



UNITED STATES COMMISSION ON CIVIL RIGHTS

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May 8, 2020

Dear Senators Warren, Hirono, Duckworth, Cantwell, Markey, Sanders, Van Hollen, Blumenthal, Harris, Booker, Klobuchar, and Rosen:

Thank you for your letter of April 10, 2020, requesting the Commission issue recommendations to federal agencies “to reduce the dangerous and hateful spread of anti-Asian sentiment that is on the rise during this pandemic.”¹

As an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. As the nation’s civil rights watchdog, we have a unique responsibility during times of crisis to speak out on behalf of communities who are directly or indirectly impacted by the crisis.

We share your concern over the reported increase in xenophobic animosity towards Asian Americans as a result of the COVID-19 pandemic. Today, the Commission voted unanimously to issue the attached recommendations to secure nondiscrimination in the COVID-19 pandemic context, and specifically to address anti-Asian racism and xenophobia.²

As discussed in more detail in our recommendations, all federal civil rights offices should use enforcement where necessary to secure rights violated within their jurisdictions. It is also necessary for the federal government to communicate and act in a manner that demonstrates to communities that it will protect all Americans regardless of race, national origin, or other protected characteristics. Given the rise in anti-Asian sentiment reported in recent weeks and months, it is important that the federal government is conscious of the particular needs of the Asian American community. The Commission has identified widespread concerns about discrimination impacting Asian Americans in relation to education, employment, hate crimes, health, housing, and immigration enforcement. Efforts to address these concerns must always take into account the critical requirement to provide for language access for limited English proficient populations.

I also want to draw your attention to other recent Commission statements about civil rights impacts during the pandemic, including our unanimous call for adequate healthcare in prisons and detention centers during the COVID-19 outbreak,³ urging federal agencies to vigilantly enforce civil rights laws during and in the wake of the COVID-19 crisis,⁴ and announcing opposite to executive branch action shutting down virtually all immigration of permanent residence-seekers into the United States.⁵

¹ Letter from Senators Warren, Hirono, Duckworth, Cantwell, Markey, Sanders, Van Hollen, Blumenthal, Harris, Booker, Klobuchar, and Rosen to U.S. Commission on Civil Rights Chair Catherine E. Lhamon, dated Apr. 10, 2020 (on file).

² U.S. Comm’n on Civil Rights, “U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia,” May 8, 2020, <https://www.usccr.gov/press/2020/05-08-Anti-Asian-Discrimination.pdf>.

³ U.S. Comm’n on Civil Rights, “The U.S. Commission on Civil Rights Calls for Adequate Healthcare in Prisons and Detention Centers During the COVID-19 Outbreak,” Mar. 20, 2020, <https://www.usccr.gov/press/2020/03-20-COVID-19-Detention-Prison-Healthcare.pdf> (Chair Catherine E. Lhamon took no part in consideration of this statement).

⁴ U.S. Comm’n on Civil Rights, “U.S. Commission on Civil Rights Urges Federal Agencies to Vigilantly Enforce Civil Rights Laws During and in the Wake of the COVID-19 Crisis,” Apr. 17, 2020, <https://www.usccr.gov/press/2020/04-17-Statement-on-Coronavirus-Federal-Guidance.pdf>.

⁵ U.S. Comm’n on Civil Rights, “The U.S. Commission on Civil Rights Announces Opposition to Executive Branch Action Shutting Down Virtually All Immigration of Permanent-Residence Seekers Into the United States,” May 8, 2020, <https://www.usccr.gov/press/2020/05-08-Immigration-Shutdown.pdf>.

The Commission also voted unanimously today to take up more in-depth investigation on civil rights impacts during the pandemic. I look forward to fulfilling our mission to advise the President, Congress, and the American public about the state of civil rights in our country.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Lhamon", is positioned below the word "Sincerely,".

Catherine E. Lhamon
Chair

Enclosure



U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia

May 8, 2020

As an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. As the nation's civil rights watchdog, we have a unique responsibility during times of crisis to speak out on behalf of communities who are directly or indirectly impacted by the crisis.

We are especially concerned, as we noted in a statement we issued earlier this month,¹ over the increase in xenophobic animosity toward Asian Americans (and perceived Asian Americans) as a result of the COVID 19 pandemic.

