

September 4, 2024

Administrator Michael S. Regan  
c/o Jeffrey M. Prieto, General Counsel  
U.S. Environmental Protection Agency  
Office of the General Counsel  
Mail Code 2310A  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460

**RE: ENVIRONMENTAL JUSTICE AND CIVIL RIGHTS ADVOCATES' RESPONSE  
TO PETITION FOR RULEMAKING TO RESCIND EPA'S TITLE VI  
DISPARATE IMPACT REGULATIONS**

Dear Administrator Regan:

On behalf of a coalition of groups and individuals fighting for environmental justice and civil rights, please see the attached Executive Summary and Letter responding to the Petition for Rulemaking seeking rescission of EPA's Title VI disparate impact regulations.

Please reach out if you have any questions.

Sincerely,

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## **EXECUTIVE SUMMARY: RESPONSE TO CIVIL RIGHTS ROLLBACK PETITION**

Sixty years after the passage of the Civil Rights Act of 1964, we face a new wave of coordinated threats to the statute and its core aims of equal protection for all people. One assault comes in the form of a petition filed by a confederation of attorneys general requesting that the United States Environmental Protection Agency (“EPA”) rescind its disparate impact regulations promulgated under Title VI of the Civil Rights Act (“Civil Rights Rollback Petition”). The Civil Rights Rollback Petition seeks to erase critical Title VI protections when they are needed more than ever to safeguard Black, Latinx, Indigenous, and other communities of color, alongside other marginalized groups exposed to disproportionate environmental harms.

On behalf of a coalition of [organizations and individuals](#) working across the country to advance environmental justice and civil rights, we call on EPA to take the time needed to fully analyze Title VI and its history and purpose, and the lived experiences of communities on the frontlines, as described in the coalition’s letter. After that investigation, we are confident that EPA will find it appropriate to reject the Civil Rights Rollback Petition and, instead, strengthen and fully resource Title VI enforcement, and advance environmental justice as a critical civil rights and environmental protection issue.

### **EPA MUST PLAY A KEY ROLE IN UPHOLDING TITLE VI**

Title VI of the Civil Rights Act of 1964 prohibits federal government support of discriminatory practices by prohibiting discrimination by federal funding recipients. Accordingly, EPA’s regulations prohibit all EPA funding recipients from discriminating on the basis of race, color, national origin, disability, and sex. Consistent with agencies across the federal government, EPA’s regulations prohibit these funding recipients from using “criteria or methods” of administering programs or activities that have the effect of subjecting individuals to discrimination on any basis stated above. Findings of disparate impact can also contribute to a determination of intentional discrimination.

Historically, EPA has failed to hold recipients of federal funds accountable for discriminatory acts and policies that perpetuate and exacerbate inequities. The Biden Administration’s commitment to environmental justice is a turning point in upholding EPA’s mission to protect human health and the environment. Executive Order 14096 mandates that federal agencies “advance environmental justice for all by implementing and enforcing the Nation’s environmental and civil rights laws,” setting the expectation that EPA use civil rights laws to protect all communities.

### **ENVIRONMENTAL RACISM REMAINS UNREMEDIED**

The legacy of government-sanctioned discriminatory practices—such as redlining in housing, zoning decisions that place chemical mega-polluters near residential areas, permitting processes that prioritize toxic industrial development over community health, and transportation projects that split and isolate communities—are devastating to generations of low-income communities of color. The consequence is permanent and systematic exposure to disproportionate amounts of pollution, and a lack of access to clean air, water, and soil. The resultant health harms include disproportionate levels of lead poisoning, asthma, diabetes, heart disease, cancer, and other health impacts, in addition to perpetuating generational cycles of poverty. At every stage of their life cycle, polluting industries disproportionately harm environmental justice communities. Black

Americans, in particular, are exposed to more pollution from all major emission sources, including waste, energy, industrial agriculture, vehicles, and construction.

Moreover, segregated housing and land use patterns now put environmental justice communities most at risk from life-threatening temperatures, flooding, and other extreme weather impacts of climate change. Climate change acts as a threat multiplier, and inequitable resource distribution obstructs recovery from these disasters, exacerbating wealth inequality.

## **COMMUNITY EXPERIENCES DEMAND CIVIL RIGHTS ENFORCEMENT**

The proponents of the Civil Rights Rollback Petition simply—and cruelly—ignore the lived experiences of frontline communities facing disproportionate environmental exposures, who deserve the protections promised by our civil rights laws, not further entrenchment of those harms. Communities of color experience overlapping inequities in the “criteria and methods” used to implement environmental laws, such as inaccessible permitting processes for all community members and notably people with disabilities or limited English proficiency; failure to consider adverse or cumulative impacts in permitting; inequitable investment in infrastructure; insufficient environmental monitoring, compliance and enforcement activities; and more.

When federal funding recipients refuse to comply with the mandates of Title VI and/or when EPA does not robustly enforce civil rights regulations to address gaps in environmental laws, communities suffer. For instance, Latinx residents of Miami-Dade County, Florida are fighting local plans for the largest trash-burning incinerator in the United States while Florida’s Department of Environmental Protection fails to acknowledge human health harms in its permitting or make its processes accessible to the many people with limited English proficiency in the state.

When EPA or other agencies employ civil rights tools to support communities harmed by discrimination, and funding recipients engage in the process, state and local agencies have adopted policies that may promote change on the ground. For example, two civil rights complaints in Chicago stemmed from the relocation of a polluting scrap-metal recycling facility from a predominantly wealthy, white neighborhood to a predominantly Latinx and Black neighborhood, where residents have been exposed to disproportionate environmental harms. EPA’s and HUD’s resolution of the complaints has required changes in state permitting and city zoning laws and practices, which can prevent further health harms to communities in Chicago and across Illinois.

## **EPA MUST REJECT THE CIVIL RIGHTS ROLLBACK PETITION AND TAKE MEANINGFUL ACTION ON BEHALF OF FRONTLINE COMMUNITIES**

As EPA considers its response to the Civil Rights Rollback Petition, we urge the agency to center communities facing disproportionate exposure to environmental harms—the very harms Title VI was designed to remedy when applied to environmental laws and policies. We urge EPA to reject this brazen petition, strengthen and fully resource Title VI enforcement, and advance environmental justice as a core civil rights issue.

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DISPARATE IMPACT REGULATIONS**

Dear Administrator Regan:

At a time when we should be celebrating the sixtieth anniversary of the Civil Rights Act of 1964, we instead face a new wave of threats to its core aims of equal protections for all people.<sup>1</sup> One assault on civil rights comes in the form of a petition filed by a confederation of attorneys general (“AGs”) requesting that the United States Environmental Protection Agency (“EPA”) rescind its “disparate impact” regulations promulgated under Title VI of the Civil Rights Act (“Civil Rights Rollback Petition”).<sup>2</sup> The Petitioners baldly assert that environmental justice “asks the States to engage in racial engineering in deciding whether, for example, issue environmental permits, rather than relying on the effect on the environment and other appropriate factors.”<sup>3</sup> This assertion not only ignores EPA’s mission to protect public health but also ignores the severe conditions of structural racism that have led to persistent disproportionate exposures and resulting health burdens facing the very communities that Title VI was designed to protect. That is not surprising: All of these state petitioners are concurrently engaged in concerted efforts to roll back or block many critical environmental protections,<sup>4</sup> even as they seek to erode civil rights and preserve existing inequity to the detriment of their own residents.

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<sup>1</sup> “It is well-settled that the word ‘person’ includes citizens and noncitizens alike and that undocumented individuals in the United States are protected from discrimination on the basis of race, color, and national origin.” U.S. Dep’t of Just. Civ. Rts. Div., *Title VI Legal Manual* § V, at 1, <https://www.justice.gov/crt/book/file/1364106/dl?inline> (“DOJ Title VI Legal Manual”).

<sup>2</sup> Petition to EPA for Rulemaking by Ashley Moody, Florida Attorney General et al. (Apr. 16, 2024), <https://www.myfloridalegal.com/sites/default/files/2024-04/epa-title-vi-comment-final.pdf>.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *See, e.g.*, App. for Stay of Final Agency Action During Pendency of Pet. for Rev., *Oklahoma v. EPA*, No. 24A213 (S. Ct. Aug. 23, 2024) (petition by the same state signatories to the Civil Rights Rollback

On behalf of the undersigned organizations and individuals working across the country to advance environmental justice and civil rights, we urge EPA to take the time needed to thoroughly investigate the history and purpose of EPA’s Title VI disparate impact regulations, and the critical role the regulations can play in promoting equal access to clean air, water, and soil. Once you undertake that careful review, we are confident that you will find it appropriate to reject this brazen petition, strengthen and fully resource Title VI enforcement, and advance “environmental justice [as] a core civil rights issue.”<sup>5</sup> Now is not the time to reopen EPA’s Title VI regulations. The agency should not do so at the behest of forces intent on weakening protections for frontline communities; nor can the agency afford to redirect its limited civil rights staff and resources away from essential compliance and enforcement activities for such an exercise. If the agency engages in future rulemaking, it should strengthen EPA’s civil rights efforts in line with the other federal agencies’ programs. The guidance and needs of the frontline communities, who have long awaited redress consistent with the promise and intent of Title VI, should shape any forthcoming rule.

The Civil Rights Rollback Petition is a part of a coordinated attempt to undermine these critical Title VI implementing regulations and to dismantle civil rights protections more broadly, at a moment when they are needed more than ever to fill the gaps in environmental protection afforded Black, Latinx, Indigenous, and other communities of color, alongside other marginalized groups, including persons with disabilities.<sup>6</sup>

This response to the Civil Rights Rollback Petition addresses: (1) the history and purpose of Title VI; (2) the persistent exposure to disproportionate environmental harm experienced by Black, Latinx, Indigenous, and other communities of color; (3) the unique role that Title VI enforcement can play in addressing that harm, including examples of successful and failed enforcement; and (4) models for successful Title VI enforcement provided by the enforcement actions of other agencies.

The Civil Rights Rollback Petitioners simply—and cruelly—ignore the lived experiences of frontline communities facing disproportionate environmental exposures, who deserve the

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Petition, and other states, to the Supreme Court to halt EPA plan intended to cut methane emissions by 80%); App. for Emergency Stay of EPA’s Mercury and Air Toxics Rule, *North Dakota v. EPA*, No. 24A180 (S. Ct. Aug. 16, 2024) (petition by many of the state signatories to the Civil Rights Rollback Petition asking the Supreme Court to halt an EPA rule that would reduce Mercury and Air Toxics Standards for coal-fired power plants by 66-70%); Amended Complaint, *State of Idaho v. EPA*, No. 1:24-cv-00100-DLH-CRH (D.N.D. June 14, 2024), ECF No. 4 (complaint by many of the state signatories to the Civil Rights Rollback Petition seeking to overturn an EPA rule that formalizes a process for states and the federal government to consider water-dependent Tribal reserved rights when setting water quality goals and pollution limits for rivers, lakes, and streams under the Clean Water Act).

<sup>5</sup> U.S. Dep’t of Just. et al., *Joint Interagency Statement of Shared Commitment to Ensure Compliance with Civil Rights Laws and Advance Environmental Justice* (May 6, 2024), <https://www.justice.gov/crt/media/1350821/dl?inline>.

<sup>6</sup> For example, other federal discrimination prohibitions, such as for persons with disabilities, are patterned on Title VI. See *U.S. Dep’t of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 600 n.4 (1986).

protections promised by our civil rights laws, not further entrenchment of harms. This response highlights those experiences. These communities include, for example:

- the Latinx residents of Doral in Miami-Dade County, Florida, who—as a result of discriminatory state permitting processes—have faced a disproportionate amount of air pollution from a trash burning incinerator, including when the facility caught on fire and burned for three straight weeks, and are now threatened by plans for a new incinerator;
- the Black residents of Jackson, Mississippi, who, through persistent disinvestment by the state, lack the infrastructure needed to access safe drinking water;
- the historically redlined Black community of Gary, Indiana whose residents face an array of toxic exposure from legacy and ongoing industrial pollution because the state’s permitting processes do not consider the disparate and adverse impacts that result from permitting decisions; and
- the residents of Cancer Alley, Louisiana, who suffer some of the highest cancer risk from toxic air pollution in the nation because the state has allowed a massive proliferation of petrochemical plants and other facilities that emit air toxics to locate in their back yard and has failed to enforce the environmental laws.

As EPA considers its response to the Civil Rights Rollback Petition, we implore you to consider what is at stake for these communities and center their experiences and harms—the very harms Title VI was designed to remedy.

## **I. THE PASSAGE OF THE CIVIL RIGHTS ACT WAS A WATERSHED MOMENT IN A MOVEMENT TO END SYSTEMIC RACISM IN OUR NATION**

In the wake of President John F. Kennedy’s assassination, President Lyndon B. Johnson called on Congress to honor President Kennedy’s life by passing the Civil Rights Act: “We have talked long enough in this country about equal rights. We have talked for one hundred years or more. It is time now to write the next chapter, and to write it in the books of law.”<sup>7</sup>

Indeed, one hundred years before the passage of the Civil Rights Act of 1964, the Thirteenth, Fourteenth, and Fifteenth Amendments promised to provide Black Americans and formerly enslaved people a new set of rights.<sup>8</sup> Yet, federal, state, and local governments resisted providing the same rights to Black people already enjoyed by white people. State and local governments created Jim Crow laws, which separated Black and white people in schools,

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<sup>7</sup> U.S. Senate, *Landmark Legislation: The Civil Rights Act of 1964*, <https://www.senate.gov/artandhistory/history/common/generic/CivilRightsAct1964.htm>.

