13 We've also worked to pick up the slack  
14 where we can through programs or enforcement actions,  
15 though we work with more limited resources,  
16 jurisdiction, and authority than those available to  
17 federal agencies.

18 Simply put, this is not the way it should  
19 be. And it is not a sustainable model for protecting  
20 citizens' rights.

21 We need to again be able to rely on the  
22 federal government to be a partner in protecting the  
23 civil rights of our citizens rather than a threat to  
24 them.

25 As the Commission continues its work, I

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1 would encourage you to be bold and be honest about the  
2 realities of civil rights in the United States and the  
3 sources of threats to those rights. It is clear to me,  
4 many of my constituents, and many of my colleagues  
5 that there is reason for alarm.

6 A clear-eyed, impartial declaration of the  
7 threat to civil rights in America would be a  
8 courageous and necessary step that history will surely  
9 judge favorably. Thank you. And as the top law  
10 enforcement officers of our states, my colleagues and  
11 I stand ready to assist you in any way possible.

12 CHAIR LHAMON: Thank you very much.

13 MS. SRIDARAN: Good afternoon, members of  
14 the Commission. I'm Lakshmi Sridaran, and I serve as  
15 the Director of National Policy and Advocacy for South  
16 Asian Americans Leading Together or SALT.

17 We are a national non-partisan, non-profit  
18 organization that fights for racial justice and  
19 advocates for the civil rights of all South Asians.  
20 And our core policy priorities are in civil rights,  
21 immigration, and combating hate crimes.

22 In our critical work both documenting and  
23 addressing hate violence against our communities, we  
24 rely on the Department of Justice to enforce hate  
25 crimes protections at the federal level.

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1           During a time when hate violence against  
2 South Asian, Muslim, Sikh, Hindu, Middle Eastern, and  
3 Arab American communities has risen nearly 45 percent  
4 in the last year alone, and I should note that our  
5 data found that one in five hate incidents we  
6 documented we found that the perpetrator cited the  
7 president, his administration, or one of this  
8 administration's policies while committing the act of  
9 violence.

10           So, as you can understand, we are appalled  
11 that underreporting of hate crimes is occurring at a  
12 factor of over 40 to 1 according to the National Crime  
13 Victimization Survey.

14           Even more unacceptable are ProPublica's  
15 recent findings that 120 federal agencies have not  
16 complied with mandates to submit hate crimes data to  
17 the FBI. In fact, ProPublica's investigation found  
18 that the FBI itself is not submitting hate crimes it  
19 investigates to its own database.

20           The DOJ must make hate crimes by both  
21 local law enforcement and federal agencies mandatory  
22 with consequences for inaction to ensure that we all  
23 have the data to even understand the magnitude of this  
24 problem and then fully enforce and prosecute hate  
25 crimes.

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1           Additionally, we are deeply disturbed by  
2           the racist and anti-immigrant framework being advanced  
3           by this Department of Justice through its task force  
4           on crime reduction and public safety defined as so-  
5           called illegal immigration, drug trafficking, and  
6           violent crime.

7           A subcommittee within this task force  
8           focuses on hate crimes. This infrastructure advances  
9           the myth of immigrants as perpetrators of hate crimes  
10          rather than focusing on the growing problem of white  
11          supremacist hate violence targeting all vulnerable  
12          communities.

13          Lastly, on this point, prosecutions cannot  
14          be the only tool of enforcement to address hate  
15          crimes. This DOJ eliminated the budget of its  
16          Community Relations Service. CRS was an arm of DOJ  
17          that supported the very difficult task of building  
18          trust between communities and law enforcement, which  
19          research and evidence strongly suggests is one of the  
20          most effective ways to improve hate crimes reporting.  
21          This DOJ has undermined a key tool for addressing and  
22          preventing hate crimes.

23          On immigration, another one of our  
24          priority areas, we are aware and disturbed by the  
25          number of detainees and detention facilities across

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1 the country facing a number of civil rights  
2 violations. This includes withholding medical  
3 treatment, force feeding, abusive treatment, and  
4 retaliation by detention center staff, withholding  
5 critical language interpretation, and denial of bond  
6 hearings.

7 The Office of Civil Rights and Civil  
8 Liberties within DHS must have more power and  
9 resources. DHS staff visited the folks in Georgia, a  
10 detention facility this year, a private detention  
11 center run by GEO Group in August after receiving  
12 several complaints. And yet we have not heard anything  
13 about this investigation.

14 Due to the deference to ICE within DHS, we  
15 recommend an independent ombudsperson position to be  
16 created to liaison between communities and CRCL to  
17 move such complaints through a transparent process and  
18 ensure the civil rights of all detainees are enforced  
19 --

20 CHAIR LHAMON: Thank you very much. Thank  
21 you.

22 MS. BEANE: Good afternoon. And thank you  
23 for the opportunity to speak here today. My name is  
24 Catherine Beane, and I serve as Vice President for  
25 Public Policy and Advocacy at YWCA USA.

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1           Founded 160 years ago, YWCA is one of the  
2           oldest and largest women's organizations in the United  
3           States and is dedicated to eliminating racism,  
4           empowering women, and promoting peace, justice,  
5           dignity, and freedom for all.

6           Today we serve over two million women,  
7           girls, and family members through a network of 210  
8           local associations across 46 states and the District  
9           of Columbia.

10          Across this vibrant network we are proud  
11          to provide a broad range of services to meet the  
12          health, safety, economic security, racial justice, and  
13          civil rights needs of women, girls, and communities.

14          And as our CEO, Alejandra Castillo, often  
15          says, while not every YWCA has a pool, we are here to  
16          help when women feel like they're drowning.

17          At YWCA we are profoundly concerned by the  
18          active and ongoing rollback of civil rights  
19          enforcement and attention to the needs and experiences  
20          of marginalized communities across numerous federal  
21          agencies.

22          Of particular note, YWCA is concerned by  
23          the rescission and changes to guidance by the  
24          Department of Education regarding sexual violence,  
25          campus sexual assault in transgender students and the

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1 potential rescission of guidance on school discipline,  
2 changes to the Department of Health and Human  
3 Services' draft strategic plan, which eliminated  
4 references to health disparities experienced by racial  
5 and ethnic minorities and LGBTQ people, the Department  
6 of Justice's rollback in the use of consent decrees,  
7 the Department of Housing and Urban Development's  
8 removal of anti-discrimination language from its  
9 mission statement, as well as HUD's suspension of the  
10 Affirmatively Furthering Fair Housing rule, and the  
11 denial of refuge and safety for survivors of domestic  
12 and sexual violence that is occurring daily at our  
13 borders, as well as the ongoing tragedy of children's  
14 separation from their parents.

15           These and other recent actions which  
16 you've heard detailed testimony about throughout the  
17 day reinforce gender and racial stereotypes,  
18 exacerbate systemic barriers, and send a clear message  
19 that the federal government is not fulfilling its  
20 critical role of protecting and vindicating civil  
21 rights.

22           And the true irony here is that these  
23 rollbacks are occurring at a time when women have  
24 heightened concerns about discrimination, safety, and  
25 economic security.

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1           YWCA's recent national report, What Women  
2           Want 2018, makes clear that women's experiences of  
3           gender discrimination remain prevalent and, in fact,  
4           have increased since 2012 and that black, Latina, and  
5           Asian Pacific Islander women experience racial  
6           discrimination at even higher rates in addition to the  
7           gender discrimination that they experience.

8           Moreover, many of women's top areas of  
9           concern relate to issues that are directly impacted by  
10          the lack of enforcement of civil rights.

11          As is too often the case in our history,  
12          women, people of color, and other marginalized groups  
13          are directly impacted and bear the cascading impacts  
14          of the federal government's changed policies and  
15          practices with respect to civil rights enforcement.  
16          These are the very same people in communities that  
17          YWCA's serve.

18          Thank you for the opportunity to share  
19          these comments. I anticipate and will be thankful to  
20          be able to provide additional comments in writing in a  
21          few weeks. Thank you.

22                   CHAIR LHAMON: Thank you.

23                   MS. WILLIAMS: Hello. My name is Faith  
24                   Williams, and I'm the Senior Manager of Government  
25                   Relations at the National Council of Jewish Women,

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1 known as NCJW.

2 NCJW is a grassroots organization with  
3 members across the country devoted to improving the  
4 lives of women, children, and families and  
5 safeguarding individual rights and freedoms. We're 125  
6 years old this year.

7 Thank you for the opportunity to speak  
8 today. We will submit a more detailed statement for  
9 the record.

10 There is no shortage of the ways the  
11 administration has rolled back and undermined civil  
12 rights. You've heard so many of them from our partners  
13 here today.

14 Rather than reiterate that list, I want to  
15 focus on a broader push from this administration to  
16 make policies and interpret law based on a narrow  
17 interpretation of evangelical Christianity.

18 NCJW supports comprehensive, accessible,  
19 and affordable healthcare for all, including access to  
20 abortion. We believe women have the right to make  
21 their own reproductive and childbearing decisions.

22 We work for programs and policies that  
23 protect all people from discrimination and bias  
24 regardless of their race, religion, gender, ethnicity,  
25 sexual orientation, immigration status, ability, and

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1 more.

2 Why do I list just some of our many  
3 principles? Because these beliefs are based on our  
4 Jewish values not in spite of them.

5 As Jews, we know that gender is a  
6 spectrum, a concept rooted in traditional Jewish text.  
7 We are taught that protecting an existing life is of  
8 paramount importance. We believe in Kavod HaBriyot,  
9 respect and dignity for all people, B'tzelem Elohim,  
10 we are all made in the image of God, and Tzedek,  
11 Tzedek Tirdof, the pursuit of justice always.

12 When the administration makes policy to  
13 align with one interpretation of one religion or when  
14 they allow employers, health plans, and business  
15 owners to use their religious beliefs to thwart our  
16 laws, it threatens the religious liberty of all  
17 people.

18 We depend on religious liberty to be a  
19 protective shield not a weapon to harm and demean  
20 others. Thank you for your time.

21 CHAIR LHAMON: Thank you.

22 MS. DORHOI: Hi, my name is Monica Dorhoi.  
23 And it's a great pleasure to get today to speak to  
24 you.

25 For over the decade I've worked at World

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1 Bank. And I got the chance to conduct training with  
2 the Equal Employment Commission, to be an official  
3 enforcer for the Fairness Act. I worked with the  
4 Comptroller General, David Walker, for over 15 years.

5 However, my work is international. And  
6 I'm not as much known here in Washington. However, I  
7 wanted to show a little bit the work that we have done  
8 at World Bank and international organizations and how  
9 you apply the civil rights to international  
10 organizations, because many of us are Americans  
11 working in those institutions.

12 My job and my PhD was last year the most  
13 recommended, commended, and received more  
14 congratulatory letters from the United States Senate  
15 and Congress than any other PhD in the union. I  
16 received a medal of honor, a celebration for a decade  
17 of research.

18 My job is on anti-fraud and anti-  
19 corruption. I do not play and do not have a political  
20 career. I'm just a professional. So please note, I do  
21 not play any political role in such, neither was  
22 appointed by President Barack Obama or Trump. I'm a  
23 career professional.

24 Mentioning so, my research and my PhD  
25 research was awarded in 2005 at Michigan State. And we

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1 speak today about civil rights. My PhD advisor was  
2 Brian Silver. And he worked after September 11 all the  
3 civil rights and how we're affected by September 11.

4 However, my PhD advisor at the time is the  
5 largest, the most known expert in dissidents of the  
6 Soviet Union that immigrated to United States.  
7 Michigan State and the University of Michigan hold the  
8 largest database, what happened to Americans that  
9 emigrated from Eastern Europe.

10 Why would you care? A decade later we  
11 looked through the database. And I want the Commission  
12 to understand this is research. It's not political. It  
13 was not intended as such. It's pure data. And we have  
14 here also an excerpt for you in the PhD dissertation.

15 Melania Trump is foreign born in the  
16 country of Slovenia. Melania Trump, you say what's the  
17 link with civil rights. The link is you need to look  
18 at Melania Trump and what will happen through -- and  
19 this is our research in our book to, in fact, who is  
20 Melania Trump. Melania Trump grew up in a  
21 dictatorship. And her parents were leaders in the Tito  
22 --

23 CHAIR LHAMON: I'm going to have to stop  
24 you there. But we'll be pleased to see the written  
25 submission. Thank you very much.

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1 MS. DORHOI: Okay. Thank you.

2 CHAIR LHAMON: And with that, that closes  
3 this briefing. I thank everybody for your  
4 participation.

5 We will, as I mentioned, keep our record  
6 open until December 17th. Panelists and members of the  
7 public who would like to submit materials for  
8 Commission consideration, which we welcome, may mail  
9 them to the U.S. Commission on Civil Rights, Office of  
10 Civil Rights Evaluation. The address is 1331  
11 Pennsylvania Avenue, N.W., Suite 1150, Washington,  
12 D.C. 20425 or email them to enforcement@usccr.gov.

13 And I ask that our attendees move any  
14 continuing conversations outside of the hearing room  
15 so our staff can complete the logistics necessary to  
16 close this out.

17 And please make sure you exit the building  
18 through the F Street lobby as the exit to the  
19 Pennsylvania Avenue side is closed.

20 Thank you very much. That concludes this  
21 briefing.

22 (Whereupon, the above-entitled matter went  
23 off the record at 6:07 p.m.)

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