As discussed in more detail below, all federal civil rights offices should use enforcement where necessary to secure rights violated within their jurisdictions. It is also necessary for the federal government to communicate and act in a manner that demonstrates to communities that it will protect all Americans regardless of race, national origin, or other protected characteristics. Given the rise in anti-Asian sentiment reported in recent weeks and months, it is important that the federal government is conscious of the particular needs of the Asian American community. The Commission has identified widespread concerns about discrimination impacting Asian Americans in relation to education, employment, hate crimes, health, housing, and immigration enforcement.² Efforts to address these concerns must always take into account the critical requirement to provide for language access for limited English proficient populations. According to Census data, Asian Americans and Pacific Islanders make up 22 percent of the limited English proficient population in the United States.³

¹ U.S. Comm'n on Civil Rights, "The U.S. Commission on Civil Rights Expresses Concern Over Growing Anti-Asian Racism and Xenophobia Amid the COVID-19 Outbreak," Mar. 20, 2020, <https://www.usccr.gov/press/2020/03-20-Racism-and-Coronavirus-Stmt.pdf>.

² U.S. Comm'n on Civil Rights, *Are Rights a Reality? Evaluating Federal Civil Rights Enforcement*, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>, at pp. 58 (hate crimes; health care), 134 (education), 138 (immigration), 146 (housing), 191 and 193 (education), 265 and 267 (housing), 334 (employment), 337 and 369 (immigration).

³ See Jeanne Batalova and Jie Zong, "Language Diversity and English Proficiency in the United States," Migration Policy Institute, Nov. 11, 2016, <https://www.migrationpolicy.org/article/language-diversity-and-english-proficiency-united-states>.

Core Non Discrimination Principles

Based on our experience evaluating civil rights in the United States over 62 years, and our statutory charge, the Commission reminds the President, Congress, and the American people of the following core nondiscrimination principles applicable now as in all times, as the Department of Justice noted in recent civil rights guidance:⁴

For more than six decades, Congress has promised the American people that discrimination based on race and national origin is unlawful. Title VI of the Civil Rights Act of 1964 promises: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁵ Through this law and many others, Congress has extended this nondiscrimination protection to all aspects of American life, including housing,⁶ employment,⁷ education,⁸ healthcare,⁹ and use of public accommodations.¹⁰ Other statutes, such as the Hate Crimes Prevention Act and the Voting Rights Act, similarly prohibit discrimination based on race and national origin.¹¹

Federal courts have been clear over time in their explanations of ways race and national origin discrimination can persist and the range of remedies available therefore. With respect to employment discrimination, the Supreme Court observed that “[t]he objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees.”¹² As the Court subsequently pointed out, the potential remedies for such discrimination is by necessity broad: “...Congress took care to arm the courts with full equitable powers. . . . Where racial discrimination is concerned, the district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.”¹³ For example, in a case involving a hospital that subjected Filipino-American hospital workers to unfair treatment including “harassing comments, undue scrutiny, and discipline particularly when speaking with a Filipino accent or in Filipino languages,” the EEOC secured a

⁴ Statement by Assistant Attorney General for Civil Rights Eric S. Dreiband, Protecting Civil Rights While Responding to the Coronavirus Disease 2019 (COVID-19), Apr. 28, 2020, <https://www.justice.gov/file/1271776/download>. See also U.S. Comm’n on Civil Rights, “U.S. Commission on Civil Rights Urges Federal Agencies to Vigilantly Enforce Civil Rights Laws During and in the Wake of the COVID-19 Crisis,” Apr. 17, 2020, <https://www.usccr.gov/press/2020/04-17-Statement-on-Coronavirus-Federal-Guidance.pdf>.

⁵ 42 U.S.C. §§ 2000d-2000d-4.

⁶ Fair Housing Act of 1968, 42 U.S.C. §§3601-19.

⁷ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

⁸ Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-4.

⁹ 42 U.S.C. § 2000d.

¹⁰ Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a.

¹¹ 18 U.S.C. § 249; 52 U.S.C. § 10301 et seq.

¹² *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971).

¹³ *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975) (internal citations and quotation marks omitted).

consent decree in 2012 requiring payment of monetary relief, development of protocols for handling harassment and discrimination, and adoption of a Title VII-compliant language policy.¹⁴ In March 2013, the Civil Rights Division of the Department of Justice settled its first claim under the Americans with Disabilities Act regarding discrimination against persons with Hepatitis-B, the majority of whom are Asian American.¹⁵

In 1974, in the landmark case of *Lau v. Nichols*, the Supreme Court established that to protect against national origin discrimination under Title VII, schools must provide “meaningful access” to education in languages other than English;¹⁶ this “meaningful access” standard now extends to federally-funded activities such as courts and law enforcement, health services, and voting.¹⁷

The federal government can and should protect these rights. In one case, for example, involving the failure of a Maine child protective services contractor to provide interpreters for Limited English Proficient clients speaking Somali, Vietnamese, and Cambodian, HHS OCR secured an agreement that the contractor would “implement a new Language Assistance Policy and take additional steps to ensure that LEP persons are provided meaningful access to all of its more than 40 programs in over 15 locations through the state.”¹⁸ In another case, the Department of Justice filed suit against Alameda County, California, for failing to provide effective access to the ballot for Spanish and Chinese-speaking Americans as required by Section 203 of the Voting Rights Act of 1965. The suit resulted in a consent decree in 2011 under which “the County must provide bilingual language assistance at the polls and election-related

¹⁴ U.S. Equal Employment Opportunity Commission, Press Release, “Delano Regional Medical Center to Pay Nearly \$1 Million in EEOC National Origin Discrimination Suit,” Sept. 17, 2012, <https://www.eeoc.gov/eeoc/newsroom/release/9-17-12a.cfm>.