<sup>8</sup> See Univ. of Va. Law Sch. Educ. Rts. Instit., *Preventing and Remediating Race, Color, and National Origin Discrimination in Schools: A Primer on Title VI of the Civil Rights Act of 1964* 7 (2024), <https://www.law.virginia.edu/document/title-vi-primer/view>.

neighborhoods, housing, public accommodations, health care, and transportation.<sup>9</sup> Federal, state, and local agencies expressly discriminated against people of color by denying them loans, designating residential areas with a large percentage of people of color as less desirable for investment purposes (“redlining”), encouraging racially restrictive covenants, and segregating housing by race.<sup>10</sup> Segregation and systemic racism have determined not only where people live but also their access to clean air, water, and soil<sup>11</sup>—and now their levels of protection from the impacts of the climate crisis.<sup>12</sup>

#### **A. Title VI of the Civil Rights Act Prohibited Federal Government From Perpetuating Discrimination Through Its Funding.**

Title VI of the Civil Rights Act of 1964 was meant to stop the federal government’s support of discriminatory practices by prohibiting discrimination by federal funding recipients. As President Kennedy explained forcefully:

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.<sup>13</sup>

As the Department of Justice (“DOJ”) Title VI Legal Manual explains, Senator Hubert Humphrey, acting as the Senate manager of the Civil Rights Act of 1964, identified at least four reasons for the enactment of Title VI: (1) to expressly invalidate several federal financial assistance statutes in place that provided federal grants for racially segregated institutions; (2) to clarify that federal agencies had the authority and obligation to prohibit discrimination in their programs; (3) to ensure uniformity in nondiscrimination policies across the federal government;

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<sup>9</sup> Dorceta E. Taylor, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* 243 (2014) (noting that the Federal Housing Administration’s 1939 Underwriting Manual stated that “[i]f a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes” and that it encouraged “suitable restrictive covenants”).

<sup>10</sup> See Earthjustice on behalf of St. Francis Prayer Center et al., Comment Letter on HUD Disparate Impact Standard Proposed Rule, 1-3 (Oct. 18, 2019), <https://njappleseed.org/wp-content/uploads/2019/10/ceh-sustainable-hud-disparateimpactcomment-oct2019.pdf>; see, e.g., Rachel D. Godsil, *Environmental Justice and the Integration Deal*, 49 N.Y.L. Sch. L. Rev. 1109, 1113 (Apr. 29, 2005), [https://digitalcommons.nyls.edu/nyls\\_law\\_review/vol49/iss4/6](https://digitalcommons.nyls.edu/nyls_law_review/vol49/iss4/6); Taylor, *supra* note 9.

<sup>11</sup> See U.S. Comm’n on Civ. Rts., *Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12,898* 7-8 (2016), [https://www.usccr.gov/pubs/2016/Statutory\\_Enforcement\\_Report2016.pdf](https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf) (“U.S. Comm’n on Civil Rights Environmental Justice Report”).

<sup>12</sup> See, e.g., Alique G. Berberian et al., *Racial Disparities in Climate Change-Related Health Effects in the United States*, Current Env’t Health Rep. (Sept. 2022), <http://dx.doi.org/10.1007/s40572-022-00360-w>.

<sup>13</sup> H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

and (4) to create an efficient alternative to time-consuming litigation of private discrimination claims.<sup>14</sup>

Title VI prohibits discrimination by recipients of federal funding (like state environmental agencies). Section 601 provides:

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.<sup>15</sup>

Section 602 authorizes the creation of regulations to implement 601.<sup>16</sup>

Pursuant to section 602, at least 25 agencies have promulgated disparate impact regulations.<sup>17</sup> Title VI prohibits discrimination to ensure “that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”<sup>18</sup> EPA’s implementing regulations carry out the statute’s purpose by forbidding funding recipients from using “criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination.”<sup>19</sup> As the DOJ Title VI Manual explains,

[t]he disparate impact regulations seek to ensure that programs accepting federal money are not administered in a way that perpetuates the repercussions of past discrimination. As the Supreme Court has explained, even benignly-motivated policies that appear neutral on their face may be traceable to the nation’s long history of invidious race discrimination in employment, education, housing, and many other areas.<sup>20</sup>

The regulations require agencies to take a close look at facially neutral policies that disparately exclude minorities from benefits or services or inflict a disproportionate share of harm on them.

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<sup>14</sup> DOJ Title VI Legal Manual § II, at 2.

<sup>15</sup> 42 U.S.C. § 2000d.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* § VII, at 42 n. 24; *see also* Tseming Yang, *Old and New Environmental Racism*, 2024 Utah L. Rev. 109, 125 (2024), <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1372&context=ulr>.

<sup>18</sup> H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

<sup>19</sup> 40 C.F.R. § 7.35(b).

<sup>20</sup> DOJ Title VI Legal Manual § VII, at 2 (citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 430–31 (1971) and *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980)).



## **B. EPA’s Title VI Implementing Regulations and Guidance Prohibit Disparate Treatment, Disparate Impacts, and Retaliation.**

In 1973, to implement Title VI’s mandate, EPA promulgated regulations consistent with those promulgated by the DOJ and other federal agencies—prohibiting discrimination based on race, color, or national origin for all recipients of EPA assistance.<sup>21</sup> The protections also extend to people with disabilities, under Section 504 of the Rehabilitation Act, as well as on the basis of age under the Age Discrimination Act of 1975 and sex under Title IX of the Education Amendments of 1972.<sup>22</sup> In 2017, the agency also created a Case Resolution Manual (“CRM,” updated in 2021) to “ensure EPA’s prompt, effective, and efficient resolution of civil rights complaints” consistent with both civil rights laws and EPA’s mission of protecting human health and the environment.<sup>23</sup> The CRM provides procedural guidance on how to handle civil rights complaints. It also mirrors the guidance provided in Sections VI through VIII of the DOJ Title VI Legal Manual in laying out three legal theories that may apply to a civil rights complaint: Disparate/Different Treatment, Disparate Impact/Effects, and Retaliation.<sup>24</sup>

While Disparate/Different Treatment prohibits intentional discrimination, the Disparate Impact/Effects legal theory applies where a recipient of EPA funds “uses a facially neutral policy or practice that has a sufficiently adverse (harmful) and disproportionate effect based on race, color, national origin, or other prohibited discriminatory basis.”<sup>25</sup> To establish a prima facie case of disparate impact discrimination, EPA must “(1) identify the specific policy or practice at issue; (2) establish adversity/harm; (3) establish disparity; and (4) establish causation.”<sup>26</sup> If all four of these prongs are met, recipients are given the opportunity to demonstrate the existence of a substantial legitimate justification for the policy or practice.<sup>27</sup> If there is a substantial legitimate justification, EPA must determine whether there are less discriminatory alternatives. EPA must make a finding of disparate impact discrimination if (1) the recipient cannot establish a substantial legitimate justification or (2) a less discriminatory alternative than the challenged decision or policy is available.<sup>28</sup>

## **C. Intentional Discrimination and Disparate Impact are Intertwined.**

Importantly, claims of intentional discrimination and disparate impact are often intertwined. Intentional discrimination may be proven by evidence of disparate impact and other circumstantial

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<sup>21</sup> 40 C.F.R. § 7.35 (“EPA’s Disparate Impact Regulations”).

<sup>22</sup> 40 C.F.R. § 7.45.

<sup>23</sup> EPA, *Case Resolution Manual* ii (Jan. 2021), [https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5\\_final\\_case\\_resolution\\_manual.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf) (“CRM”).

<sup>24</sup> *Id.* at 26-27.

<sup>25</sup> *Id.* at 27.

<sup>26</sup> *Id.*

<sup>27</sup> DOJ Title VI Legal Manual, § VII at 33-34; EPA, *External Civil Rights Compliance Office Compliance Toolkit*, Chapter 1, at 8-10 (Jan. 18, 2017), [https://www.epa.gov/sites/default/files/2020-02/documents/toolkit\\_earco\\_chapter\\_1-letter-faqs\\_2017.01.18.pdf](https://www.epa.gov/sites/default/files/2020-02/documents/toolkit_earco_chapter_1-letter-faqs_2017.01.18.pdf).

<sup>28</sup> EPA, *External Civil Rights Compliance Office Compliance Toolkit*, Chapter 1, at 8-10.

evidence of discriminatory intent.<sup>29</sup> In *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, the United States Supreme Court explained that evidence of a disparate impact or discriminatory patterns and practices may support intentional discrimination claims. The Supreme Court laid out several types of evidence that can be used to prove intentional discrimination: (1) statistics demonstrating a clear pattern of discriminatory effect; (2) historical background of the decision in question or other comparable decisions; (3) sequence of events leading up to the decision as compared to decisions on other matters; (4) departures from normal procedures or substantive conclusions; (5) relevant legislative or administrative history; and (6) consistent pattern of actions of decision-makers that impose much greater harm on minorities than on non-minorities.<sup>30</sup> For example, statistical evidence can be used to show that “an ostensibly race-neutral action actually causes a pattern of discrimination [or] a racially disproportionate impact” (where there is a “stark” pattern).<sup>31</sup> Additionally, a recipient’s “awareness of the impact” (the foreseeability of discriminatory impact) further supports discriminatory intent.<sup>32</sup>

Indeed, when EPA accepts Title VI complaints for investigation, it investigates all theories of discrimination. It follows that, consistent with the *Arlington Heights* framework, EPA may, through its regulations, prohibit disparate impact and rely on evidence of disparate impact to support findings of intentional discrimination.

## II. DISCRIMINATION PERSISTS AND EXPOSES FRONTLINE COMMUNITIES TO DISPROPORTIONATE ENVIRONMENTAL HARM

Sixty years after the passage of Title VI, environmental injustices persist. In 1987, the United Church of Christ’s Commission for Racial Justice issued a report called *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites*. The report concluded that a community’s racial composition was the strongest predictor of a hazardous waste facility’s location.<sup>33</sup> Subsequent researchers have clarified this causal relationship: Sources of pollution tend to come to communities of color, rather than the other way around.<sup>34</sup> The 1987 report, combined with other advocacy, led President Clinton to issue Executive Order 12898 in 1994, which ordered each federal agency, including EPA, “[to] make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-

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<sup>29</sup> See *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265-66 (1977) (“The impact of the official action—whether it bears more heavily on one race than another—may provide an important starting point.”) (internal citation omitted); DOJ Title VI Legal Manual, § VI at 12.

<sup>30</sup> See DOJ Title VI Legal Manual, § VI at 9-17 (discussing the *Arlington Heights* factors).

<sup>31</sup> *Id.* at 6, 15.

<sup>32</sup> *Id.* at 15.

<sup>33</sup> See Comm’n for Racial Just., United Church of Christ, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* xiii (1987), <https://www.ucc.org/wp-content/uploads/2020/12/ToxicWastesRace.pdf>.

<sup>34</sup> See Paul Mohai & Robin K. Saha, *Which Came First, People or Pollution? Assessing the Disparate Siting and Post-Siting Demographic Change Hypotheses of Environmental Injustice*, 10 Env’t Res. Letters 15-16 (Nov. 2015), <https://iopscience.iop.org/article/10.1088/1748-9326/10/11/115008/pdf>.

income populations.”<sup>35</sup> Twenty years later, the United Church of Christ issued *Toxic Waste and Race at Twenty*, which revealed that “racial disparities in the distribution of commercial hazardous wastes are greater than previously reported.”<sup>36</sup>

In 2016, the United States Commission on Civil Rights determined that “[b]oth historical and current housing segregation amplifies the burden of toxic industrial waste on communities of color.”<sup>37</sup> The legacy of government-sanctioned discriminatory housing, land use, and transportation practices devastate generations of low-income communities of color, whose injuries include disproportionate levels of lead poisoning, asthma, diabetes, heart disease, and other environmental health impacts, in addition to perpetuating generational cycles of poverty.<sup>38</sup> Black Americans, in particular, are exposed to more pollution from all major emission sources, including waste, energy, industrial agriculture, vehicles, and construction.<sup>39</sup> These disparities exist nationally and across states, urban and rural areas, and all income levels.

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<sup>35</sup> Exec. Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994) (“Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations”).

<sup>36</sup> Robert D. Bullard et al., Comm’n for Racial Just., United Church of Christ, *Toxic Waste and Race at Twenty: 1987-2007*, 152 (2007), <https://www.ucc.org/wp-content/uploads/2021/03/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.

<sup>37</sup> U.S. Comm’n on Civil Rights Environmental Justice Report at 89.

<sup>38</sup> Earthjustice on behalf of St. Francis Prayer Center et al., *supra* note 10, at 4; *see, e.g.*, Jyotsna S. Jagai et al., *Association Between Environmental Quality and Diabetes in the U.S.*, J. of Diabetes Investigation (Oct. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7078099> (finding a strong correlation between higher cumulative environmental exposures and diabetes prevalence); Ihab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 Am. J. of Pub. Health 480 (Apr. 2018), <https://www.ncbi.nlm.nih.gov/pubmed/29470121> (concluding that disparities in the burden from particulate matter-emitting facilities exist and are more pronounced based on race); Brad Plumer & Nadja Popovich, *How Decades of Racist Housing Policy Left Neighborhoods Sweltering*, N.Y. Times (Aug. 24, 2020), <https://www.nytimes.com/interactive/2020/08/24/climate/racism-redlining-cities-global-warming.html> (“[L]ocal and federal officials enacted policies that reinforced racial segregation in cities and diverted investment away from minority neighborhoods in ways that created large disparities in heat exposure in cities across the country.”).

