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Marc Brenman * Adrienne Hollis * Ellis Jacobs * Helen Kang * Gregg Macey * Vincent Martin
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August 8, 2017

Catherine E. Lhamon, Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425
(202) 376-8116

Re: Request for Follow-up on USCCR September 2016 Enforcement Report

Dear Chair Lhamon,

We write as an alliance of environmental justice, environmental, and civil rights activists and organizations to request that the Commission follow up on its 2016 report ENVIRONMENTAL JUSTICE: EXAMINING THE ENVIRONMENTAL PROTECTION AGENCY'S COMPLIANCE AND ENFORCEMENT OF TITLE VI AND EXECUTIVE ORDER 12898 (EJ Report).¹ The EJ Report powerfully and authoritatively voiced what many environmental justice activists and advocates see on a daily basis: that the U.S. Environmental Protection Agency's (EPA) civil rights enforcement is woefully inadequate and much more needs to be done to make the promise of environmental justice a reality. We are concerned, however, that since the release of the EJ Report, EPA has failed to adopt or implement most of the Commission's recommendations. Indeed, there are reasons to believe that the agency is moving further backward in civil rights enforcement and environmental justice. We appreciate the Commission's prior efforts to shine a light on these critical issues² and write both to applaud the Commission's decision to launch a new inquiry into this Administration's civil rights enforcement,³ and, particularly, to request that the Commission use its authority to inquire into steps EPA is taking to implement the Commissions' recommendations and to build a robust Title VI compliance and enforcement program.

¹ U.S. COMMISSION ON CIVIL RIGHTS, ENVIRONMENTAL JUSTICE: EXAMINING THE ENVIRONMENTAL PROTECTION AGENCY'S COMPLIANCE AND ENFORCEMENT OF TITLE VI AND EXECUTIVE ORDER 12898 (2016) [hereinafter *EJ Report*].

² See U.S. COMMISSION ON CIVIL RIGHTS, NOT IN MY BACKYARD: EXECUTIVE ORDER 12,898 AND TITLE VI AS TOOLS FOR ACHIEVING ENVIRONMENTAL JUSTICE (2003) [hereinafter *NIMBY Report*].

³ The U.S. Commission on Civil Rights Expresses Concern Regarding Federal Civil Rights Enforcement Efficacy and Priorities, U.S. Commission on Civil Rights (June 16, 2017), available at <http://www.usccr.gov/press/2017/06-16-Efficacy-of-Federal-Civil-Rights-Enforcement.pdf>.

As the EJ Report documented, “EPA continues to struggle to provide procedural and substantive relief to communities of color impacted by pollution,” particularly in the context of enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and EPA’s implementing regulations, 40 C.F.R. Part 7. Specifically, the EJ Report included the following recommendations related to EPA’s civil rights compliance and enforcement program⁴:

1. Congress should increase EPA’s Office of Civil Rights budget specifically to increase staffing to meet current and future needs.
2. EPA should bring on additional staff temporarily to clean up the significant backlog – in some cases decades old.
3. EPA should continue to build up its recent efforts to share expertise among the regions and headquarters, and support the Deputy Civil Rights Officers.
4. EPA leadership must empower and support the efforts of the Office of Civil Rights and provide it with the necessary tools and administrative responsibilities to support and hold accountable other EPA entities whose jurisdiction intersects communities of color.
5. . . .
6. EPA should not adopt a phased-approach to conducting post-award compliance review.
7. EPA should include affected communities in the settlement process.

In many respects, EPA’s actions since the release of the EJ Report and, particularly, since the new Administration came into office, further undermine hope for civil rights enforcement to address discrimination on the basis of race, color, or national origin by recipients of funds in the environmental sector. Every day, disparities in the distribution of benefits and burdens – whether children will be exposed to air pollution or will have clean water to drink, for example – seem to widen. Every day, we lose hope that communities of color will have opportunities for meaningful participation in decisions that affect the health and welfare of their neighborhoods. We write to ask that the Commission request information from EPA in follow up on the EJ Report and use its recently-announced investigation to further inquire into the EPA’s civil rights compliance and enforcement and environmental justice efforts.

The remainder of this letter provides additional background on the status of key recommendations made by the Commission, based upon information available to the public.