¹⁵ See Settlement Agreement Between the United States of America and the University of Medicine and Dentistry of New Jersey Under the Americans with Disabilities Act, Mar. 5, 2013, https://www.ada.gov/umdnj_sa.htm. See also U.S. Department of Justice, Press Release, “Justice Department Settles with University of Medicine and Dentistry of New Jersey Over Discrimination Against People with Hepatitis B,” Mar. 5, 2013, <https://www.justice.gov/opa/pr/justice-department-settles-university-medicine-and-dentistry-new-jersey-over-discrimination> (“Both of the applicants in this matter come from the Asian American Pacific Islander community. The CDC reports that Asian American Pacific Islanders (AAPIs) make up less than 5 percent of the total population in the United States, but account for more than 50 percent of Americans living with chronic Hepatitis B. Nearly 70 percent of AAPIs living in the United States were born, or have parents who were born, in countries where hepatitis B is common. Most AAPIs with Hepatitis B contracted Hepatitis B during childbirth. The Civil Rights Division is committed to ensuring that this community is not subjected to discrimination because of disability.”)

¹⁶ *Lau v. Nichols*, 414 U.S. 563, 568 (1974).

¹⁷ See, e.g., U.S. Comm’n on Civil Rights, *Are Rights a Reality? Evaluating Federal Civil Rights Enforcement*, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>, at p. 127 (state courts), 133 (all federally-funded activities), and 220 (HHS). See *United States v. Berks County, PA*, 250 F. Supp. 2d 525, 527 (voting).

¹⁸ U.S. Department of Health and Human Services, Office for Civil Rights, Enforcement Success Stories Involving Persons with Limited English Proficiency, <https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/examples/limited-english-proficiency/index.html> (last accessed May 5, 2020).

materials and information in Spanish and Chinese” and federal observers can monitor voting processes in the county.¹⁹

Other relevant cases include not only language discrimination, but also other forms of national origin discrimination such as challenging voters based on national origin or prohibiting Asian-American voters from receiving assistance. The Commission documented some of these cases in our 2018 statutory report on voting rights,²⁰ along with testimony about concerns of increasing anti-Asian hate sentiment impacting voting rights as there is no longer federal preclearance of changes in voting procedures that are likely to be discriminatory.²¹ The Commission also documented our concerns with ongoing discrimination in voting, decreased Department of Justice activity in monitoring elections to help prevent discrimination and bringing affirmative cases to prevent implementation of discriminatory voting procedures.²²

In a case stemming from a joint investigation by the Department of Justice and Consumer Financial Protection Bureau, the federal government filed suit against American Honda Finance Corporation for violation of the Equal Credit Opportunity Act by allowing automobile dealers “to charge higher interest rates to borrowers on the basis of race and national origin.”²³ The federal government secured a consent order in 2015 under which Honda had to “implement policies and procedures that limit the dealer markup on automobile retail installment contracts,” create a \$1 million consumer financial education program, and establish a \$24 million compensation fund for particular African American, Hispanic American, and Asian American borrowers who were subjected to Honda’s discriminatory practices.²⁴

The federal government also has an important role in preventing and addressing hate crimes against Asian Americans. The Commission recently found that although data was incomplete, as the FBI only began collecting disaggregated data about Asians and Native Hawaiians and Other Pacific Islanders in 2013,²⁵ reported hate crimes based on national origin, including those directed against Asian Americans, have been dramatically

¹⁹ U.S. Department of Justice, Civil Rights Division, Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act, <https://www.justice.gov/crt/cases-raising-claims-under-language-minority-provisions-voting-rights-act> (last accessed Apr. 28, 2020).

²⁰ U.S. Comm’n on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf, p. 140 (New York State Attorney General settlement of case of discrimination and harassment of Chinese American student voters who were challenged and removed from the rolls, though they were ultimately added back to the rolls after the settlement) and p. 258 (cases brought to enforce the right to voter assistance).

²¹ *Id.* at 191-192 (testimony of Jerry Vattamala, Asian American Legal Defense and Educational Fund).

²² *Id.* at 252, 275.

