



## **U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights Oversight and Legislation**

**December 7, 2018**

The U.S. Commission on Civil Rights, by majority vote, urges the 116th Congress to prioritize civil rights issues with its oversight and legislative activity because of the urgent need to restore national commitment to civil rights principles. For over sixty years, Congress has mandated that the U.S. Commission on Civil Rights advise Congress, the President, and the American public on matters of civil rights policy; that mandate is as pressing now as it has ever been. The Commission's recent evaluation of issues ranging from voting rights, to education equity, to workplace protections for LGBT individuals, to access to justice, among other critical areas, shows that Congress can and should do much more to ensure that all Americans' civil rights are protected.

While the Commission presses Congress to take up all the recommendations of the Commission, we highlight below particular priorities – both for immediate oversight investigations as well as legislative actions – that are based on recent Commission reports and statements, which can be accessed at our [website](#). We also encourage Members to view reports from the Commission's 51 State Advisory Committees which contain the views of their constituents on civil rights issues.

### Oversight Priorities

- Congress should investigate habitability conditions for children and adults<sup>1</sup> as well as alleged abusive labor practices at government and privately operated immigration detention centers.<sup>2</sup> In addition, Congress should investigate the status of family separation at the border, and what policies and practices are necessary to ensure that all separated families may be reunited.<sup>3</sup>
- Congress should investigate the Department of Justice's use of consent decrees and the impact on justice of the Department's narrowing authority to use a civil

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<sup>1</sup> U.S. Commission on Civil Rights, *With Liberty and Justice For All: The State of Civil Rights at Immigration Detention Facilities*, September 2015, [https://www.usccr.gov/pubs/docs/Statutory\\_Enforcement\\_Report2015.pdf](https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf).

<sup>2</sup> U.S. Commission on Civil Rights *Concerned with Alleged Abusive Labor Practices at Immigration Detention Centers*, Dec. 21, 2017, <https://www.usccr.gov/press/2017/12-21-PR.pdf>.

<sup>3</sup> See Letter from Chair Catherine E. Lhamon, et al. to Attorney General Jeff Sessions and Secretary Kirstjen M. Nielsen, June 15, 2018, <https://www.usccr.gov/press/2018/06-15-18-letter.pdf>.

rights enforcement tool that Congress has expressly provided to the Department.<sup>4</sup> Congress should also investigate activity in the Community Oriented Policing Services (COPS) office to determine whether that office is active in offering its services.<sup>5</sup>

- Congress should investigate the status of the Department of Justice's Office for Access to Justice, and how well it accomplishes the work led by that office.<sup>6</sup> Congress should also investigate the degree to which the Department of Justice enforces equal access to justice following Attorney General Sessions' rescission of civil rights guidance concerning potential unconstitutional practices in the imposition of fines and fees.<sup>7</sup>
- Congress should investigate the impact on justice following U.S. Immigration and Customs Enforcement's policy to site immigration enforcement agents at courthouses.<sup>8</sup>
- Congress should investigate the potential civil rights impact of the Department of Commerce's stated intention to place a citizenship question on the 2020 Census Questionnaire, including whether those potential impacts outweigh a Department interest in adding the citizenship question.<sup>9</sup>
- Congress should evaluate the effectiveness of Department of Justice enforcement activity related to violent expressions of hate,<sup>10</sup> to ensure respect for personhood remains a core component of the rule of law in this nation.

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<sup>4</sup> Police Use of Force: An Examination of Modern Policing Practices, Nov. 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>; U.S. Commission on Civil Rights Urges Department of Justice to Use All Available Tools to Work with Police Departments to Ensure Constitutional Policing, Apr. 24, 2017, [https://www.usccr.gov/press/2017/Statement\\_04-24-2017-Policing.pdf](https://www.usccr.gov/press/2017/Statement_04-24-2017-Policing.pdf). Commissioner Debo Adegbile took no position on this recommendation.

<sup>5</sup> Commissioner Debo Adegbile took no position on this recommendation.

<sup>6</sup> The U.S. Commission on Civil Rights Highlights the Need for the Department of Justice to Reopen the Office for Access to Justice, Mar. 16, 2018, <https://www.usccr.gov/press/2018/03-16-statement-DOJ.pdf>.

<sup>7</sup> Letter from Chair Catherine E. Lhamon et al. to Attorney General Jeff Sessions, Feb. 12, 2018, <https://www.usccr.gov/press/2018/02-14.pdf>; see also Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications, Sept. 2017, [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf).

<sup>8</sup> Letter from Chair Catherine E. Lhamon et al. to Thomas D. Homan, Deputy Director and Senior Official Performing the Duties of the Director for U.S. Immigration and Customs Enforcement, Mar. 16, 2018, <https://www.usccr.gov/press/2018/03-16-statement-ICE.pdf>.

<sup>9</sup> Letter from Chair Catherine E. Lhamon et al. to Secretary Wilbur Ross, Apr. 20, 2018, <https://www.usccr.gov/press/2018/04-20-Census-Letter.pdf>.

<sup>10</sup> U.S. Commission on Civil Rights Statement on Charlottesville, Virginia, Aug. 18, 2017, [https://www.usccr.gov/press/2017/Statement\\_08-18-2017\\_Charlottesville.pdf](https://www.usccr.gov/press/2017/Statement_08-18-2017_Charlottesville.pdf); U.S. Commission on Civil Rights Condemns Recent Hate Incidents and Calls for Federal Action, Mar. 20, 2017, <https://www.usccr.gov/press/2017/03-20-Hate-Incidents-Statement.pdf>; U.S. Commission on Civil Rights Statement on Hate Crimes in the United States, Dec. 5, 2016, <https://www.usccr.gov/press/2016/PR-12-05-16-hate-crimes.pdf>. The Commission also opened its own investigation into the Departments of Justice and Education's efforts to document, prosecute, and prevent hate crimes and bias-motivated incidents. The Commission held a public briefing in May 2018, and will issue its report in 2019. Press Release, U.S. Commission on Civil Rights Public Briefing, In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes, May 9, 2018, <https://www.usccr.gov/press/2018/05-09-18-PR.pdf>.

## Legislative Priorities

- Congress should appropriate agency funding at the levels necessary to meet current and future needs for civil rights enforcement staff in federal agencies.<sup>11</sup>
- Congress should amend the Voting Rights Act (VRA) to restore and/or expand protections against voting discrimination that are more streamlined and efficient than the current provisions of the VRA.<sup>12</sup>
  - Congress should hold hearings to amass evidence, in addition to that collected by the Commission, to determine where voter discrimination has occurred and continues to occur. Congress should then craft a new coverage provision that accounts for evidence that voting discrimination tends to recur in certain parts of the country. It also should take account of the reality that voting discrimination may arise in jurisdictions that do not have extensive histories of discrimination since minority populations shift and efforts to impose voting impediments may follow.
  - Congress should provide a streamlined mechanism to review certain changes with known risks of discrimination before they take effect, not after potentially tainted elections.
- Congress should pass legislation to bar systematic identity-based exclusion, including on the basis of religion, from our country<sup>13</sup> or from military service.<sup>14</sup>
- Congress should pass legislation to protect Deferred Action for Childhood Arrival (DACA) beneficiaries. Congress should also legislate a compassionate and comprehensive modernization of our immigration system.<sup>15</sup>

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<sup>11</sup> See, e.g., The U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights in the Fiscal Year 2019 Budget, Mar. 16, 2018, <https://www.usccr.gov/press/2018/03-16-statement-2019-budget.pdf>; The U.S. Commission on Civil Rights Expresses Concern Regarding Federal Civil Rights Enforcement Efficacy and Priorities, Jun. 16, 2017, <https://www.usccr.gov/press/2017/06-16-Efficacy-of-Federal-Civil-Rights-Enforcement.pdf>; Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12898, Sept. 2016, [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf) at 92.

<sup>12</sup> An Assessment of Minority Voting Rights Access in the United States, Sept. 2018, [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf) at 285.

<sup>13</sup> The U.S. Commission on Civil Rights Expresses Concern Over Executive Orders Promoting Religious and National Origin Discrimination, Feb. 24, 2017, <https://www.usccr.gov/press/2017/statement-02-24-17-EO.pdf>. See also U.S. Commission on Civil Rights Decries Supreme Court Decision in Muslim Ban Case, Jul. 13, 2018, <https://www.usccr.gov/press/2018/07-13-18-Statement.pdf>.

<sup>14</sup> The U.S. Commission on Civil Rights Condemns the Announced Military Ban on Transgender Individuals, Aug. 18, 2017, [https://www.usccr.gov/press/2017/Statement\\_08-18-2017\\_Transgender.pdf](https://www.usccr.gov/press/2017/Statement_08-18-2017_Transgender.pdf).

<sup>15</sup> The U.S. Commission on Civil Rights Condemns Ending of Undocumented Youth Program, Sept. 8, 2017, <https://www.usccr.gov/press/2017/09-08-DACA.pdf>.

- Congress should pass criminal justice reform legislation that accomplishes at least the following goals to:
  - Reduce mandatory minimum sentences for particular nonviolent offenses and return discretion to judges on sentencing in more cases. This legislation should also make retroactive the sentencing reductions in crimes involving crack cocaine.<sup>16</sup>
  - Curtail the practice of civil asset forfeiture, defined as the taking of property by law enforcement without a criminal conviction, by law enforcement agencies, by curbing the ability of state and local law enforcement agencies to use federal authority to seize property in particular circumstances.<sup>17</sup>
  - Discourage penalizing poverty and, consistent with that goal, give DOJ explicit statutory authority to investigate courts that impose fines and fees and jail individuals for their failure to pay fines and fees in an unconstitutional manner.<sup>18</sup>
- Congress should pass legislation extending the right to counsel in immigration detention proceedings to all indigent detainees. Eligibility for this access to counsel should begin at the time of detention.<sup>19</sup> Congress should urgently prioritize guaranteeing the right to counsel in immigration proceedings to all children.<sup>20</sup>
- Congress should increase funding for immigration judges to address the large case backlog in immigration courts, and discourage the use of quotas on immigration judges.<sup>21</sup>
- Congress should pass legislation providing a federal right to education, to ensure that all students have an equitable opportunity for quality education.<sup>22</sup>

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<sup>16</sup> U.S. Commission on Civil Rights Supports Sentencing Reform Legislation, Nov. 13, 2018, <https://www.usccr.gov/press/2017/11-13-statement.pdf>.

<sup>17</sup> The U.S. Commission on Civil Rights Disapproves of the Department of Justice's Civil Asset Forfeiture Policy, Aug. 18, 2017, [https://www.usccr.gov/press/2017/Statement\\_08-18-2017\\_Forfeiture.pdf](https://www.usccr.gov/press/2017/Statement_08-18-2017_Forfeiture.pdf).

<sup>18</sup> Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications, Sept. 2017, [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf) at 77.

<sup>19</sup> With Liberty and Justice For All: The State of Civil Rights at Immigration Detention Facilities, Sept. 2015, [https://www.usccr.gov/pubs/docs/Statutory\\_Enforcement\\_Report2015.pdf](https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf) at 126.

<sup>20</sup> Letter to Members of Congress regarding the Fair Day in Court for Kids Act, February 26, 2016, [https://www.usccr.gov/press/archives/correspd/PR\\_FairDayinCourtforKid.pdf](https://www.usccr.gov/press/archives/correspd/PR_FairDayinCourtforKid.pdf).

<sup>21</sup> U.S. Commission on Civil Rights Denounces Imposition of Immigration Judge Quotas, Apr. 20, 2018, <http://www.usccr.gov/press/2018/04-20-Immigration-Quota-Statement.pdf>.

<sup>22</sup> Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation, Jan. 2018, <https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf> at 107.

- Congress should pass legislation that adds explicit protections against workplace discrimination on the basis of sexual orientation and gender identity.<sup>23</sup>
- Congress should fund research to better understand the health impact on humans resulting from exposure to coal ash.<sup>24</sup>
- Congress should appropriate funds to invest in unmet essential utilities and core infrastructure projects in Native American communities; Congress should also pass legislation to create the process for a government-to-government relationship between the United States and Native Hawaiians.<sup>25</sup>
- Congress should pass legislation clarifying nondiscriminatory terms under which immigration officials may consider public charge potential in immigration decisions, codifying existing 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds.<sup>26</sup>

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*The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7<sup>th</sup> decade, a continuing legacy of influence in civil rights.*

*For more information about the Commission, please visit [www.usccr.gov](http://www.usccr.gov) and follow us on [Twitter](#) and [Facebook](#).*

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<sup>23</sup> Working for Inclusion: Time for Congress to Enact Federal Legislation to Address Workplace Discrimination Against Lesbian, Gay, Bisexual, and Transgender Americans, Nov. 2017, [https://www.usccr.gov/pubs/docs/LGBT\\_Employment\\_Discrimination2017.pdf](https://www.usccr.gov/pubs/docs/LGBT_Employment_Discrimination2017.pdf).

<sup>24</sup> Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12898, Sept. 2016, [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf) at 92.

<sup>25</sup> Transcript of Oct. 3, 2018 U.S. Commission on Civil Rights Telephonic Business Meeting (Oct. 3, 2018), <https://www.usccr.gov/calendar/2018/12-03-Unedited-Commission-Business-Meeting-Transcript.pdf>. On December 20, 2018 the Commission will release *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, which evaluates whether the federal government is meeting its trust responsibilities and examines budgets and spending of federal agencies that sponsor Native American and Native Hawaiian programs.

<sup>26</sup> Letter from U.S. Commission on Civil Rights, to Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (Dec. 7, 2018) (link forthcoming); INS, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 FR 28689 (May 26, 1999).