⁴ *EJ Report* at 4, 92. The Commission also recommended – as did many signatories to this letter – that EPA withdraw its proposal to eliminate deadlines for processing complaints and conducting investigations, and we commend former Administrator McCarthy and the leadership of the Office of Civil Rights (OCR), now called the External Civil Rights Compliance Office (ECRCO), for following suit in the closing days of the Obama Administration. Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, 82 Fed. Reg. 2294-01 (Jan. 9, 2017), <https://www.regulations.gov/document?D=EPA-HQ-OA-2013-0031-0097>; see also Letter from Marianne Engelman Lado, Senior Staff Attorney, Earthjustice, et al. to Velveta Golightly-Howell, Director, U.S. EPA Office of Civil Rights, et al. 35 (Mar. 14, 2016) available at www.naacpldf.org/files/case_issue/Comments%20on%20Title%20VI%20NPRN.pdf.

Congress should increase EPA's Office of Civil Rights budget specifically to increase staffing to meet current and future needs.

If implemented, President Trump's fiscal year 2018 budget proposal would cut total EPA funding by 31.4%,⁵ and guidance from EPA's Acting Chief Financial Officer David A. Bloom proposes a cut of 10.7 full time equivalents (FTEs) from the agency's Title VI compliance budget along with the elimination of the Office of Environmental Justice.⁶ Precisely the opposite of the Commission's recommendations, these cuts would further weaken the Agency's enforcement capabilities and would increase already lengthy processing times.

Moreover, discrepancies between EPA's testimony before the Commission and staffing levels presented in the President's budget merit further inquiry. During OCR Director Velveta Golightly-Howell's testimony, the Commission raised the concern that OCR operated with only nine staff members.⁷ For many of the signatories who have engaged in efforts to reform EPA's civil rights program over the years, this number was similar to staff levels reported during meetings with EPA leadership during the Obama Administration, which ranged from approximately 8 to 11.⁸ To our knowledge, this number may not have included other staff across the regions, including Deputy Civil Rights Officers or investigators on detail, but it's clear that OCR failed to provide a complete picture of staffing. David Bloom's guidance calls for a reduction of 10.7 FTEs,⁹ which is inconsistent with a staffing level of approximately 8 to 11. Even accounting for the fact that the 10.7 FTEs may be allocated between headquarters and the regions, a cut of 10.7 FTEs is hard to reconcile with OCR's prior disclosure of staffing levels. The staffing cut is also at odds with the need for increased attention to civil rights compliance and enforcement.¹⁰

We request that the Commission inquire into staffing levels for civil rights compliance and enforcement efforts, as well as projections of future staffing and funding to ensure that resources are available for civil rights compliance and enforcement at EPA.

EPA should bring on additional staff temporarily to clean up the significant backlog – in some cases decades old.

While EPA might argue that it has been working toward reducing the backlog of cases that had been languishing for years at the agency, EPA's actions are, instead, a travesty of justice. EPA's response to the Commission's recommendations and to litigation brought on

⁵ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE U.S. GOVERNMENT: A NEW FOUNDATION FOR AMERICAN GREATNESS, FISCAL YEAR 2018 42 (2017).

⁶ Letter from David A. Bloom, Acting Chief Financial Officer, US EPA, to EPA leadership, A 1, A 11 (Mar. 21, 2017).

⁷ *EJ Report* at 220.

⁸ *See Id.* at 49 ("According to the Office of Civil Rights' supplemental response sent to the Commission in January 2016, there are eight staff members who manage and investigate complaints, provide technical assistance, respond to Freedom of Information Act Requests, and assist in developing policy documents."); *See also Id.* at 217.

⁹ Bloom, *supra* note 6, at A 1.

¹⁰ David Bloom's March 21, 2017 guidance letter also calls for the elimination of ECRCO's Alternative Dispute Resolution program, one of the few mechanisms for bringing complainants and recipients to the table to resolve civil rights complaints. *See* Bloom, *supra* note 6, at A 15.

behalf of complainants in five of the oldest cases filed with EPA in the nation – from Tallassee, Alabama to Pittsburg, California¹¹ – has largely been to close cases without thorough investigations. To our knowledge, EPA has not conducted site inspections, meaningful consultation with complainants, or air, water, dust, or soil sampling, for example, before declaring these cases closed.

Since the release of the EJ Report, EPA continues to demonstrate the “timid enforcement” criticized in the Report.¹² Out of the ten Title VI complaints EPA has closed or resolved so far in 2017, a majority have been closed without a resolution agreement or finding of discrimination.¹³ For example, on April 28, 2017, EPA notified the Ashurst Bar/Smith Community Organization that it was “resolving and closing” the administrative complaint the Community Organization had filed on December 8, 2003 against the Alabama Department of Environmental Management (ADEM) for approving a permit modification for the Stone’s Throw Landfill, which sits in the heart of a historic African American community.¹⁴ The Ashurst Bar/Smith community was founded after the Civil War by newly freed enslaved people, who were able to purchase land for the first time. After neglecting the complaint for more than a decade, ECRCO closed the case without visiting the community or, to the knowledge of complainants, taking air, water, dust, or soil samples to evaluate the impact of the permit modification. Neither did ECRCO seek creative approaches to addressing the impacts of the facility in light of the many years that had passed since the complaint was filed. Perhaps most astonishing, EPA closed the case despite acknowledging that “information gathered during the course of this investigation and additional pending investigations involving ADEM have raised issues not addressed by this letter.”¹⁵ The letter stated, “ECRCO will be contacting ADEM to discuss these issues and possible options for addressing them,”¹⁶ but EPA closed the case nonetheless and has failed to engage complainants in any such subsequent discussions related to ADEM’s permitting processes or nondiscrimination program.

In those few cases where EPA has reached a resolution agreement, the terms are weak and ineffectual. For instance, on May 23, 2017, ECRCO came to a Resolution Agreement with the Texas Commission on Environmental Quality (TCEQ) in a case that had been languishing at EPA for seventeen years.¹⁷ In response to allegations of discrimination based on race in the 1999 issuance of a permit modification for a hydrocracker unit at the ExxonMobil refinery in Beaumont, Texas – one of the largest refineries in the country – the Resolution Agreement called for TCEQ to hold two community meetings and place one air quality monitor a mile away from the refinery.¹⁸ ECRCO’s review of TCEQ’s nondiscrimination program was deferred to a

¹¹ *Californians for Renewable Energy v. U.S. EPA*, 3:15-cv-03292 (N.D. Cal. 2015).

¹² *EJ Report* at 2.

¹³ NEW DEVELOPMENTS!, <https://www.epa.gov/ocr/external-civil-rights-compliance-office-new-developments> (last visited Aug. 2, 2017).

¹⁴ Letter from Lilian S. Dorka, Director, ECRCO, to Marianne Engelman Lado, Visiting Clinical Professor, Yale Law School Environmental Justice Clinic, et al. (Apr. 28, 2017) (Closure of Administrative Complaint, EPA File No. 06R-03-R4).

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ Letter from Lilian S. Dorka, Director, ECRCO, to Richard A. Hyde, Executive Director, TCEQ 2 (May 23, 2017) (Resolution of Administrative Complaint, EPA File 01R-00-R6).

¹⁸ INFORMAL RESOLUTION AGREEMENT BETWEEN THE TCEQ AND THE US EPA: ECRCO COMPLAINT NO. 01R-00-R6 § (II)(G)-(III)(B) (2017).

“separate process” apart from complaint resolution.¹⁹ EPA should affirmatively require all recipients to implement nondiscrimination programs,²⁰ not only those that are the subject of a complaint. But where EPA reviews a complaint alleging discrimination, addressing deficiencies in a recipient’s nondiscrimination program should be an essential part of the resolution of the case. In the Beaumont case, the complainants, People Against Contaminated Environments and the Sierra Club, were shut out of the process for addressing the issues they raised, and the terms of the Resolution Agreement will not begin to address the impacts of the expanded facility on the lives of residents in the Charlton-Pollard neighborhood, an African American community in Beaumont. The terms can only be described as meager, especially in light of the fact that community members living near the polluting facility had been exposed to its harmful effects, including toxic air pollution, for so many years.²¹

Ironically, the outcome of the one case where EPA made a preliminary finding of discrimination is equally egregious. In what was until recently the oldest outstanding case in the country, filed in 1992 by the St. Francis Prayer Center in Flint, Michigan, EPA issued a preliminary finding of discrimination, stating, among other things, that it was “deeply concerned that [the recipient] does not take seriously its responsibility to implement a properly functioning non-discrimination program as required under EPA regulations.”²² Nonetheless, EPA then closed the complaint without requiring any remedial measures or finalizing its finding.²³ The recipient, the Michigan Department of Environmental Quality (MDEQ), faces no repercussions for its history of discrimination, and the Genesee Power Station, which was the subject of the permit challenged in the complaint as discriminatory, continues to operate in Flint.

It cannot have been the Commission’s intent that by following the Commission’s recommendation, EPA would get rid of its significant backlog without conducting thorough investigations or responding to findings with appropriate remedies. We ask the Commission to make inquiries into EPA’s handling of the backlog, to emphasize its recommendation for EPA to bring on additional staff to increase its capacity to conduct thorough investigations, and to call on EPA to ensure that investigations are professionally conducted, leading to appropriately strong remedies.

EPA should not adopt a phased-approach to conducting post-award compliance review.

The Commission’s report signaled concern over OCR’s suggestion in a proposal for rulemaking that it use a phased approach to conducting post-award compliance reviews.²⁴ Although EPA has now withdrawn that proposed rule, to our knowledge it still is not conducting

¹⁹ *Id.* at § (II)(H).

²⁰ *See, e.g.*, FEDERAL TRANSIT ADMINISTRATION, CIRCULAR 4702.1B (Oct. 1, 2012) (Title VI Requirements and Guidelines for Federal Transit Administration Recipients).

²¹ *Californians for Renewable Energy v. U.S. EPA*, 3:15-cv-03292 para. 20 (N.D. Cal. 2015).

²² Letter from Lilian S. Dorka, Director, EPA ECRCO, to Heidi Grether, Director, MDEQ 30 (Jan. 19, 2017) (Resolution and Closure of Administrative Complaint, EPA File No. 01R-94-R5).

²³ *See Id.*

²⁴ *EJ Report* at 39, n. 40 (quoting OCR Director Velveta Golightly-Howell “[T]he Office of Civil Rights’ Strategic Plan for 2015 to 2020 will . . . take a phased approach to conducting post award compliance reviews.”); *See also EJ Report* at 39-40.

post-award compliance reviews.²⁵ EPA’s failure to take an affirmative approach to compliance is not new, as evidenced by the Commission’s 2003 recommendation to EPA that it “conduct independent analyses of adverse disparate impacts to determine if they actually are present in a given community.”²⁶

EPA should regularly conduct meaningful affirmative review of civil rights compliance and enforcement pre- and post-award. The City of Los Angeles, for example, presents an opportunity for EPA to exercise its affirmative responsibility to review recipient compliance with civil rights mandates. Diverse stakeholders have repeatedly raised civil rights and environmental justice concerns with the City and EPA over the revitalization of the Los Angeles River,²⁷ yet the goal of environmental justice through a straightforward civil rights compliance and equity plan is still far off. The City admits the River flows through the “epicenter of cancer risk” in Los Angeles²⁸ and the River has become a hotspot of green displacement and gentrification that disproportionately impacts people of color and low income people,²⁹ making the River’s revitalization the perfect opportunity for EPA to take meaningful action to implement both the recommendations of the Commission and EPA’s own Environmental Justice 2020 Action Agenda.³⁰ To date EPA has not properly addressed compliance and enforcement in L.A. River revitalization.

In light of EPA’s longstanding failure to perform affirmative compliance reviews, we ask the Commission to inquire into EPA’s efforts to conduct pre- and post-award compliance reviews.

EPA should include affected communities in the settlement process.

EPA has also failed to follow the Commission’s recommendation that it “[i]nclude affected communities in the settlement process.”³¹ This shortfall has been widely observed and reported on by the signatories of this letter; for instance, in its 2016 report, A RIGHT WITHOUT A REMEDY: HOW THE EPA FAILED TO PROTECT THE RIGHTS OF LATINO SCHOOLCHILDREN, which was released just months before the Commission’s EJ Report, the Center for Race, Poverty & the Environment recounted how after years of delay in the *Angelita C.* case, EPA failed to engage

²⁵ NEW DEVELOPMENTS!, <https://www.epa.gov/ocr/external-civil-rights-compliance-office-new-developments> (last visited Aug. 2, 2017).

²⁶ *NIMBY Report* at 77.

²⁷ LOS ANGELES RIVER PROJECT OFFICE, LOS ANGELES RIVER ACCESS AND USE: BALANCING EQUITABLE ACTIONS WITH RESPONSIBLE STEWARDSHIP 26 (2009) (“Numerous local organizations have stressed the importance of making sure that the River’s revitalization addresses environmental justice issues.”).

²⁸ Carol Armstrong, Los Angeles River Revitalization & the Urban Waters Federal Partnership 4 (2015), available at <https://www.epa.gov/sites/production/files/2015-02/documents/armstrong-urban-waters.pdf>.

²⁹ ROBERT GARCÍA & TIM MOK, WHITEWASHING THE L.A. RIVER: DISPLACEMENT AND EQUITABLE GREENING (2017), available at <https://www.cityprojectca.org/blog/archives/44644>.

³⁰ Thirty civil rights and environmental justice leaders and advocates wrote to EPA in November 2016 to express these recommendations. Letter from Marianne Engelman Lado, Senior Staff Attorney, Earthjustice to Matt Fritz, Chief of Staff, EPA (Nov. 22, 2016).

³¹ *EJ Report* at 92.

the complainants in either its investigation or negotiations with the recipient.³² According to the report, EPA “deliberately excluded” the complainants “from both the investigation and the resolution of the complaint, which provided no relief for Latino children from pesticide exposure while at school.”³³

Despite the fact that participation by complainants in the investigation and discussions of remedy are consistent with EPA’s protocols and policies governing case resolution,³⁴ EPA continues to exclude complainants in all facets of the process. Repeatedly, complainants have asked EPA for a seat at the table in negotiations with TCEQ, ADEM, and other recipients of federal funds, but EPA ignores these requests. In a nod toward greater transparency, EPA has, at least in some open cases, briefed complainants about developments, but this is a far cry from meaningful participation.³⁵

Similarly, we believe that EPA and MDEQ are now in discussions about MDEQ’s public participation program, MDEQ’s non-discrimination program to establish procedural safeguards, access for persons with disabilities and limited English proficient (LEP), and MDEQ’s processes for addressing environmental complaints.³⁶ Complainants Rhonda Kelso and the St. Francis Prayer Center have strongly urged EPA and MDEQ to include them in discussions about the resolution of Ms. Kelso’s Complaint and any remedies relevant to the Prayer Center case before any agreement is reached between the agencies.³⁷ As Ms. Kelso and St. Francis Prayer Center recently wrote to ECRCO Director Lilian Dorka, in support of their request to participate in negotiations between ECRCO and MDEQ,

³² CENTER FOR RACE, POVERTY & THE ENVIRONMENT, *A RIGHT WITHOUT A REMEDY: HOW THE EPA FAILED TO PROTECT THE RIGHTS OF LATINO SCHOOLCHILDREN 6* (2016), available at http://earthjustice.org/sites/default/files/Right%20without%20a%20Remedy%20FINAL_optimized.pdf.

³³ *Id.* at 17.

³⁴ See ECRCO, *CASE RESOLUTION MANUAL*, § 3.13 (2017) (“ECRCO will use its discretion, when appropriate, to engage complainants who want to provide input on potential resolution issues.”). While EPA policy does not require consultation with complainants in informal resolution and voluntary compliance efforts, one of EPA’s explicit goals is to promote appropriate involvement by complainants and recipients in the Title VI complaint process, and this form of involvement is well within EPA’s discretion. See EPA, *TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: ROLE OF COMPLAINANTS AND RECIPIENTS IN THE TITLE VI COMPLAINTS AND RESOLUTION PROCESS 2 & 2 n 2* (2015) (stating “EPA’s goal is to promote appropriate involvement by complainants and recipients,” and making clear that determinations about what is “‘appropriate’ will be made by the EPA” within its discretion.), available at <https://assets.documentcloud.org/documents/2178959/final-roles-of-complainants-and-recipients-issue.pdf>; see also ECRCO, *CASE RESOLUTION MANUAL*, § 3.1 (2017) (“The EPA’s regulations do not prescribe a role for the complainant once s/he has filed a complaint. Nevertheless, one of the EPA’s goals is to promote appropriate involvement by complainants and recipients in the External Compliance complaint process.”).

³⁵ For example, EPA briefed members of the Ashurst Bar/Smith Community Organization just before closing Complaint No. 06R-03-R4 and held a call with representatives from People Against Contaminated Environments and Sierra Club before releasing the Resolution Agreement in Complaint No. 01R-00-R6, but these calls were merely pre-release notifications, not meaningful consultation.

³⁶ See Letter from Lilian Dorka, Director, ECRCO, US EPA, to Father Phil Schmitter, St. Francis Prayer Center (Jan. 19, 2017) (EPA File No. 01R-94-R5).

³⁷ Letter from Marianne Engelman Lado, Visiting Clinical Professor of Law, Yale Law School Environmental Justice Clinic, to Lilian Dorka, Director, EPA ECRCO 1 (June 9, 2017) (Request by Complainants to Participate in Discussions Regarding Resolution of Complaint No. 17-RD-16-R5 and Relief Relevant to Findings in Complaint No. 01R-94-R5).

It would be a significant mistake for EPA and MDEQ to reach resolution without community input – and, particularly, without participation by the complainants.... Given their firsthand experience and knowledge, community members have valuable contributions to make to any proposal to improve MDEQ’s public participation, non-discrimination, and complaint policies and practices. Their input will improve the quality of the resolution agreement and will help to ensure the integrity and credibility of any agreement. On the other hand, decisions made behind closed doors without stakeholder input will only further erode trust in EPA and MDEQ.³⁸

In spite of this request, complainants in Flint, Michigan have not been included in the resolution process. We ask the Commission to inquire into measures that EPA is taking to include affected communities in the settlement process.

EPA should take steps to increase transparency.

In addition to its failure to adopt the EJ Report’s recommendations, signatories to this letter are concerned that EPA is also reducing ECRCO’s transparency.³⁹ In particular, the Agency has removed its list of “Complaints Filed with EPA under Title VI of the Civil Rights Act of 1964” from the agency’s website.⁴⁰ The Obama Administration had posted ECRCO’s docket on the EPA website at the request of complainants and community members who otherwise lacked access even to public documents about EPA’s investigations, and it was the understanding of signatories that EPA was committed to moving toward a more complete docket, to be updated quarterly and with links to public documents.⁴¹ This resource acted to increase accountability and its removal makes the acquisition of information more difficult. Community members and interested parties must again submit Freedom of Information Act (FOIA) requests to obtain basic information, which is burdensome on communities and inefficient for EPA. In some cases, the complainants themselves are forced to submit a FOIA request to receive notice of the results of their complaint.⁴² The USCCR relied on EPA’s valuable tool for transparency in

³⁸ *Id.* at 2.

³⁹ In her testimony before the Commission, then-Director Velveta Golightly-Howell stated that OCR was “reinvigorating its efforts to provide information to not only recipients but also complaints and other external stakeholders.” Velveta Golightly-Howell, Testimony Before the U.S. Commission on Civil Rights 3 (Jan. 22, 2016), available at <http://bit.ly/2u5HiPf>. These steps included, among other things, “revamping our external website to make it easier for the public to quickly obtain information about the nondiscrimination complaint process.” *Id.*

⁴⁰ EPA, *Complaints Filed with EPA under Title VI of the Civil Rights Act of 1964* <https://www.epa.gov/ocr/complaints-filed-epa-under-title-vi-civil-rights-act-1964> (“The table . . . which provided information through 2014 is no longer updated or maintained; thus, the table has been removed from EPA’s website.”) (last accessed Aug. 8, 2017).

⁴¹ Letter from Marianne Engelman Lado, Senior Staff Attorney, Earthjustice, et al. to Velveta Golightly-Howell, Director, U.S. EPA Office of Civil Rights, et al. 35 (Mar. 14, 2016) available at www.naacpldf.org/files/case_issue/Comments%20on%20Title%20VI%20NPRN.pdf.

⁴² In Complaint No. 04-NO-16-R4 against the Georgia Department of Agriculture, in response to a written inquiry by complainant’s counsel, EPA replied via phone call to say that the EPA would not provide complainant with notice during any stage of the review, that complainant would not be included in the review/comment process, and that complainant could request the final procedures via FOIA. Solimar Mercado-Spencer, Senior Staff Attorney, Georgia Legal Services, personal communication (June 13, 2017).

its September, 2016 report.⁴³ The removal of this list is ironic given EPA's statement elsewhere on its website that it seeks to expand transparency.⁴⁴

The need for transparency was demonstrated by revelations in February that EPA failed to check an email inbox for Title VI complaints for over a year and then failed to disclose the problem to the public.⁴⁵ This misstep illustrates that more transparency is needed, not less. We ask the Commission to seek information about EPA's plans for providing a regularly updated docket and, more generally, efforts to improve transparency.

In light of the above concerns, we recommend that the Commission pose the following questions to EPA:

1. What are ECRCO staffing levels and what efforts is EPA making to bring on additional staff?
2. In the current budgetary situation, what steps is EPA taking to ensure civil rights enforcement is adequately funded?
3. How is EPA working to ensure rigorous and thorough investigations into allegations of discrimination, particularly in the context of backlogged complaints?
4. What steps is EPA taking to begin affirmative pre- and post-award compliance reviews?
5. What steps is EPA taking to engage affected communities in settlement processes?
6. Why is EPA no longer maintaining a docket of complaints filed under Title VI of the Civil Rights Act of 1964, and what steps is EPA taking to make this information and other documents pertaining to EPA's investigations regularly available to the public?

Thank you for your consideration. Please let us know if we can provide additional information, meet, or otherwise assist with the Commission's recently announced investigation.

Sincerely,



Marianne Engelman-Lado
Visiting Clinical Professor of Law
Benjamin W. Wedeking
Student Clinician
Environmental Justice Clinic
Yale Law School

⁴³ *EJ Report* at 25 n. 131-32, 37 n. 231, 40 n. 250.

⁴⁴ NEXT GENERATION COMPLIANCE, <https://www.epa.gov/compliance/next-generation-compliance> (stating a goal of the EPA Next Generation Compliance program is to “[e]xpand transparency by making information more accessible to the public.”) (last visited Aug. 3, 2017).

⁴⁵ Rachel Leven, EPA Didn't Check Environmental Racism Complaint E-Mail for One Year, BLOOMBERG BNA: DAILY ENVIRONMENT REPORT (Feb. 8, 2017).

127 Wall Street
New Haven, CT 06511
marianne.engelman-lado@ylsclinics.org
cell 917 608-2053

On behalf of:

Anthony Alifieri
Natalie N. Barefoot
University of Miami School of Law Environmental Justice Clinic

Susana Almanza
PODER

Marc Brenman
iDare LLC*

Kristen Clarke
Lawyers' Committee for Civil Rights Under Law

Allison Elgart
Equal Justice Society

Leslie Fields
Sierra Club

Lisa Garcia
Suzanne Novak
Jonathan Smith
Earthjustice

Robert Garcia
The City Project

Ebony Griffin
Public Interest Law Center of Philadelphia

Megan Haberle
Poverty & Race Research Action Council

Michael Hansen
Gasp

Adrienne Hollis
WE ACT for Environmental Justice*

Sherrilyn A. Ifill
Leah C. Aden
NAACP Legal Defense & Educational Fund, Inc.

Ellis Jacobs
Advocates for Basic Legal Equality (Dayton, OH)*

Helen Kang
Environmental Law and Justice Clinic*

Gregg Macey
Brooklyn Law School*

Mark Magaña
GreenLatinos

Vincent Martin
Detroit, Michigan

Douglas Meiklejohn
New Mexico Environmental Law Center

Vernice Miller-Travis
Skeo Solutions*

Richard Moore
Los Jardines Institute

John Philo
Maurice and Jane Sugar Law Center for Economic and Social Justice

Glenn Robinson
Morgan State University Institute for Urban Research*

Maria S. Savasta-Kennedy
University of North Carolina School of Law*

Theodore M. Shaw
University of North Carolina Center for Civil Rights

Rachel Spector
New York Lawyers for the Public Interest

Anjali Waikar
Natural Resources Defense Council

Brenda and Omega Wilson
West End Revitalization Association (Mebane, NC)

** For identification only*

CC:

Patricia Timmons-Goodson
Debo P. Adegbile
Gail Heriot
Peter N. Kirsanow
David Kladney
Karen K. Narasaki
Michael Yaki
Mauro Albert Morales