²³ U.S. Department of Justice, Civil Rights Division, Recent Accomplishments of the Housing and Civil Enforcement Section, <https://www.justice.gov/crt/recent-accomplishments-housing-and-civil-enforcement-section> (last accessed May 5, 2020).

²⁴ *Id.*

²⁵ U.S. Comm’n on Civil Rights, *In the Name of Hate: Examining the Federal Government’s Role in Response to Hate Crimes*, Nov. 2019, <https://www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf> at 85.

increasing in recent years.²⁶ According to FBI data, the highest incidents of reported hate crimes were motivated by race, and the second-highest were motivated by ethnicity;²⁷ both categories include anti-Asian bias.²⁸

The Commission has also documented recent anti-Asian American hate incidents in schools, particularly at the elementary school level. We reported that:

Furthermore, according to a report by the Sikh Coalition and the Asian American Legal Defense and Education Fund (AALDEF), in 2013, 50 percent of Asian American youth surveyed in New York City have experienced bias-based bullying and harassment in school. That is, half of these students have been victims of bias incidents in their school.²⁹

These incidents are similar to those reported incidents unfortunately arising in the wake of the current pandemic.

Commission's Recommendations

The Commission's recommendations to reduce the dangerous and hateful spread of anti-Asian sentiment that appears to be on the rise during this pandemic are as follows:

- All federal civil rights offices should use enforcement where necessary to secure rights violated within their jurisdictions.
- All federal officials must communicate and act in a manner that demonstrates to communities that the federal government will protect all Americans regardless of race, national origin, or other protected characteristics.
- Federal agencies should improve their civil rights performance overall and specifically, through improving data collection and disaggregating data; through prioritizing and including civil rights in their highest-level agency strategic planning process, with an ability to weigh in on policies before they are enacted; through improved enforcement actions when necessary; through increased staffing necessary for baseline levels of civil rights oversight and compliance reviews; and through proactive guidance, community outreach, and partnerships.³⁰

²⁶ *Id.* at 85, 92.

²⁷ *Id.* at 85, Chart 8: Hate Crimes by Race/Ethnicity Bias (2009-2017).

²⁸ *See, e.g., United States v. Won Kim Ark*, 169 U.S. 649 (1898). *See also* U.S. Census Bureau, About Race, <https://www.census.gov/topics/population/race/about.html> (accessed 5/5/2020); 2020 Census Questions: Race, <https://2020census.gov/en/about-questions/2020-census-questions-race.html> (“The category ‘Asian’ includes all individuals who identify with one or more nationalities or ethnic groups originating in the Far East, Southeast Asia, or the Indian subcontinent. Examples of these groups include, but are not limited to, Chinese, Filipino, Asian Indian, Vietnamese, Korean, and Japanese. The category also includes groups such as Pakistani, Cambodian, Hmong, Thai, Bengali, Mien, etc.”).

²⁹ *In the Name of Hate* at 155-56.

³⁰ *Are Rights a Reality?*, at 4-5 and 508-10.

- Federal agency civil rights offices use all tools at their disposal, including guidance documents, public education, technical assistance, outreach, and publicity to ensure that the regulated community understands their legal obligations under federal civil rights laws, and to ensure that the general public know their rights. For instance, this should include increased grants and training to local jurisdictions for addressing hate crimes and bias-motivated incidents.³¹
- For all of these communications, officials should remember their federal obligation to provide access to individuals with limited English proficiency.³²
- Federal officials should make sure to communicate the resources available for individuals and communities who might be targeted, specifically to address hate crimes and bias-motivated incidents. In this instance, this type of engagement might include working with Asian American organizations or organizations that provide assistance to Asian residents in our country to provide leadership and assurance that anti-Asian harassment, slurs, bullying, aggression, and violence are not to be tolerated and provide a direct line of communication for organizations to report instances of the same.
- Federal officials should also use non-English media to publicize all of the above. The utilization and placement of language-appropriate public service announcements should be a priority.

It is not the responsibility of only one agency or civil rights office to enforce these nondiscrimination laws; it is incumbent on any office that has jurisdiction to fulfill its legal mandate and ensure that no American is without the protection of our nation's core civil rights promises. Moreover, all Americans should do our part to fulfill the promises in our nation's civil rights laws so that each among us, now and in all times, may live, work, learn, and thrive in the expectation that our peers and our government will treat us with respect, dignity, and fairness.

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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.

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³¹ *In the Name of Hate*, at 5-6 and 226-27.

³² Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; U.S. Dep't of Justice, Office of the Atty General, Memorandum of the Attorney General to Heads of Federal Agencies, General Counsels and Civil Rights Heads, Federal Government's Commitment to Language Access Under Executive Order 13166 (Feb. 17, 2011), p. 2, https://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf.