



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

December 5, 2019

The U.S. Commission on Civil Rights, by majority vote, renews our appeal to the 116th Congress to prioritize civil rights issues with its oversight and legislative activity. The Commission today updates the Commission's December 2018 [statement](#) based on the Commission's investigative activity over the past year, and the continuing urgent need to restore our nation's commitment to civil rights. 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 collateral consequences of criminal justice involvement, broken promises to Native Americans, effective prevention and prosecution of hate crimes, school discipline, children in immigration detention, and federal agency civil rights enforcement, , among other critical areas, demonstrates that Congress can and should redouble its efforts to bolster civil rights protections in this country.

While the Commission presses Congress to take up all the recommendations of the Commission contained in our reports and statements (available [here](#)), below we highlight particular legislative and oversight priorities that remain pending since our last correspondence, newly identified priorities based on our past year of work, and encouraging developments. We also encourage Members to view reports from the Commission's 51 [State Advisory Committees](#); those reports focus on state-specific civil rights concerns that may benefit from federal oversight and intervention.

New Oversight Priorities

The Commission's work over the last year revealed the following oversight priorities:

- Congress should exercise oversight authority to evaluate baseline staffing necessary for federal agency civil rights offices to be able to fulfill their civil rights enforcement functions. This oversight should include evaluation of the requisite staffing necessary to fulfill an agency's external civil rights enforcement function including through conducting proactive compliance reviews as well as complaint investigation.¹

¹ *Are Rights a Reality? Evaluating Civil Rights Enforcement*, Nov. 2019, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>.

- Congress should hold at least annual public oversight hearings specific to each civil rights office to review and assess the effectiveness of civil rights office satisfaction of the jurisdictional charges Congress has given them.²
- Congress should periodically review collateral consequences imposed by law or regulation to evaluate whether they are necessary to protect public safety and if they are related to the underlying offenses.
- Congress should ensure that it can conduct sufficient oversight of immigration detention centers by passing legislation to allow members of Congress and members of this Commission to conduct independent inspections of detention facilities with minimal notice (no more than 24 hours) and be given full access to detainees to interview them.³

Continuing Oversight Priorities

We renew our request that Congress initiate oversight activities in the following areas:

- 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 rights enforcement tool that Congress has expressly provided to the Department.⁴ Congress should also investigate activity in the Community Oriented Policing Services (COPS) office to determine whether that office is active in offering its services.⁵
- 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.⁶ Congress should also investigate the degree to which the Department of Justice enforces equal access to justice following former Attorney General Sessions’ rescission of civil rights guidance concerning potential unconstitutional practices in the imposition of fines and fees.⁷

² *Id.*

³ *Trauma at the Border: The Human Cost of Inhumane Immigration Policies*, Oct. 2019, <https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf> at 180. Chair Catherine E. Lhamon took no position on this recommendation, and was recused from the underlying evaluation.

⁴ *Are Rights a Reality?: Evaluating Federal Civil Rights Enforcement*, Nov. 2019, p. 93, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>; *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. Commissioner Debo Adegbile took no position on this recommendation.

⁵ Commissioner Debo Adegbile took no position on this recommendation.

⁶ *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>.

⁷ 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.

- Congress should investigate the impact on justice following U.S. Immigration and Customs Enforcement's policy to site immigration enforcement agents at courthouses.⁸
- Congress should evaluate the effectiveness of Department of Justice enforcement activity related to violent expressions of hate,⁹ to ensure respect for personhood remains a core component of the rule of law in this nation.

New Legislative Priorities

The Commission's work over the last year revealed the following legislative priorities:

- Congress should continue to prioritize civil rights office capacity through budget appropriations, specifically increasing their staff capacity to fulfill the jurisdictional authorities Congress has given them and in so doing to maximize their capacity to protect civil rights for all Americans.¹⁰
- Congress should give civil rights offices that now lack such authority the authority to compel resolution from noncompliant entities within an agency's jurisdiction, to allow for efficient investigation of allegations of civil rights harms.¹¹
- Congress should enact legislation to remedy federal agencies' failure to keep accurate, consistent, and comprehensive records of federal spending on Native American programs, which has made it difficult to monitor federal spending to meet its trust responsibility.¹²
- Congress should provide sufficient funding to address the need for hiring, full training, and retention of experienced and qualified administrative law judges to process asylum and other immigration claims, as well as, sufficient funding for

⁸ 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>.

⁹ 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; 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>.

¹⁰ *Are Rights a Reality? Evaluating Civil Rights Enforcement*, Nov. 2019, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf> at 508. See also *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 at 92.

¹¹ *Are Rights a Reality? Evaluating Civil Rights Enforcement*, Nov. 2019, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf> at 509.

¹² *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, Dec. 2018, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

law clerks, interpreters and other administrative support staff to ensure asylum seekers and other immigrants are accorded full due process.¹³

- Congress should pass legislation and provide adequate funding that would incentivize local and state law enforcement to more accurately report hate crimes to the FBI and promote greater transparency and accountability, which would aid in building community trust.¹⁴
- Congress should require federal courts to give comprehensive notice of federal restrictions on individuals' rights before guilty plea entry, upon conviction, and on release from incarceration.¹⁵

Continuing Legislative Priorities

We renew our request that Congress initiate legislation in the following areas:

- 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.¹⁶
 - 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 country¹⁷ or from military service.¹⁸

¹³ *Trauma at the Border: The Human Cost of Inhumane Immigration Policies*, Oct. 2019, <https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf> at 127. Chair Catherine E. Lhamon took no position on this recommendation, and was recused from the underlying evaluation. See also *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>.

¹⁴ *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, <https://www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

¹⁵ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, Jun. 2019, <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

¹⁶ *An Assessment of Minority Voting Rights Access in the United States*, Sept. 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf at 285.

¹⁷ *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.*

- 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.¹⁹
- Congress should pass criminal justice reform legislation that accomplishes at least the following goals to:
 - Congress should build on the mandatory sentencing reductions and increased discretion to judges contained in the First Step Act, for which the Commission previously expressed support, by reducing mandatory minimum sentences for additional particular nonviolent offenses.²⁰
 - 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.²¹
 - 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.²²
- 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.²³ Congress should urgently prioritize guaranteeing the right to counsel in immigration proceedings to all children.²⁴
- Congress should pass legislation providing a federal right to education, to ensure that all students have an equitable opportunity for quality education.²⁵

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>.

¹⁸ *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.

¹⁹ *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>.

²⁰ *U.S. Commission on Civil Rights Supports Sentencing Reform Legislation*, Nov. 13, 2018, <https://www.usccr.gov/press/2017/11-13-statement.pdf>.

²¹ *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.

²² *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 at 77.

²³ *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 at 126.

²⁴ 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.

²⁵ *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.²⁶
- Congress should fund research to better understand the health impact on humans resulting from exposure to coal ash.²⁷
- 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.²⁸

Encouraging Developments

We are encouraged to see that the following developments in civil rights have been made over the past year:

- For the Fiscal Year 2020 cycle, Senator Brian Schatz successfully introduced appropriations language that incorporated recommendations from the Commission stemming from our reports on targeted fines and fees as well as police use of force.
- In August 2019, Representative Deb Haaland and Senator Elizabeth Warren released a draft legislative proposal and request for input based on the Commission’s report entitled *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*.²⁹ We strongly encourage Congress to consider this legislation once introduced.
- In June 2019, Congressman Derek Kilmer convened a briefing about the Commission’s *Broken Promises* report, bringing together USCCR Commissioners, federal agency leaders, and Native American community leaders with Members of Congress to discuss the critical findings and recommendations of our report.

²⁶ *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.

²⁷ *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 at 92.

²⁸ 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) (<https://www.usccr.gov/press/2018/12-07-Comment-on-Public-Charge-Rule.pdf>); INS, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 FR 28689 (May 26, 1999).

²⁹ Congresswoman Deb Haaland, Press Release, “Haaland, Warren Release Legislative Proposal to Address Chronic Underfunding and Barriers to Sovereignty in Indian Country, Aug. 16, 2019, <https://haaland.house.gov/media/press-releases/haaland-warren-release-legislative-proposal-address-chronic-underfunding-and>.

- In December 2018, the Senate passed the First Step Act which included mandatory sentencing reductions and increased discretion to judges consistent with the Commission’s recommendations. We strongly encourage Congress to build on these critical reforms by passing legislation fully consistent with the Commission’s recommendations.
- In April 2018, the Commission wrote to Commerce Secretary Ross requesting that the Department reconsider its decision to include a citizenship status question on the 2020 census.³⁰ Litigation challenging the inclusion of the question ultimately led to the Supreme Court upholding a lower court’s decision to block the addition of the question.
- Between fiscal years 2016 through 2018, a bipartisan Congress passed an increase in appropriations for seven federal civil rights agencies, consistent with the Commission’s call for increased resources for federal civil rights enforcement work.³¹

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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 7th decade, a continuing legacy of influence in civil rights. Follow us on [Twitter](#) and [Facebook](#).

³⁰ Letter from U.S. Commission on Civil Rights to The Honorable Wilbur Ross, Secretary of Commerce (Apr. 20, 2018), <https://www.usccr.gov/press/2018/04-20-Census-Letter.pdf>.

³¹ *Are Rights a Reality? Evaluating Civil Rights Enforcement*, Nov. 2019, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf> at 34.