<sup>39</sup> *See, e.g.*, Jeremy L. Mennis & Lisa Jordan, *The Distribution of Environmental Equity: Exploring Spatial Nonstationarity in Multivariate Models of Air Toxic Releases*, 95 Annals Soc’y Am. Geographers 249 (2005), <https://doi.org/10.1111/j.1467-8306.2005.00459.x>; Russ Lopez, *Segregation and Black/White Differences in Exposure to Air Toxics in 1990*, 110 Env’t. Health Persp. 289 (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241175/pdf/ehp110s-000289.pdf>; Jayajit Chakraborty & Paul A. Zandbergen, *Children at Risk: Measuring Racial/Ethnic Disparities in Potential Exposure to Air Pollution at School and Home*, 61 J. Epidem. Cmty. Health 1074, 1074 (2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2465656/pdf/1074.pdf>; Robert Bullard, *Addressing Urban Transportation Equity in the United States*, 31 Fordham Urban L.J. 1183 (2003), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2193&context=ulj>.

Race remains the strongest predictor of hazardous waste siting across the United States.<sup>40</sup> Seventy-nine percent of the nation's municipal solid waste incinerators are in environmental justice communities like Saugus, Massachusetts; Baltimore, Maryland; Chester, Pennsylvania; and Camden, New Jersey.<sup>41</sup> Residents of historically Black communities like Uniontown and Tallassee, Alabama, contend with the degraded air and water quality from sites like Uniontown's Arrowhead Landfill, a 974-acre site permitted to receive up to 15,000 tons of commercial and industrial waste per day from 33 states, and the ever-expanding Stone's Throw Landfill, which continues to displace Tallassee community members and threatens to turn this historic community into yet another example of Black land loss.

The impacts of the fossil fuel industry are also particularly stark. At every stage of its life cycle, oil and gas production disproportionately harms environmental justice communities.<sup>42</sup> More than 1 million Black people live within a one half-mile radius of oil and gas facilities<sup>43</sup> and Black and Latinx people make up nearly two-thirds of those living within three miles of the dirtiest refineries.<sup>44</sup> The proliferation of toxic facilities, mines, and fossil-fuel infrastructure has taken an irreparable toll on Indigenous land, cultural resources, and the health and well-being of Indigenous and Tribal communities.<sup>45</sup>

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<sup>40</sup> Written Testimony Regarding H.R. 2021, Environmental Justice for All Act, by Amy Laura Cahn, Visiting Assistant Professor and Director, Environmental Justice Clinic, Vermont Law School (Feb. 15, 2022), <https://democrats-naturalresources.house.gov/imo/media/doc/Cahn%20Testimony%20-%20FC%20Leg%20Hrg%202.15.22.pdf> (citing Bullard et al., *supra* note 36, at xii). With permission of Amy Laura Cahn, a co-author of this letter, this paragraph and the next two are largely repeated from this testimony.

<sup>41</sup> See generally Ana Isabel Baptista et al., The New Sch. Tishman Env't & Design Ctr., *U.S. Municipal Solid Waste Incinerators: An Industry in Decline* (2019), [https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/5d5c4bea0d59ad00012d220e/1566329840732/CR\\_GaiaReportFinal\\_05.21.pdf](https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/5d5c4bea0d59ad00012d220e/1566329840732/CR_GaiaReportFinal_05.21.pdf).

<sup>42</sup> NAACP, *Fumes Across the Fence-Line* 1, 6 (Nov. 2017) <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>.

<sup>43</sup> *Id.*

<sup>44</sup> Ben Kunstman et al., Env't Integrity Project, *Environmental Injustice and Refinery Pollution: Benzene Monitoring Around Oil Refineries Showed More Communities at Risk in 2020* 14-16 (Apr. 28, 2021), <https://environmentalintegrity.org/wp-content/uploads/2021/04/Benzene-report-4.28.21.pdf>.

<sup>45</sup> Renee McVay, Env't. Def. Fund, *Natural Gas Waste on the Navajo Nation: Updated Analysis of Oil and Gas Methane Emissions Shows Growing Problem* (2021), <https://www.edf.org/sites/default/files/content/NavajoEmissionsReport2021.pdf>; Kyle Whyte, *The Dakota Access Pipeline, Environmental Injustice, and U.S. Colonialism*, Red Ink: Int'l J. Indigenous Literature, Arts, & Humanities (Apr. 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2925513](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2925513); Ryan E. Emanuel & David E. Wilkins, *Breaching Barriers: The Fight for Indigenous Participation in Water Governance*, 12 Water 2113 (2020), <https://www.mdpi.com/2073-4441/12/8/2113>; U.N. Special Rapporteur, *End of Mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz of her Visit to the United States of America* (Mar. 3, 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274&LangID=E>.

Geographic disparities in life expectancy between counties are large and increasing.<sup>46</sup> As communities of color breathe air pollution largely caused by white peoples' consumption,<sup>47</sup> segregated housing and land use patterns now put environmental justice communities most at risk from flooding,<sup>48</sup> extreme temperatures,<sup>49</sup> and other extreme weather impacts of climate change, while inequitable resource distribution obstructs recovery from extreme weather.<sup>50</sup> Environmental and climate impacts dovetail—heat increases the impacts of degraded air quality in historically redlined neighborhoods,<sup>51</sup> and flooding compounds the “toxic threat” of unremediated and uncontained Superfund sites.<sup>52</sup>

The disproportionate exposure to air pollution also creates more risk for adverse outcomes from health threats such as COVID. Researchers from the Harvard T.H. Chan School

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<sup>46</sup> Laura Dwyer-Lindgren et al., *Inequalities in Life Expectancy Among US Counties, 1980 to 2014: Temporal Trends and Key Drivers*, 117 *JAMA Intern. Med.* 1003 (Jul. 1, 2017), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2626194>.

<sup>47</sup> Christopher W. Tessum et al., *Inequity in Consumption of Goods and Services Adds to Racial–Ethnic Disparities in Air Pollution Exposure*, 116 *PNAS* 6001 (Mar. 11, 2019), <https://www.pnas.org/doi/full/10.1073/pnas.1818859116>.

<sup>48</sup> See, e.g., Marilyn Montgomery & Jayajit Chakraborty, *Assessing the Environmental Justice Consequences of Flood Risk: A Case Study in Miami, Florida*, 10 *Env't Res. Letters* (2015), <https://iopscience.iop.org/article/10.1088/1748-9326/10/9/095010/pdf>; Stacy Seicshnaydre et al., *Rigging the Real Estate Market: Segregation, Inequality, and Disaster Risk*, The Data Ctr. (2018), [https://www.datacenterresearch.org/reports\\_analysis/rigging-the-real-estate-market-segregation-inequality-and-disaster-risk](https://www.datacenterresearch.org/reports_analysis/rigging-the-real-estate-market-segregation-inequality-and-disaster-risk).

<sup>49</sup> See, e.g., Bill M. Jesdale et al., *The Racial/Ethnic Distribution of Heat Risk–Related Land Cover in Relation to Residential Segregation*, 121 *Env't Health Persp.* 811-817 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3701995>; Jackson Voelkel et al., *Assessing Vulnerability to Urban Heat: A Study of Disproportionate Heat Exposure and Access to Refuge by Socio-Demographic Status in Portland, Oregon*, 15 *Int'l J. Env't Res. Pub. Health* 640 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5923682/pdf/ijerph-15-00640.pdf>.

<sup>50</sup> See generally Robert D. Bullard & Beverly Wright, *Race, Place, and Environmental Justice After Hurricane Katrina: Struggles to Reclaim, Rebuild, and Revitalize New Orleans and the Gulf Coast* (2009); Rachel Morello Frosch et al., *The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap* (2009); Gustavo A. Garcia-Lopez, *The Multiple Layers of Environmental Injustice in Contexts of (Un)natural Disasters: The Case of Puerto Rico Post-Hurricane Maria*, 11 *Env't Just.* 101-108 (2018), <https://www.liebertpub.com/doi/epdf/10.1089/env.2017.0045>; U.S. Global Change Res. Program, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018), [https://nca2018.globalchange.gov/downloads/NCA4\\_2018\\_FullReport.pdf](https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf).

<sup>51</sup> Daniel Cusick, *Past Racist “Redlining” Practices Increased Climate Burden on Minority Neighborhoods*, *E&E News* (Jan. 21, 2020), <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods>.

<sup>52</sup> David Hasemyer & Lisa Olsen, *A Growing Toxic Threat — Made Worse by Climate Change*, *Inside Climate News & Tex. Observer* (Sept. 24, 2020), <https://www.nbcnews.com/specials/superfund-sites-climate-change>; see Shriver Ctr. on Poverty Law & Earthjustice, *Poisonous Homes: The Fight for Environmental Justice in Public Housing* (June 2020), [https://www.povertylaw.org/wp-content/uploads/2020/06/environmental\\_justice\\_report\\_final-rev2.pdf](https://www.povertylaw.org/wp-content/uploads/2020/06/environmental_justice_report_final-rev2.pdf).

of Public Health found a direct link between places with high levels of air pollution in the United States and the probability of more severe COVID-19 cases in those locations.<sup>53</sup> One air pollutant, fine particulate matter (“PM2.5”), is generated by combustion from car engines, refineries, and coal or gas power plants.<sup>54</sup> The Harvard study modeled the relationship between air pollution and coronavirus death by using 17 years of PM2.5 data from more than 3,000 counties, as well as COVID-19 death counts from the first couple of months of the pandemic. The results showed that long-term exposure to PM2.5 is linked to a greater chance of dying from COVID-19; at the county level, just a small increase in long-term exposure to PM2.5 pollution leads to a large increase in COVID-19 death rate.<sup>55</sup> An increase in 1 ug/m<sup>3</sup> of long-term PM2.5 is associated with an increase of 11% of a county’s COVID-19 mortality rate.<sup>56</sup>

The health burden from air pollution is not limited to COVID-19 susceptibility. Small increases in PM2.5 pollution are associated with increased mortality from a variety of causes.<sup>57</sup> This exposure to PM2.5 is a housing issue, as communities of color tend to be exposed to higher levels of air pollution than affluent, white communities.<sup>58</sup> PM2.5 is not the only problematic pollutant. Counties with chronic exposure to multiple hazardous air pollutants (i.e., air toxics

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<sup>53</sup> Xiao Wu et al., *Air Pollution and COVID-19 Mortality in the United States: Strengths and Limitations of an Ecological Regression Analysis*, 6 *Sci. Advances* 45 (2020), <https://www.science.org/doi/epdf/10.1126/sciadv.abd4049> (hereinafter “Harvard Study”); Earthjustice on behalf of East Chicago Calumet Coalition et al., Comment Letter on Reinstatement of HUD’s Discriminatory Effects Standard (Aug. 24, 2021), <https://www.washlaw.org/wp-content/uploads/2021/08/2021.08.24-Comments-on-HUD-Discriminatory-Effects-Proposed-Rule-Accessible.pdf>; see generally Just Transit Alliance et al., *Federal Dereliction of Duty: Environmental Racism Under Covid-19* (Sept. 2021), <https://www.vermontlaw.edu/wp-content/uploads/2024/07/Federal-Dereliction-of-Duty-Full-Report.pdf> (describing how EPA reduced enforcement of environmental laws during COVID without consideration of the harm to frontline communities).

<sup>54</sup> PM2.5 can cause serious health problems because when the very small particles are inhaled, as they can get deep into the lungs and enter the bloodstream. See EPA, *Particulate Matter Basics* (updated June 20, 2024), <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>.

<sup>55</sup> Harvard Study at 1-2. The Harvard researchers adjusted for other confounding factors known to affect health outcomes, such as smoking rates and diabetes.

<sup>56</sup> *Id.*

<sup>57</sup> The World Health Organization recognizes that air pollution increases mortality from stroke, heart disease, chronic obstructive pulmonary disease, lung cancer, and acute respiratory infections, attributing seven million premature deaths every year, worldwide to the combined effects of outdoor and household air pollution. WHO, *WHO Global Air Quality Guidelines* 10-11 (2021), <https://iris.who.int/bitstream/handle/10665/345329/9789240034228-eng.pdf>.

<sup>58</sup> See also Rashmi Joglekar, *Air Pollution Makes COVID-19 More Deadly*, Earthjustice, <https://earthjustice.org/experts/rashmi-joglekar/air-pollution-makes-covid-19-more-deadly> (Apr. 13, 2020) (discussing the Harvard study and highlighting an area of southeastern Louisiana known as Cancer Alley with a high COVID-19 death rate, high rates of toxic air pollution, and a large portion of Black residents); Lisa Friedman, *New Research Links Air Pollution to Higher Coronavirus Death Rates*, N.Y. Times (Apr. 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

such as formaldehyde, diesel particulate matter, and naphthalene) also had higher COVID-19 mortality rates than counties with less hazardous air pollution exposure.<sup>59</sup>

It is the cumulative—and often catastrophic—impacts of discriminatory decision-making, poverty, and industrial pollution that disproportionately and adversely impact health in environmental justice communities,<sup>60</sup> with climate change now functioning as a threat multiplier.<sup>61</sup>

Historically, EPA has woefully failed to hold recipients of federal funds accountable for discriminatory acts and policies.<sup>62</sup> EPA’s Office of Civil Rights, now called the Office of

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<sup>59</sup> Michael Petroni et al., *Hazardous Air Pollutant Exposure as a Contributing Factor to COVID-19 Mortality in the United States*, 15 *Env’t Res. Letters* 4 (2020), <https://iopscience.iop.org/article/10.1088/1748-9326/abaf86/pdf> (suggesting that high levels of hazardous air pollutants could explain why some rural counties, such as those in Georgia and Louisiana, had high levels of COVID-19 mortality). Researchers have found a link between higher incidences of COVID-19 cases and/or deaths and increased air pollution in other nations, as well. *See, e.g.*, Daniele Fattorini & Francesco Regoli, *Role of the Chronic Air Pollution Levels in the Covid-19 Outbreak Risk in Italy*, 264 *Env’t Pollution* 114732 (Sept. 2020), <https://www.sciencedirect.com/science/article/pii/S0269749120332115>; Cosimo Magazzino et al., *The Relationship Between Air Pollution and COVID-19-related Deaths: An Application to Three French Cities*, 279 *Applied Energy* 115835 (Dec. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7486865>; Vanessa Bianconi et al., *Particulate Matter Pollution and the COVID-19 Outbreak: Results from Italian Regions and Provinces*, 16 *Archives of Med. Sci.* 985-992 (May 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7444704>; Bertha V. Vasquez-Apestegui et al., *Association Between Air Pollution in Lima and the High Incidence of COVID-19: Findings from a Post Hoc Analysis*, *Res. Square* (July 2020, rev’d Mar. 2021) (pre-print), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7362895>. A few other examples of the many environmental threats disproportionately impacting BIPOC communities include proximity to Superfund sites; lead in drinking water; lead paint and lead in soil and dust; failing sewage and stormwater infrastructure.

<sup>60</sup> Rachel Morello-Frosch et al., *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 *Health Affairs* 879-87 (May 2011), <https://escholarship.org/uc/item/1kq0196d>.

<sup>61</sup> H. Orru et al., *The Interplay of Climate Change and Air Pollution on Health*, 4 *Current Env’t Health Report* 504, 504 (2017), <https://link.springer.com/article/10.1007/s40572-017-0168-6>.

<sup>62</sup> *See, e.g.*, Deloitte Consulting LLP, *Final Report: Evaluation of the EPA Office of Civil Rights* (Order # EP10H002058) 1-2 (Mar. 21, 2011), [https://archive.epa.gov/epahome/ocr-statement/web/pdf/epa-ocr\\_20110321\\_finalreport.pdf](https://archive.epa.gov/epahome/ocr-statement/web/pdf/epa-ocr_20110321_finalreport.pdf) (noting EPA’s failure to “adequately adjudicate[] Title VI complaints . . . . has exposed EPA’s Civil Rights programs to significant consequences which have damaged its reputation internally and externally.”); Kristen Lombardi et al., *Environmental Justice Denied: Environmental Racism Persists, and the EPA is One Reason Why*, *Ctr. for Pub. Integrity* (2015), <https://publicintegrity.org/environment/pollution/environmental-justice-denied/environmental-racism-persists-and-the-epa-is-one-reason-why> (noting that EPA’s “civil-rights office rarely closes investigations with formal sanctions or remedies,” so it “appeared more ceremonial than meaningful, with communities left in the lurch.”); U.S. Comm’n on Civil Rights *Environmental Justice Report*, *supra* note 11, at 22, 25-33 (“The [United States Commission on Civil Rights], academics, environmental justice organizations, and news outlets have extensively criticized EPA’s management and handling of its Title VI external compliance program.”); *see also* Marianne Engelman Lado, *No More Excuses: Building A New Vision of*

External Civil Rights Compliance, has never taken or attempted to take the steps outlined in its regulations to enforce compliance (by delaying, terminating, or refusing to award assistance),<sup>63</sup> and instead, it has rejected or dismissed a majority of the over 400 Title VI complaints it has received to date.<sup>64</sup> EPA’s failures have subjected the agency to repeated criticism from multiple sources. A 2015 Center for Public Integrity investigative study showed that even where there was a reason to believe a recipient of federal funding had a discriminatory policy, the Office of External Civil Rights Compliance failed to conduct an investigation.<sup>65</sup> EPA’s own Office of Inspector General, in 2020, noted that the Office of External Civil Rights Compliance had “not fully implemented an oversight system to provide reasonable assurance that organizations receiving EPA funding are properly implementing Title VI” and that improved EPA oversight could prevent discrimination.<sup>66</sup>

The Biden Administration’s commitment to environmental justice has provided a turning point in upholding EPA’s mission of “protect[ing] human health and the environment.” Its mandate under Executive Order 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” to “advance environmental justice for all by implementing and

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*Civil Rights Enforcement in the Context of Environmental Justice*, 22 U. Pa. J.L. & Soc. Change 281, 295–300 (2019), <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1237&context=jlasc>.

<sup>63</sup> Decl. of Anhtu Hoang, ¶ 23, *Louisiana v. EPA*, No. 2:23-cv-692 (W.D. La. Aug. 16, 2023), ECF No. 29-3.

<sup>64</sup> The estimate of over 400 Title VI complaints received to date is based on one account of 271 complaints filed between 1993 and 2013 and another account of 150 complaints filed between 2014 and 2023. See Tony LoPresti, *Realizing the Promise of Environmental Civil Rights: The Renewed Effort to Enforce Title VI of the Civil Rights Act of 1964*, 65 Admin. L. Rev. 757, 760-61 n. 15 (2013) (“As of writing this [2013], EPA has received at least 271 complaints.”); Jamie Smith Hopkins, *Facing environmental discrimination? Read this before complaining to EPA*, Ctr. for Pub. Integrity (Oct. 25, 2023); see also Yang, *supra* note 17, at 130; Yvette Cabrera et al., *EPA Promised to Address Environmental Racism. Then States Pushed Back*, Ctr. for Pub. Integrity (Oct. 24, 2023), <https://publicintegrity.org/environment/pollution/environmental-justice-denied/environmental-justice-epa-civil-rights-story> (“EPA records show it resolved just 35 Title VI complaints with various types of agreements in the period between enacting its civil-rights policy and Biden’s inauguration — a span of nearly five decades.”); see generally Olatunde Johnson, *Lawyering that Has No Name: Title VI and the Meaning of Private Enforcement*, 66 Stan. L. Rev. 1293, 1329 (2014), [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2091&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2091&context=faculty_scholarship) (“according to a recent account, the EPA’s Office of Civil Rights has failed to make a single final finding of noncompliance among the 247 complaints advocates have filed since 1993”) (citing Tony LoPresti, *Realizing the Promise of Environmental Civil Rights*, 65 Admin. L. Rev. 757, 760-61 (2013)).

<sup>65</sup> Lombardi, *supra* note 62; Yue Qiu & Talia Buford, *Decades of Inaction*, Ctr. for Pub. Integrity (Aug. 3, 2015), <https://publicintegrity.org/environment/decades-of-inaction>; see also Cabrera, *supra* note 64..

<sup>66</sup> U.S. EPA, Office of Inspector General, *Improved EPA Oversight of Funding Recipients’ Title VI Programs Could Prevent Discrimination*, Report No. 20-E-0333 (Sept. 28, 2020), [https://www.epa.gov/sites/default/files/2020-09/documents/epa\\_oig\\_20200928-20-e-0333.pdf](https://www.epa.gov/sites/default/files/2020-09/documents/epa_oig_20200928-20-e-0333.pdf).



enforcing the Nation’s environmental and civil rights laws,” creates vital momentum that EPA should do everything in its power to maintain.<sup>67</sup>

### III. FRONTLINE COMMUNITIES NEED EPA TO DEFEND AND ENFORCE TITLE VI AND ITS REGULATIONS

The experiences of communities impacted by environmental discrimination and injustices around the country make clear the unique role that Title VI can play in promoting environmental justice and providing relief where environmental laws do not. The stories below highlight frontline communities disproportionately subjected to highways disrupting their communities, air pollution, threats to drinking water, and the resulting health harms of these environmental exposures. Many involve the failures of the states that have joined the Civil Rights Rollback Petition.

When EPA and other federal agencies embrace the goals of Title VI and enforce their Title VI regulations, they can interrupt discriminatory practices and harms and contribute to “[r]estoring and protecting a healthy environment [as] a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people.”<sup>68</sup> The success stories—which happened as a result of amplifying community stories to the public, bringing parties to the table to envision solutions, and/or making findings of discrimination—serve as a roadmap of what is necessary and possible. Other stories show the results of inadequate Title VI enforcement: Communities endure harmful exposures, adverse health outcomes, and lower life expectancies. These stories illustrate how high the stakes are when government fails to act and why EPA must not only preserve its Title VI regulations but also improve its Title VI enforcement.

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<sup>67</sup> See Exec. Order 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023) (“Revitalizing Our Nation’s Commitment to Environmental Justice for All”); Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021) (“Tackling the Climate Crisis at Home and Abroad”); The White House, *Justice40, A Whole-of-Government Initiative*, <https://www.whitehouse.gov/environmentaljustice/justice40>. Similarly, President Biden acknowledged the urgency of the moment when he issued a number of relevant executive orders and the “Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies” (“Discriminatory Housing Memorandum”). The Discriminatory Housing Memorandum directs HUD to examine recent regulations, including the 2020 Rule, and recognizes that the Fair Housing Act is “not only a mandate to refrain from discrimination but a mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities.” *Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies, Memorandum for the Secretary of HUD*, 86 Fed. Reg. 7487 (Jan. 26, 2021); see also Earthjustice on behalf of East Chicago Calumet Coalition et al., *supra* note 53.

<sup>68</sup> Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023) (“Revitalizing Our Nation’s Commitment to Environmental Justice for All”).

**A. Steps Forward: EPA’s Enforcement of Disparate Impact Regulations Mitigates Harm to Communities.**

**Chicago, Illinois: Proposed relocation of scrap metal shredder and serial violator from wealthy, white neighborhood to the working-class Black and Latinx Southeast Side**

When faced with a blatant example of environmental racism—literally moving pollution from a wealthy, white North Side Chicago community to a lower-income, largely people of color community that already bore wildly disproportionate environmental burdens—the Southeast Side of Chicago community mobilized. A scrap metal shredder, a particularly notorious noxious facility, had been cited for dozens of air quality-related violations and even exploded, sending potentially toxic “auto-fluff” raining on its wealthy North Side residential neighbors. In response to political pressures and changing market conditions, the City of Chicago helped the facility identify a new location among many other industrial polluters that neighbored predominantly working-class Black and Latinx communities: the Southeast Side. The shredder relocated across the street from the community’s public high school, which hosts an air monitor that revealed the area had already endured some of the poorest air quality and highest levels of certain metals emissions in the state.

Following the lead of Southeast Side community members who went on a month-long hunger strike and staged protests during the height of the COVID-19 pandemic, community organizations launched an array of legal strategies. They fought before City committees, in local land use processes, and in city-level permit processes. They also filed federal civil rights complaints with both EPA and the U.S. Department of Housing and Urban Development (“HUD”).<sup>69</sup> During this period of intense national scrutiny on its actions, the City Department of Public Health performed a Health Impacts Analysis and ultimately denied the facility the final operating permit it needed to begin business on the Southeast Side.

The Southeast Environmental Taskforce and the Chicago Southeast Side Coalition to Ban Petcoke filed a Title VI complaint<sup>70</sup> with U.S. EPA in December of 2020. It alleged that the Clean Air Act construction permit that Illinois EPA (“IEPA”) issued to the facility to build on the Southeast Side violated residents’ civil rights. When IEPA issued the construction permit, it refused to consider cumulative impacts on the community from the proposed facility in combination with existing facilities, disparate impacts that would be created on the basis of race, the sordid compliance history of the applicants’ corporate family, or the impacts of increased truck traffic on the community, among other harms.

U.S. EPA and IEPA entered into an Informal Resolution Agreement in February 2024, closing the U.S. EPA Title VI complaint process.<sup>71</sup> While the community organization

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<sup>69</sup> See Section IV, *infra*, for a discussion of the HUD complaint.

<sup>70</sup> Southeast Environmental Taskforce and Chicago Southeast Side Coalition to Ban Petcoke, Complaint under Title VI against Ill. Env’t Prot. Agency (Dec. 17, 2020), [https://www.epa.gov/system/files/documents/2022-06/01RNO-21-R5%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/01RNO-21-R5%20Complaint_Redacted.pdf).

<sup>71</sup> Informal Resolution of EPA Complaint No. 01RNO-21-R5 Agreement (Feb. 23, 2024), <https://www.epa.gov/system/files/documents/2024-02/01rno-21-r5-rec-resolution-ltr-and-ira.pdf>.

complainants were, frustratingly, not included in key moments of the negotiation, the outcome represents real progress: IEPA will make significant changes to the state’s industrial permitting process that has contributed to the creation of sacrifice zones in the state’s most vulnerable areas. The agreement requires IEPA to evaluate applicants’ previous compliance history, consider additional requirements and monitoring at sites found to cause disproportionate impacts, streamline their process for handling discrimination grievances, and enhance public participation as well as language access. As it implements the agreement, IEPA has opened a line of communication to the complainants and engaged other community groups.

While the Informal Resolution Agreement will advance environmental equity in Illinois and could provide a powerful precedent for other states willing to work with U.S. EPA to move toward environmental justice, the agreement does not revoke IEPA’s construction permit for the scrap metal shredder that triggered the need for the complaint in the first place. Further, judicial review of the City’s permit denial is underway now, with the facility seeking a court order requiring the City to issue the permit immediately. The proposed facility that sparked the complaint several years ago remains standing across the street from the community’s public high school, and residents still fear that it could be switched on at a moment’s notice if the company’s legal maneuvering is successful in overturning the City’s permit denial.

### **Houston, Texas: Cleaning up illegal trash dumping in Black and Latinx communities**

Houston, one of the most diverse and segregated cities in the country, has a long history of disinvestment in Black and Latinx neighborhoods, including by failing to provide basic water and sewage infrastructure. In December 2021, Super Neighborhood 48 Trinity/Houston Gardens, representing a predominantly Black and Latinx area in Northeast Houston, filed a Title VI complaint with EPA, HUD, the U.S. Department of Commerce, and the U.S. Department of Homeland Security, over the City of Houston’s disinvestment from and failure to provide municipal services.<sup>72</sup> The complaint was based, in part, on six years of unsuccessful efforts to get the City to address illegal dumping in the neighborhoods of Houston Gardens and Trinity Gardens, also known as the Gardens. Tires, couches, mattresses, and other trash were routinely illegally dumped in the Gardens, not only causing potential health issues but also blocking drainage ditches and increasing flooding. In response to the complaint, in July 2022, DOJ launched a civil rights investigation into whether the City’s response to complaints of illegal dumping in these Black and Latinx neighborhoods was discriminatory. In June 2023, DOJ reached a voluntary compliance agreement with the City of Houston that included a rapid cleanup initiative, better enforcement, monitoring and public data, and educational outreach.<sup>73</sup>

### **Memphis, Tennessee: Shutting down a crude oil pipeline through Black neighborhoods**

On May 16, 2021, Memphis Community Against Pollution, Inc. (“MCAP”) filed a Title VI complaint against the Tennessee Department of Environment and Conservation (“TDEC”) for

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<sup>72</sup> Super Neighborhood 48 Trinity/Houston Gardens, Complaint under Title VI against the City of Houston, Texas (Dec. 20, 2021), [https://www.epa.gov/system/files/documents/2022-06/03R-22-R6%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/03R-22-R6%20Complaint_Redacted.pdf).

<sup>73</sup> U.S. Dep’t of Just., DOJ-171-74-36, Resolution Agreement Between United States and City of Houston (June 2023), <https://www.justice.gov/opa/press-release/file/1586446/dl>.

its issuance of permits for the Byhalia Connection Pipeline, a proposed 49-mile crude oil pipeline.<sup>74</sup> The pipeline’s proposed route would have gone through predominantly Black neighborhoods in southwest Memphis, including Boxtown, named after formerly enslaved people who used scraps of wood and metal from train boxcars to build their homes. The complaint alleged that the TDEC permits issued for the Byhalia Connection Pipeline would disproportionately harm Black residents, including by threatening their local drinking water and posing other health risks. The pipeline would have compounded the disproportionate environmental harms these Black southwest Memphis neighborhoods had already suffered: A 2013 study identified the area as an air pollution hotspot due to the quantity of industries and emission sources, noting that the cumulative cancer risk from air pollution in southwest Memphis was “four times higher than the national average.”<sup>75</sup>

Community groups MCAP and Protect Our Aquifer led the charge to rally intense community opposition against the pipeline. Shortly after the Title VI complaint was filed, and with the added pressure of media attention and advocacy, the community scored a major victory: on July 2, 2021, Plains All American Pipeline announced that the company was pulling the plug on the controversial Byhalia Pipeline. MCAP’s Title VI complaint is still pending.

## **B. Missed Opportunities: Gaps in Environmental Laws and Failed Title VI Enforcement Leave Communities Without Redress.**

### **Miami, Florida: Ongoing threats of waste incinerator pollution in a Latinx community and communities of color statewide**

Florida is home to the most trash-burning incinerators of any state in the United States, aside from New York. Incinerators emit a slew of air pollutants known to cause cancer, respiratory problems, and reproductive health risks, among other health harms, not to mention noxious odors that cause a pervasive nuisance to those in the vicinity. The subject of a 2022 Title VI complaint that is currently under investigation by EPA,<sup>76</sup> the majority of these incinerators in Florida are in communities of color, including one facility in the predominantly Latinx city of Doral in Miami-Dade County that in 2023 burned down in a three-week-long fire.<sup>77</sup> The fire blanketed the surrounding neighborhoods in toxic smoke that sent some residents to the hospital. While Miami seeks to build a new incinerator, with Doral shortlisted as a proposed site, Florida’s Department of Environmental Protection (“DEP”) and the State of Florida, through the Civil

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<sup>74</sup> Memphis Community Against Pollution (MCAP), Complaint under Title VI against Tennessee Department of Environment and Conservation (May 16, 2021), [https://www.epa.gov/system/files/documents/2022-06/03R-21-R4%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/03R-21-R4%20Complaint_Redacted.pdf).

<sup>75</sup> Chunrong Jia & Jeffrey Foran, *Air Toxics Concentrations, Source Identification, and Health Risks: An Air Pollution Hot Spot in Southwest Memphis, TN*, 81 *Atmospheric Env’t* 112–116 (Dec. 2013), <https://www.sciencedirect.com/science/article/abs/pii/S1352231013006948>.

<sup>76</sup> Florida Rising, Civil Rights Complaint under Title VI against Florida Department of Environmental Protection regarding incinerator permitting (Mar. 31, 2022), [https://www.epa.gov/system/files/documents/2023-02/05RNO-22-R4%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2023-02/05RNO-22-R4%20Complaint_Redacted.pdf).

<sup>77</sup> Dominique Burkhardt et al., Earthjustice & Florida Rising, *The Doral Incinerator Fire* 1-2 (June 2023), [https://earthjustice.org/wp-content/uploads/2023/05/20230531\\_doral-incinerator-fire-report3.pdf](https://earthjustice.org/wp-content/uploads/2023/05/20230531_doral-incinerator-fire-report3.pdf).

Rights Rollback Petition, disavow any responsibility to protect frontline communities from health hazards—making Title VI as important as ever in the fight for environmental justice. DEP has also historically failed to provide meaningful language access services to residents with limited English proficiency, thus denying them the ability to effectively advocate for themselves and have a say in environmental decision-making.<sup>78</sup> Over a year after accepting the complaint, EPA has not reached an agreement with DEP or issued findings, leaving the community, and others like it throughout the state, with no relief.

### **Albuquerque, New Mexico: The fight for clean air for frontline communities**

For generations, industries and local governments in Albuquerque and Bernalillo County, New Mexico have concentrated pollution in communities of color and low-income communities. Albuquerque and Bernalillo County’s frontline communities are disproportionately overburdened by various sources of pollution: toxic air, contaminated water, and polluted soils that are a legacy of discriminatory zoning and redlining.<sup>79</sup> Today, fifteen large stationary sources (which include fossil fuel-fired power plants, oil refineries, gas processing plants and compressor stations, manufacturing plants, and landfills that emit large amounts of toxic and hazardous air pollutants) are sited in Albuquerque and Bernalillo County, with the Albuquerque facilities tending to be located in more low-income areas compared to the rest of the state.<sup>80</sup> Several of New Mexico’s South Valley neighborhoods (Mountain View and South Broadway) and Albuquerque neighborhoods (the International District, San Jose, Martineztown, and Greater Gardner) are home to majority low-income residents of color. As a result of the high concentration of polluting facilities sited in these neighborhoods, residents also have an elevated risk of adverse health impacts from air pollution, including shorter life expectancies and high rates of asthma,

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<sup>78</sup> As a result of this Title VI investigation, Florida’s DEP did create and finalize a language access policy; however, at the time of writing this letter, the policy has not been translated into other languages, there has been no affirmative outreach by DEP to notify communities of this policy, and the policy itself requires fixes to make it more protective of the rights of people with limited English proficiency.

<sup>79</sup> See Los Jardines Institute, Complaint under Title VI against Albuquerque Environmental Health Department and City of Albuquerque in administration of Albuquerque-Bernalillo County Air Quality Program (May 30, 2024) (“Los Jardines Complaint”), at 7-10, Exhibits H-N, <https://www.nrdc.org/sites/default/files/2024-06/nm-titlevi-complaint-jardines-20240530.pdf>; see generally Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 *Env’t Sci. & Tech. Letters* 345-350 (2022), <https://pubs.acs.org/doi/10.1021/acs.estlett.1c01012>.

<sup>80</sup> Gabriel Pacyniak et al., *Climate, Health, and Equity Implications of Large Facility Pollution Sources in New Mexico*, Univ. of New Mexico & PSE Health Energy Research Paper No. 2023-01, at 55 (Feb. 1, 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4354671](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4354671).

cancer, and heart disease,<sup>81</sup> in comparison to wealthier and whiter communities in Albuquerque and Bernalillo County.<sup>82</sup>

For decades, Albuquerque and Bernalillo County’s frontline communities have advocated for stronger air quality protections, petitioning the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) twice for cumulative impacts regulations that would address the disparate pollution burden that exists in these areas. In 2014, after the Air Board denied such a petition, the Southwest Organizing Project filed a Title VI complaint against the Albuquerque Environmental Health Department (“EHD”) and the Air Board, which EPA accepted for investigation.<sup>83</sup> Despite recent efforts by EPA and the Air Board to reach a resolution, EHD has continually resisted change, making the 2014 filing EPA’s longest-standing open Title VI complaint.<sup>84</sup> As such, as EHD admits, EHD still has no mechanism in place to determine if its permitting decisions have disparate impacts on Albuquerque and Bernalillo County’s low-income communities of color—despite data showing that is where air pollution is overwhelmingly concentrated—effectuating discrimination on the basis of race and national origin.

In May 2024, the Los Jardines Institute (“LJI”) and Natural Resources Defense Council (“NRDC”) filed a Title VI Complaint and request for a compliance review with EPA to protect communities from worsening air pollution in Albuquerque. That same month, the Mountain View Coalition also filed a Title VI Complaint with EPA, requesting an investigation into the City of Albuquerque and its city council, and ultimately, for a finding of noncompliance with Title VI. In June 2024, the Mountain View Coalition also filed a request for EPA to conduct an

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<sup>81</sup> *Mountain View is City’s Industrial Sacrifice Zone*, Albuquerque Journal (June 28, 2021), [https://www.abqjournal.com/news/mountain-view-is-citys-industrial-sacrifice-zone/article\\_fea747ab-0525-51cf-bda8-5c4fd74c0f7e.html](https://www.abqjournal.com/news/mountain-view-is-citys-industrial-sacrifice-zone/article_fea747ab-0525-51cf-bda8-5c4fd74c0f7e.html); Los Jardines Complaint, *supra* note 79, at 24-26.

<sup>82</sup> See N.M. Comty. Data Collab., *Bernalillo County Chronic Disease Deaths Map* (2008-2017), <https://www.arcgis.com/home/webmap/viewer.html?webmap=a730afb44786482882df08c801e8ee57&extent=-107.0246,34.9188,-106.3064,35.2475> (some areas of Northern Albuquerque experience rates of 371.0 chronic disease deaths per 100,000 residents; whereas, in some areas of the South Valley, chronic disease death rates range from 492.5 to 568.2 per 100,000 residents).

<sup>83</sup> Southwest Organizing Project, Complaint under Title VI against Albuquerque Air Quality Div. & Albuquerque/Bernalillo County Air Quality Control Bd. (Sept. 15, 2014), <https://www.epa.gov/system/files/documents/2022-08/13R-14-R6%20Complaint%20NR.pdf>.

<sup>84</sup> The second time a community coalition, including the Mountain View Coalition and members of Los Jardines Institute, filed a petition for cumulative impact regulations, the Albuquerque City Council attempted to prevent a hearing by voting to dismantle the Air Board and stay certain types of air quality regulations until the following year. See Bryce Dix, *ABQ City Council Approves Controversial and Sweeping Changes to Air Quality Control Board*, KUNM (Nov. 8, 2023), <https://www.kunm.org/local-news/2023-11-08/abq-city-council-approves-controversial-and-sweeping-changes-to-air-quality-control-board>.

affirmative Title VI compliance review of EHD, based on its ongoing discriminatory permitting, patterns and practices.<sup>85</sup>

### **St. Louis, MO: Cancer, asthma and other cumulative impacts resulting from failure to implement procedural safeguards mandated by Title VI**

In September of 2020, the Dutchtown South Community Corporation, the Missouri State Conference of the NAACP, and the NAACP St. Louis City Branch filed a Title VI Complaint against the Missouri Department of Natural Resources (“DNR”).<sup>86</sup> The complaint alleges that because DNR’s programs lack the procedural safeguards mandated by EPA’s Title VI regulations to ensure meaningful public involvement in permitting processes, the agency regularly issues permits that cause discriminatory impacts in violation of Title VI.

The complaint highlights DNR’s decision to issue an air pollution permit to the Kinder Morgan Transmix Company for a facility located adjacent to the Dutchtown neighborhood of the City of St. Louis, as an example of this procedural shortfall resulting in a discriminatory impact to nearby residents. Close to three-quarters of Dutchtown residents identify as non-white, a high proportion of the residents speak languages other than English in the home, and a disproportionate number are living below the poverty line or are otherwise considered low-income. Further, the Dutchtown neighborhood is adjacent to more than 600 other regulated sources of pollution and multiple major highways, and many area residents live in aging housing stock replete with lead and mold. Not surprisingly, the residents of Dutchtown experience higher incidences of cancer and asthma, and are clearly suffering significant cumulative impacts from the state agency’s Title VI failures.

EPA recognized the strength of the complaint, issuing a partial preliminary finding of noncompliance regarding DNR’s lack of procedural safeguards.<sup>87</sup> Nonetheless, DNR entered into a voluntary compliance agreement<sup>88</sup> with EPA that has not notably changed the permitting program or provided additional environmental or health protections for EJ communities. The agreement merely led to minor procedural changes in the agency’s program, such as creating a Limited English Proficiency plan, establishing grievance procedures and procedures for citizens

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<sup>85</sup> Although both complaints include allegations of intentional discrimination, LJI, NRDC, and the Mountain View Coalition support EPA’s Title VI disparate impact regulations.

<sup>86</sup> Dutchtown South Cmty. Corp. et al., represented by Great Rivers Environmental Law Clinic, Complaint under Title VI against Mo. Dep’t of Nat. Res. (Sept. 4, 2020), [https://www.epa.gov/system/files/documents/2022-08/01RNO-20-R7%20Complaint\\_Redacted\\_0.pdf](https://www.epa.gov/system/files/documents/2022-08/01RNO-20-R7%20Complaint_Redacted_0.pdf).

<sup>87</sup> EPA, Partial Preliminary Findings for EPA Complaint No. 01RNO-20-R7 (Mar. 30, 2021), <https://www.epa.gov/system/files/documents/2023-05/2021.03.30%20FINAL%20Recipients%20MDNR%20Partial%20Prelim%20Findings%20Letter%20Compl%20No%2001RNO-20-R7.pdf> (finding that Missouri’s DNR did not comply with Title VI because it failed to provide: (1) a notice of nondiscrimination; (2) staff a nondiscrimination coordinator; (3) develop guidance procedures; and (4) provide meaningful access for persons with limited English proficiency).

<sup>88</sup> EPA, External Civ. Rts. Compliance Off., & Mo. Dep’t of Nat. Res., Voluntary Compliance Agreement (June 22, 2022), <https://www.epa.gov/system/files/documents/2023-05/2022.06.22%2001RNO-20-R7%20FINAL%20Recipient%20Correspondence%20and%20VCA.pdf>.

with disabilities, appointing a nondiscrimination coordinator, and providing a notice of nondiscrimination on the agency’s website. The allegations in the Complaint relating to DNR’s public participation policies remain unaddressed, however, and the agency’s public participation procedures continue to fail to comply with Title VI requirements. Further, the substantive portion of the complaint, related to the discriminatory permit decision, remains unresolved.

### **Harris County, Texas: Fighting concrete plants in Black and Latinx communities**

There are approximately 140 concrete batch plants in Harris County, and these plants are disproportionately located in Black, Latinx, and low-income neighborhoods. In March 2022, 96 active plants were permitted to emit almost two million pounds of coarse particulate matter and over two thousand pounds of fine particulate matter per year, and many were routinely non-compliant. Even ignoring the other air pollution that contributes to Harris County’s non-attainment status, the particulate matter and crystalline silica emitted by concrete batch plants exceed health protective limits. In April 2022, Harris County filed a Title VI complaint.<sup>89</sup> In May 2022, four community groups representing residents in the impacted neighborhoods of the Fifth Ward and Northeast Houston also filed a Title VI complaint alleging that the Texas Commission on Environmental Quality (“TCEQ”) had violated Title VI by approving a rule that disproportionately burdened Black and Latinx residents and failing to provide language access services to affected residents.<sup>90</sup>

The EPA accepted and began investigating the complaint. For two days in May 2023, an EPA team from Region 6 and Headquarters visited Harris County, meeting with the impacted communities and visiting several of the facilities of concern identified in the twin complaints. In October 2023, TCEQ withdrew from negotiations with EPA, challenging EPA’s enforcement power under Title VI and arguing that it should close existing Title VI complaints like it had following the filing of litigation by the State of Louisiana against EPA. In response to TCEQ’s withdrawal from the informal resolution process, EPA should have issued preliminary findings of compliance or noncompliance pursuant to EPA’s regulations.<sup>91</sup> Instead, EPA allowed TCEQ to unilaterally withdraw from the negotiations and has yet to give the community any relief under Title VI. In January 2024, EPA administratively closed the complaints without prejudice because TCEQ planned to amend its standard permit for concrete batch plants by early 2024.

In April 2024, community groups representing impacted communities refiled their complaint after the TCEQ’s new amendment became effective and within the timeframe provided by EPA; the community groups asked EPA to reopen its civil rights investigation

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<sup>89</sup> Harris County, Complaint under Title VI against Tex. Comm’n on Env’t Quality (Apr. 4, 2022), [https://www.epa.gov/system/files/documents/2022-06/05RNO-22-R6%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/05RNO-22-R6%20Complaint_Redacted.pdf).

<sup>90</sup> Complaint under Title VI by Impacted Communities against Tex. Comm’n on Env’t Quality (May 17, 2022), [https://www.epa.gov/system/files/documents/2022-06/06RNO-22-R6%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/06RNO-22-R6%20Complaint_Redacted.pdf)

<sup>91</sup> See 40 C.F.R. § 7.120(d)(2)(i).



because TCEQ’s standard permit continued to discriminate against Black and Latinx residents.<sup>92</sup> Harris County and community groups have also challenged the amendment in state court.<sup>93</sup>

### **Port Arthur, Texas: Unsuccessful Title VI negotiations fail to curb pollution from heavy industry in a predominantly Black and Latinx city**

Port Arthur, Texas is a majority Black and Latinx city on the Gulf Coast with a poverty rate of more than 25%.<sup>94</sup> West Port Arthur was developed as the City’s legally segregated Black neighborhood, separated from downtown by a set of railroad tracks. The neighborhood is surrounded on all sides by industrial uses, including a port, railyards, and one of the largest concentrations of petrochemical refineries in the country, all of which produce massive amounts of air pollution, both permitted and “accidental.” In 2009, the EPA designated West Port Arthur as an “Environmental Showcase Community” and recommended relocating two HUD-subsidized developments because of the health and safety risks presented by the refineries and petrochemical storage tanks.

In 2020, the TCEQ renewed the Federal Operating Permit (“FOP”) for Oxbow’s calcinated coke facility, which emits particulate matter, in West Port Arthur. In August 2021, residents of West Port Arthur filed a complaint under Title VI of the Civil Rights Act alleging that TCEQ’s issuance and continued renewal of the permit without adequate new source review and without requiring Oxbow to use best available control technologies or an effective compliance plan disparately impacted them on the basis of race.<sup>95</sup> An EPA team from Region 6 and Headquarters spent a full day in Port Arthur meeting with the community and observing impacts from the facility. In October 2023, TCEQ withdrew from negotiations with EPA, denying EPA’s enforcement power under Title VI and arguing existing complaints against it should be closed just as EPA had closed complaints in Louisiana. The Oxbow plant continues to operate and emits ten times more sulfur dioxide than the three major refineries that surround it. In late December 2023, EPA administratively closed the complaint without prejudice until it completed its review of the FOP for the facility, which resulted in no further changes to the permit. The residents timely refiled their complaint in June 2024, urging the EPA to complete its investigation of TCEQ’s lax regulation of this facility and fulfill the commitments to the community made in its closing letter.

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<sup>92</sup> Lone Star Legal Aid on behalf of community groups, Complaint under Title VI against Tex. Comm’n on Env’t Quality (Apr. 9, 2024), [https://www.epa.gov/system/files/documents/2024-04/01mo-24-r6-complaint\\_redacted\\_0.pdf](https://www.epa.gov/system/files/documents/2024-04/01mo-24-r6-complaint_redacted_0.pdf).

<sup>93</sup> *Harris County, Tex. v. Tex. Comm’n on Env’t Quality*, Cause No. D-1-GN-24-001116 (Travis Cnty., Tex. 126th Jud. Dist. Ct.).

<sup>94</sup> U.S. Census., *Income and Poverty (Port Arthur, Texas)*, [https://data.census.gov/profile/Port\\_Arthur\\_city,\\_Texas?g=160XX00US4858820#income-and-poverty](https://data.census.gov/profile/Port_Arthur_city,_Texas?g=160XX00US4858820#income-and-poverty).

<sup>95</sup> Lone Star Legal Aid on behalf of community groups, Complaint under Title VI against Tex. Comm’n on Env’t Quality regarding Oxbow Calcining LLC (Aug. 18, 2021), [https://www.epa.gov/system/files/documents/2022-06/02R-21-R6%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/02R-21-R6%20Complaint_Redacted.pdf).

## Cancer Alley, Louisiana: Toxic air pollution

Residents of Cancer Alley, an 85-mile-long corridor between Baton Rouge and New Orleans with hundreds of industrial facilities, face some of the highest cancer risk from toxic air pollution in the country.<sup>96</sup> Community groups in two of these parishes, St. John the Baptist Parish and St. James Parish, filed civil rights complaints due to the Louisiana Department of Environmental Quality's ("LDEQ") and Louisiana Department of Health's ("LDH") failures to protect these communities from disproportionate toxic air pollution.<sup>97</sup> While giving examples of specific instances of discriminatory air permitting, the complainants highlighted LDEQ's systemic discriminatory air permitting practices that have resulted and continue to result in the amassing of polluting facilities in their predominately Black communities, resulting in a "cancer alley" of pollution that has impacted generations. EPA investigated the complaints and issued a letter of concern that "present[ed] significant evidence suggesting that the Departments' actions or inactions have resulted and continue to result in disparate adverse impacts on Black residents of St. John the Baptist Parish, St. James Parish, and the Industrial Corridor."<sup>98</sup> After months of negotiations between EPA, LDEQ, and LDH on an informal resolution agreement, then-Louisiana Attorney General Jeff Landry sued EPA and DOJ in federal court challenging not only EPA's authority to require LDEQ and LDH to address disparate impact through the agreement, but also EPA's and DOJ's authority to prohibit disparate impact under Title VI at all.

As a result of the lawsuit, EPA caved and closed the civil rights complaints, leaving the communities with no relief under Title VI.<sup>99</sup> EPA has admitted that these predominantly Black

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<sup>96</sup> Concerned Citizens of St. John & Sierra Club, Complaint under Title VI against La. Dep't of Env't Quality and La. Dep't of Health (Jan. 20, 2022), <https://www.epa.gov/system/files/documents/2022-06/04R-22-R6%20Complaint%20Redacted.pdf>; Stop the Wallace Grain Terminal et al., Complaint under Title VI against La. Dep't of Env't Quality (Feb. 1, 2022), <https://www.epa.gov/system/files/documents/2022-06/04R-22-R6%20Complaint%20Redacted.pdf>; see, e.g., EPA, *2014 National Air Toxics Assessment* (Aug. 22, 2018), <https://gispub.epa.gov/NATA> (concluding that residents of St. John the Baptist Parish faced the highest cancer risk from toxic air pollution in the nation at 1,505-in-1 million). Peer-reviewed research has linked this extra risk with a higher rate of actual cancer cases in Louisiana. Kimberly Terrell et al., *Air pollution Is Linked to Higher Cancer Rates Among Black or Impoverished Communities in Louisiana*, 17 *Env't Res. Letters* 014033 (Jan. 2022), <https://iopscience.iop.org/article/10.1088/1748-9326/ac4360/pdf>.

<sup>97</sup> Concerned Citizens of St. John & Sierra Club Complaint, *supra* note 96; Stop the Wallace Grain Terminal et al. Complaint, *supra* note 96.

<sup>98</sup> EPA, Letter of Concern to La. Dep't of Env't Quality and La. Dep't of Health (Oct. 12, 2022), <https://www.epa.gov/system/files/documents/2022-10/2022%2010%2012%20Final%20Letter%20LDEQ%20LDH%2001R-22-R6%2C%2002R-22-R6%2C%2004R-22-R6.pdf>.

<sup>99</sup> EPA, Letter regarding Administrative Closure of Complaint Nos. 01R-22-R6 and 04R-22-R6 (June 27, 2023), <https://www.epa.gov/system/files/documents/2023-06/01R-22-R6%20and%2004R-22-R6%20Administrative%20Closure%20Letter%20for%20LDEQ%206.27.2023.pdf>.

communities continue to face “imminent and substantial endangerment” from toxic air pollution.<sup>100</sup>

## Flint, Michigan

Flint is an important example of the harm to frontline communities that results when Title VI enforcement fails for decades. Well before the disastrous lead contamination of their drinking water supply made national headlines in 2014,<sup>101</sup> and to this day, Flint residents have contended with the cumulative impacts and health consequences from multiple sources of industrial pollution. In 1992, St. Francis Prayer Center brought its first Title VI complaint raising concerns about the Michigan environmental agency’s discriminatory practices with regard to permitting the Genesee Power Station (“GPS”). The Michigan agency’s public participation process was riddled with problems, including that almost all of the hearings were held in Lansing, fifty miles away from the proposed site. And when the agency finally held a meeting in the Black neighborhood in Flint, the agency arranged for armed and uniformed officers to be present—an uncommon practice.<sup>102</sup> In 2017, EPA’s Office of Civil Rights finally issued a letter with “[a] finding of discriminatory treatment of African-Americans by MDEQ [now EGLE] in the public participation process for the GPS (Genesee Power Station) . . . .<sup>103</sup> Nonetheless, the GPS facility and several other nearby facilities still pump out harmful pollution today with inadequate oversight, monitoring, or permit enforcement.

In 2021, the Flint community faced a proposal for yet another industrial facility—a hot mix asphalt plant—in the same industrial park as Genesee Power Station. The Michigan environmental agency permitted the facility, despite calls from advocates and EPA Region 5 seeking a permit denial (or at least a pause for a cumulative impact analysis). The Environmental

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<sup>100</sup> See EPA, New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 Fed. Reg. 42932, 42955 (May 16, 2024) (explaining that a neoprene production facility’s chloroprene emissions subject the fenceline community to “imminent and substantial endangerment”) (citing *U.S. v. Denka Performance Elastomer, LLC*, No. 2:23-cv-00735 (E.D. La. Feb. 28, 2023)).

<sup>101</sup> Community groups again turned to Title VI for relief in 2016, asking EPA’s civil rights office to conduct a compliance review for Michigan’s practice of providing inadequate services and protection to communities of color, immigrant communities and people with disabilities. As the Title VI letter stated, “[t]he current disaster is not the first case of environmental injustice that has been caused or exacerbated by MDEQ or MDHHS, but it should be the last.” Flint Title VI Letter, <https://earthjustice.org/wp-content/uploads/2016/07/flintletterfinal.pdf>; see also Off. of Gov. of State of Mich., *Flint Water Advisory Task Force Final Report* (Mar. 2016), [https://www.michigan.gov/documents/snyder/FWATF\\_FINAL\\_REPORT\\_21March2016\\_517805\\_7.pdf](https://www.michigan.gov/documents/snyder/FWATF_FINAL_REPORT_21March2016_517805_7.pdf).

<sup>102</sup> In 2016, St. Francis Prayer Center and several other complainants around the country filed a lawsuit against EPA alleging that it had unlawfully delayed its resolution of Title VI complaints. Earthjustice, *Challenging EPA’s Failure to Investigate Civil Rights Complaints* (Oct. 2, 2020), <https://earthjustice.org/case/challenging-epa-s-failure-to-investigate-civil-rights-complaints>.

<sup>103</sup> EPA letter to Mich. Dep’t of Env’t Quality regarding resolution of Complaint No. 01R-94-R5 (Jan. 19, 2017), <https://www.epa.gov/sites/default/files/2017-01/documents/final-genesee-complaint-letter-to-director-grether-1-19-2017.pdf>.

Transformation Movement of Flint, Flint Rising, and St. Francis Prayer Center (“Flint Complainants”) filed a complaint alleging that the Michigan Department of Environment, Great Lakes, and Energy (EGLE)’s decision to authorize the asphalt plant in an overwhelmingly Black and low-income community in North Flint violated Title VI of the Civil Rights Act.<sup>104</sup> The Flint Complainants also alleged that EGLE’s entire air permitting program discriminated on the basis of race.<sup>105</sup>

After the EPA accepted the 2021 complaint for investigation, the Flint Community Group participated in weekly negotiations with EPA and the Michigan environmental agency for months, working through important proposed changes to the state’s air permitting program that would assess and address the cumulative burdens. Unfortunately, at the eleventh hour and shortly after EPA closed the Louisiana complaints, Michigan scratched the negotiated terms and replaced the agreement with a new proposal that eliminated changes to the air permitting program and the addition of air monitoring at the industrial park.<sup>106</sup> The final resolution, signed by EPA and Michigan, is unlikely to change conditions on the ground or change permitting processes.<sup>107</sup>

### **Jackson, Mississippi: Lack of access to safe drinking water in majority-Black city**

Jackson, a majority Black state capital, has faced intentional neglect by state agencies that left Jackson residents without access to safe drinking water, including lack of resources to maintain the largest water treatment plant in Jackson, Mississippi. In 2022, the concerns of residents not being able to drink their tap water became a crisis with one of the longest running boil water alerts for the entire city. Schools closed down, medical facilities and businesses closed, and seniors struggled to find water to survive during this time. The former mayor of

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<sup>104</sup> Env’t Transformation Movement of Flint et al., Complaint under Title VI against Mich. Dep’t of Env’t, Great Lakes and Energy (Oct. 27, 2021), [https://www.epa.gov/system/files/documents/2022-06/01RNO-22-R5%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/01RNO-22-R5%20Complaint_Redacted.pdf). A separate civil rights complaint related to the permitting of the same facility was filed and alleged that EGLE discriminated on the basis of disability. [https://www.epa.gov/system/files/documents/2022-06/03DRr-22-R5%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/03DRr-22-R5%20Complaint_Redacted.pdf). Michigan United, Environmental Transformation Movement of Flint, Flint Rising, and St. Francis Prayer Center also filed a permit appeal in state court under environmental laws, which also did not result in meaningful relief. *Flint Rising v. Genesee Cty.*, No. 2022-116871-AA (Genesee Cnty. Cir. Ct. June 21, 2023).

<sup>105</sup> The Flint groups also filed a Title VI and Title VIII complaint with the Department of Housing and Urban Development (HUD) alleging that the Genesee Township zoning that EGLE relied upon to justify its permit approval to Ajax was motivated by racial animus and caused an adverse disparate impact. St. Francis Prayer Center et al., Housing Discrimination Complaint (Dec. 15, 2021), <https://www.nhlp.org/wp-content/uploads/Flint-HUD-complaint-2021.pdf>. The HUD complaint remains pending.

<sup>106</sup> The collective pressure and advocacy did result in changes to the public participation process, improved air quality monitoring, and stepped up federal enforcement of the Clean Air Act in the same area.

<sup>107</sup> EPA letter to Mich. Dep’t of Env’t Quality regarding resolution of Case No. 01RNO-22-R5 (Aug. 10, 2023), <https://www.epa.gov/system/files/documents/2023-08/Resolution%20Letter%20and%20Informal%20Resolution%20Agreement%2C%20EPA%20Complaint%20No.%2001RNO-22-R5%20%28MI%20EGLE%20Ajax%29.pdf>.

Jackson, Harvey Johnson, predicted this would happen decades prior and had asked the state for additional resources and assistance, highlighting in his written commentary the water infrastructure issues in Jackson. These requests were denied, and requests by current Mayor Chokwe Antar Lumumba to Governor Tate Reeves were ignored. These rejections foreshadowed the problematic relationship between the state and Jackson residents.

Later that year, the National NAACP, the Mississippi State Conference of the NAACP and nine Jackson residents filed a Title VI complaint seeking investigation into the use of federal funds related to drinking water in Jackson. The Complaint alleged:

This discrimination is evident in the State’s repeatedly having deprived Jackson of federal funds to maintain its public drinking water system in favor of funding smaller, majority-white communities with less acute needs—despite the fact that Jackson is Mississippi’s most populous city, with a demonstrated need for improvements to water infrastructure.<sup>108</sup>

The complaint detailed the failing state of the drinking water infrastructure in Jackson and linked it to the long-standing pattern and practice of the State agencies failing to provide Jackson with adequate funds to maintain or invest in the system while providing funding to majority-white areas. The disinvestment in Jackson’s drinking water has created dire health consequences for community members.

Even throughout the investigation, thousands of residents signed complaints highlighting their understanding that the state had ignored their issues for years. Indeed, the state allocated money to whiter communities during the height of Jackson’s water crisis. After EPA investigated the NAACP complaint, it issued a letter concluding that there was insufficient evidence of discrimination in the funding—in part due to the lack of data that EPA collects to assess funding disparities. EPA issued recommendations to MSDH to address the “potential barriers to funding”:

- Conduct a detailed needs assessment statewide on a recurring and regular basis to ensure that funding mechanisms are available to address water infrastructure needs in small and medium sized systems as well as Jackson. The assessment should include the need for technical assistance, including the need for technical assistance in the areas of engineering expertise, managerial support, and financial capacity to build, maintain, and administer Jackson drinking water systems.

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<sup>108</sup> NAACP et al., Complaint under Title VI against State of Miss. (Sept. 27, 2022), [https://www.epa.gov/system/files/documents/2022-10/06R-22-R4%20Complaint\\_Redacted\\_0.pdf](https://www.epa.gov/system/files/documents/2022-10/06R-22-R4%20Complaint_Redacted_0.pdf).

- Assess loan terms to ensure meaningful access to funding for communities in greatest need over time and develop and, if within MSDH’s authority, implement alternative approaches . . . .<sup>109</sup>

While EPA has issued recommendations designed to analyze funding and investment in drinking water, Jackson residents continue to face a drinking water crisis with no end in sight. And despite the EPA’s findings, EPA’s Office of the Inspector General recently issued additional evidence that the state’s lack of communication with Jackson contributed to Jackson’s water issues.<sup>110</sup>

### **Comal County, Texas: Spanish speakers’ lack of access to wastewater permitting decisions**

In 2020, TCEQ settled a Title VI complaint filed on behalf of a majority Latinx community in east Houston who were not being informed of permit requests for petrochemical facilities in their neighborhood because TCEQ was not providing access to the process in languages other than English. Pursuant to a Resolution Agreement, TCEQ adopted a language access policy and amended its regulations to increase access to translation and interpretation services.<sup>111</sup> Despite this agreement, TCEQ allowed applicants for a wastewater permit in Comal County to avoid providing notice of the permitting action in a Spanish-language newspaper.

In November 2022, Spanish-speaking residents of Comal County filed a Title VI complaint because they were not informed of the application for a wastewater permit in their community.<sup>112</sup> This case highlights the importance of ongoing EPA oversight of recipients of federal funding to ensure that federal funding does not support entities and activities that continue to discriminate. Even with a settlement agreement in place to ensure compliance with Title VI, the rights of limited English proficient persons in Comal County to meaningful access to environmental decision-making were violated.

### **Gary, Indiana: Legacy and ongoing industrial pollution in a redlined Black community**

Gary, Indiana is a former company town and industrial hotspot located in the Northern part of Lake County, an area also known as Northwest Indiana or “the Region.” Legacy pollution here stems back as far as 1909 with the founding of US Steel Gary Works, the largest integrated steel mill in North America, which annually emits over 10 million metric tons of carbon

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<sup>109</sup> EPA letter to Miss. State Dep’t of Health regarding final determination of EPA File No. 06R-22-R4 (May 6, 2024), <https://www.epa.gov/system/files/documents/2024-05/msdh-final-determination-epa-file-no.-06r-22-r4.pdf>.

<sup>110</sup> EPA Off. of Inspector Gen., *State Program Deficiencies and Inadequate EPA Oversight of State Enforcement Contributed to the Drinking Water Crisis in Jackson, Mississippi, Report 24-E-0055* (Aug. 12, 2024), <https://www.epaog.gov/reports/evaluation/state-program-deficiencies-and-inadequate-epa-oversight-state-enforcement>.

<sup>111</sup> EPA letter to Tex. Comm’n on Env’t Quality regarding resolution of EPA Complaint No. 02NO-20-R6 (Nov. 4, 2020), [https://www.epa.gov/sites/default/files/2020-11/documents/20-11-4\\_tceq\\_recipient\\_resolution\\_letter\\_and\\_informal\\_resolution\\_agreement\\_final.pdf](https://www.epa.gov/sites/default/files/2020-11/documents/20-11-4_tceq_recipient_resolution_letter_and_informal_resolution_agreement_final.pdf).

<sup>112</sup> Residents of Comal County, Complaint under Title VI against Tex. Comm’n on Env’t Quality (Nov. 16, 2022), [https://www.epa.gov/system/o/documents/2024-01/05no-23-r6-complaint\\_redacted.pdf](https://www.epa.gov/system/o/documents/2024-01/05no-23-r6-complaint_redacted.pdf).

emissions and carcinogenic pollutants into Gary and the Lake Michigan shoreline.<sup>113</sup> Black people began moving to the Region in the early twentieth century, seeking to escape the Jim Crow South and work in local heavy industry and steel mills that dominated the Region.<sup>114</sup> Residential areas near industrial facilities were less desirable, but due to racism and xenophobia, Black and Mexican-Americans were stuck living there.<sup>115</sup> Over the next few decades, redlining, underinvestment, and white flight to less toxic suburban areas left Black and Latinx residents with polluted and undervalued neighborhoods.<sup>116</sup> Today, Black and Latinx people comprise 89% of Gary’s population, and those same residents suffer many health disparities including an increased risk of cardiovascular, respiratory, and cognitive diseases.<sup>117</sup> Thus, Gary’s ranking as having the 4th worst air pollution in the country is directly traceable to its history of racial discrimination and toxic business practices.<sup>118</sup>

In May 2023, the Gary Advocates for Responsible Development filed a Title VI complaint against The Indiana Department of Environmental Management (“IDEM”) for renewing a FESOP permit (with higher limits) for a waste processing facility, Maya Energy, sited 100 feet away from a K-12 school in Gary.<sup>119</sup> During the permitting process, concerned residents, local politicians, and even the EPA cautioned IDEM to comply with Title VI and consider the various effects the proposed facility would have on the surrounding Gary community before deciding to grant the permit.<sup>120</sup> However, IDEM refused to address or consider the adverse harm the facility poses to the surrounding community and grossly reasoned that “[t]here exist no statutes or regulations authorizing IDEM to deny a permit based solely on

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<sup>113</sup> EPA, *Greenhouse Gas Reporting Program: GHGRP State and Tribal Fact Sheet* (July 16, 2024) (for Indiana, Region 5), <https://www.epa.gov/ghgreporting/ghgrp-state-and-tribal-fact-sheet>. Today, the Region hosts four of Indiana’s top ten direct emitters of Greenhouse gases, the largest oil refinery in the Midwest, and a wide array of Superfund sites and brownfields.

<sup>114</sup> Chris Harris, *The History and Legacy of Redlining in Greater Gary*, Our Gary Stories (Apr. 13, 2021), <https://www.ourgarystories.com/post/the-history-and-legacy-of-redlining-in-greater-gary>.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* (“It should be clear that Gary and many Northern Lake County communities were economically disadvantaged by these federal investment practices. ... [T]he city and surrounding municipalities were graded a miserly 16% desirable city to invest in 1940 ... and 42% of The Greater Gary area were considered too hazardous to invest.”).

<sup>117</sup> Kim Ferraro & Julie Peller, Hoosier Environmental Council, *Assessment of Environmental Justice Needs in Northern Lake County Communities* 4-5 (2014), <https://www.hecweb.org/wp-content/uploads/2019/03/HEC-Assessment-of-EJ-Needs-in-Northern-Lake-County-Communities-FINAL-REPORT2.pdf>.

<sup>118</sup> See Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023). President Biden’s executive order recognizes that communities with environmental justice concerns “face entrenched disparities” stemming from the racist legacy of segregation, redlining, and the historical placement of polluting industries and hazardous waste sites in communities of color.

<sup>119</sup> See Env’t Law & Policy Ctr. on behalf of Gary Advocates for Responsible Dev’t, Complaint under Title VI against Ind. Dep’t of Env’t Mgmt., at 8-10 (May 15, 2023), [https://www.epa.gov/system/files/documents/2023-05/05R-23-R5%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2023-05/05R-23-R5%20Complaint_Redacted.pdf) (“Maya Energy Complaint”).

<sup>120</sup> *Id.*

environmental justice concerns.”<sup>121</sup> IDEM also stated that they “cannot resolve the historical issues that lead to the development of the area through an individual permitting decision.”<sup>122</sup> The agency refuses to analyze permits for adverse impacts, nor does it attempt to mitigate or avoid the adverse disparate impacts that its permitting decisions may cause, as detailed by the Maya Energy complaint.<sup>123</sup> This has resulted in Gary receiving a wide array of industrial and toxic sources permitted by IDEM with no acknowledgment of the many health disparities existing in Gary and the inability of the residents to continue to be burdened by current and additional pollution.<sup>124</sup>

Title VI requires federal funding recipients to analyze how their decision-making affects people of color and whether it is perpetuating discrimination or segregation.<sup>125</sup> Unfortunately, IDEM does not recognize these protections whilst still enjoying federal funding.<sup>126</sup> The evisceration of Title VI’s regulations would allow for the continued accumulation of industry in communities of color like Gary—prolonging the racial burden placed on them over a century ago. EPA’s commitment to Title VI enforcement is needed to address the discriminatory permitting policy of IDEM as detailed in the Maya Energy complaint.

### **Eastern North Carolina: Concentrations of industrial hog operations in Black, Latinx, and Native American communities**

In September 2021, the Duplin County Branch of the North Carolina NAACP and the North Carolina Poor People’s Campaign filed a Title VI complaint against the North Carolina Department of Environmental Quality (“DEQ”).<sup>127</sup> The complaint alleges that DEQ issued permits to four industrial hog operations that lack the necessary air and water pollution protections in violation of Title VI. For decades, the swine industry has failed to manage animal waste properly, causing pollution that disproportionately harms communities of color in rural eastern North Carolina, and DEQ has failed to take the necessary steps to protect these residents. Residents near hog operations suffer from lower life expectancy and higher rates of illness.<sup>128</sup> The affected areas include the Black Belt, a region with a significant Black population, as well as

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<sup>121</sup> *Id.* at 2 and 14.

<sup>122</sup> *Id.* at 10, 13, 18.

<sup>123</sup> *Id.* at 9, 10, 14, 15.

<sup>124</sup> *Id.* at 17-26.

<sup>125</sup> *See* 40 C.F.R. § 7.35(b)-(c).

<sup>126</sup> IDEM’s Environmental Justice webpage says, “Federal rules and laws do not currently outline the use of EJ analysis in determining whether permits should be granted.” <https://www.in.gov/idem/health/esj/environmental-justice>.

<sup>127</sup> Southern Environmental Law Center, Complaint under Title VI against N.C. Dep’t of Env’t Quality (Sept. 27, 2021), [https://www.epa.gov/system/files/documents/2022-06/05RNO-21-R4%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2022-06/05RNO-21-R4%20Complaint_Redacted.pdf).

<sup>128</sup> *Id.* (citing Julia Kravchenko et al., *Mortality and Health Outcomes in North Carolina Communities Located in Close Proximity to Hog Concentrated Animal Feeding Operations*, 79 N.C. Med. J. 278, 278 (2018), <https://doi.org/10.18043/ncm.79.5.278> (finding higher mortality rates for people living near industrial hog operations)).



Native American tribes and a growing Latinx population. Black, Native, and Latinx families are up to two times more likely than white families to live within three miles of an industrial hog operation. DEQ’s own environmental justice report shows the disproportionate impact of this industry on Black and Latinx people in eastern North Carolina.<sup>129</sup> The Title VI complaint is still pending with no resolution.

### **Adel, Georgia: Cancer, asthma, and other health harms from failure to regulate air pollution impacts**

On January 4, 2023, the Concerned Citizens of Cook County filed a Title VI Complaint against the Environmental Protection Division of the Georgia Department of Natural Resources (“EPD”).<sup>130</sup> The complaint alleges that EPD’s air quality program does not protect the most vulnerable Georgians because EPD has failed to identify vulnerable communities or analyze their unique health and welfare needs as a part of its permitting program. EPD has interpreted its own regulations as prohibiting it from taking any steps to assess or redress the disproportionate burdens of its permitting program on communities of color. The complaint highlights an air quality permit authorized in August 2022 for the construction and operation of a wood pellet mill as an example of EPD’s discriminatory actions. The community surrounding the mill, Adel, Georgia, is 89% Black and Latinx and already faces the cumulative harmful effects of underground storage tanks, high voltage substations, odorous water, and local propane blasting facilities. They are plagued with cancer and asthma. EPD did not conduct any targeted analysis of the cumulative environmental burden this community bears before issuing the new air quality permit, nor did it notify the public when it issued the final permit. This complaint remains under jurisdictional review by the EPA Office of External Civil Rights Compliance.

## **IV. TITLE VI ENFORCEMENT BY OTHER FEDERAL AGENCIES OFFERS EPA A ROADMAP FOR ADDRESSING DISCRIMINATION BY FUNDING RECIPIENTS**

EPA can take instruction from other federal agencies<sup>131</sup> such as DOJ, HUD, Health and Human Services (“HHS”), and the Department of Transportation<sup>132</sup> that have pursued Title VI enforcement to ensure that funding recipients did not exclude some groups from access to basic services—including transportation or sanitation—or enjoyment of their land and homes. For instance, in Lowndes County, residents lacked access to adequate sanitation and, instead, suffered health consequences from exposure to raw sewage; DOJ and HHS’ use of Title VI has put pressure on the local government and has led to a commitment to work towards providing these sanitation services for free. In Chicago, HUD’s Title VI investigation of the City of

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<sup>129</sup> *Id.* at 22.

<sup>130</sup> Southern Environmental Law Center, Complaint under Title VI against Ga. Env’t Protection Div. (Jan. 4, 2023), [https://www.epa.gov/system/files/documents/2023-01/01R-23-R4%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2023-01/01R-23-R4%20Complaint_Redacted.pdf).

<sup>131</sup> Note that there are many other federal agencies enforcing civil rights laws, but this submission focuses on examples involving agencies, such as DOT and HUD, that made decisions that advance environmental justice.

<sup>132</sup> The inclusion of these agencies as affirmative examples of Title VI enforcement should not be interpreted to mean that these agencies have outstanding Title VI records, overall.

Chicago’s discriminatory zoning and permitting practices led to a voluntary agreement where the City agreed to develop a cumulative impacts assessment and then make policy reforms across multiple agencies to implement the findings of that assessment. These examples demonstrate a history of federal enforcement to advance environmental justice as a civil rights issue and provide EPA with models for strengthening its own enforcement practices.

### **Beavercreek, Ohio: Providing access to public transportation**

Leaders for Equality and Action in Dayton (“LEAD”) filed a Title VI civil rights administrative complaint before the Federal Highway Administration’s (“FHWA”) Office of Civil Rights alleging that the City of Beavercreek failed to comply with Title VI and the Department of Transportation’s implementing regulations when it denied the Greater Dayton’s Regional Transit Authority’s application to place bus stops on Pentagon Boulevard. The LEAD complaint alleged,

African Americans in the [Greater Dayton Regional Transit Authority]'s service area disproportionately rely on public transportation when compared with their white counterparts. Accordingly, lack of public transportation disproportionately affects African Americans in the region. Indeed, inability of African American job seekers to obtain transportation to the Beavercreek area has been a major barrier to employment.<sup>133</sup>

Further, the complaint alleged, the City’s criteria and methods for deciding whether to allow transit stops resulted in the denial of stops that had the effect of subjecting African Americans to discrimination.<sup>134</sup>

The FHWA issued a watershed decision and a finding of discrimination, and instructed the City to take several steps to redress the harm including revising its transit stop application process and re-hearing the application for the three proposed bus stops.<sup>135</sup> If the City did not act within ninety days, the FHWA would suspend or terminate federal highway assistance. The City complied and the bus stops were added.

### **Mebane, North Carolina: Saving a Black community’s displacement by a major highway**

The West End community in Mebane is a historically Black community with a long history of resilience and activism. A planned eight-lane interstate highway bypass threatened to displace residents and disrupt the community.<sup>136</sup> State and local agencies planned the bypass without adequately considering the impact on the West End community. Local residents led by

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<sup>133</sup> LEAD, Complaint under Title VI against City of Beavercreek, Ohio, at 7 (Aug. 10, 2011), <https://perma.cc/5TPV-9MLV>; DOT FHWA decision in LEAD v. City of Beavercreek, HCR-1 DOT #2012-0020 (June 26, 2013), [https://www.justice.gov/sites/default/files/crt/legacy/2014/07/07/DOT\\_fhwa\\_decision-lead\\_v\\_city\\_of\\_beavercreek\\_june\\_2013.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/07/07/DOT_fhwa_decision-lead_v_city_of_beavercreek_june_2013.pdf).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> West End Revitalization Ass’n (WERA), *Our History*, <https://weranc.org/our-history>.

Omega and Brenda Wilson formed the West End Revitalization Association (“WERA”) to fight the bypass and advocate for their rights. In 1999, WERA filed a Title VI Complaint with the DOJ, which ultimately referred it to multiple federal agencies for investigation. Through this Title VI enforcement, WERA successfully forced the North Carolina Department of Transportation to modify the highway project to save dozens of homes, a 200-year-old cemetery and a historic African-American church.

### **Corpus Christi, Texas: Black neighborhoods resist erasure by city and state decision-makers**

When the Texas Department of Transportation (TxDOT) selected a route for construction of the new Harbor Bridge and a new highway through Corpus Christi’s only historically Black neighborhoods, Washington Coles and Hillcrest, residents filed a Title VI complaint to the FHWA alleging intentional discrimination as well as disparate impacts to the residents from the proposed project.

The Harbor Bridge project was only the most recent example of encroachment into, and isolation of, these two neighborhoods, which had been divided by a highway’s construction in the 1950’s and were surrounded by multiple refineries, tank farms, and a sewage treatment plant. Acting under its Title VI authority, FHWA paused the Harbor Bridge project during its investigation, resulting in a Voluntary Resolution Agreement (the “Agreement”) between FHWA and TxDOT in December 2015. The Agreement provided options for Hillcrest residents to make a choices about their futures through mitigation that: 1) offered voluntary relocation to a comparable house in a healthier neighborhood for eligible residents (owners and renters), churches, and small businesses; 2) created a Community Advisory Board to oversee implementation of the Agreement; and 3) provided for park upgrades and memorialized the contributions of these neighborhoods through an oral history project.

The Agreement was not perfect, and residents who remain in the Hillcrest neighborhood are still facing isolation, construction impacts, and new industrial development while still fighting to see the promised park upgrades from the Agreement fully implemented. The Agreement did, however, provide a meaningful option for hundreds of residents, many of whom had suffered for years due to area pollution and related health impacts, allowing them to relocate to comparable homes in less polluted neighborhoods.

### **Lowndes County, Alabama: Long-awaited improvements to a failing sanitation system**

For decades, residents of Lowndes County, Alabama, have been plagued by inadequate access to basic sanitation. Failing sewage treatment systems release raw sewage, which contaminates local water bodies and pools in back yards and exposes residents to diseases such as hookworm. Lowndes County is a predominantly Black community, and Black residents were hit the hardest by the area’s inadequate sewage treatment systems. Making the problem worse, the local government weaponized sanitation laws to criminalize residents who were unable to afford expensive sanitation improvements on their own. Rather than help Black Lowndes County residents who reported hookworm infections or sanitation problems on their properties, the local government threatened them with jail time.

The Center for Rural Enterprise and Environmental Justice (“CREEJ”), founded by Catherine Coleman Flowers, environmental activist, author, and White House Environmental Justice Advisory Council member, filed a Title VI complaint against the Alabama Department of Public Health and the Lowndes County Health Department (collectively, “ADPH”) with HHS. The DOJ and HHS investigated whether ADPH’s conduct violated Title VI and entered into an Interim Resolution Agreement with ADPH. That Agreement created an interim moratorium on enforcing the sanitation criminal statutes: ADPH no longer refers residents to law enforcement when they report sanitation issues so long as they work with ADPH to apply for an appropriate onsite sewage system. ADPH has also drafted a Public Health and Infrastructure Improvement Plan (“PHIIP”) with involvement from the local community in its development. Although the PHIIP is not yet finalized and CREEJ hopes it will be strengthened in its final form, the draft version would provide free sewage systems for residents. Hurdles to achieving a fully functional sewage system for Lowndes County remain. But the Title VI process has set the community on a much-needed path forward.

### **Chicago, Illinois: HUD Complaint—City’s Permitting of Scrap Metal Recycler**

When faced with a civil rights complaint related to the proposed scrap metal recycler relocation in Chicago, HUD considered the historic and social context of the area and asserted its civil rights enforcement authorities to address obvious inequity. Southeast Side community groups filed a civil rights complaint against the City of Chicago with HUD, which made allegations—later found as facts by HUD—that the City’s role in the proposed relocation intentionally discriminated on the basis of race, created disparate impacts, and failed to affirmatively further fair housing.<sup>137</sup> Crucially, HUD found that the City had violated civil rights laws in both its specific acts related to the proposed relocation and in the structure and application of its zoning laws as a whole. HUD’s letter declared that these violations could be resolved only if the City agreed “to address existing and potential environmental harms of the relocation and to adopt an enhanced fair housing planning process that includes planning for overcoming disparities in environmental impacts.”<sup>138</sup> After intense resistance to HUD, the City ultimately negotiated a voluntary compliance agreement to resolve the HUD civil rights complaint in May 2023. At the center of that agreement was the City’s denial of the permit based on its assessment of the relocation’s cumulative and disparate impacts on the surrounding community, which occurred during the complaint’s pendency, coupled with the City’s commitment to develop sweeping civil rights policy reforms moving forward.

## **V. FRONTLINE COMMUNITIES URGENTLY NEED CIVIL RIGHTS PROTECTION**

Although Title VI of the Civil Rights Act of 1964 has been in place for sixty years and EPA’s regulations have been in place for forty, EPA has only *begun* to invest in the

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<sup>137</sup> People for Community Recovery, Southeast Environmental Task Force, Chicago Southeast Side Coalition to Ban Petcoke, Civil Rights Complaint with HUD against the City of Chicago (Oct. 2, 2020), <https://drive.google.com/file/d/1i3bMd9UvhExZkhCIN2km4SucRHHV04Q17/view>.

<sup>138</sup> HUD Letter of Findings of Noncompliance with Title VI and Section 109 in Southeast Environmental Task Force, et al. v. City of Chicago, Case No. 05-20-0419-6/8/9 (July 19, 2022), [https://www.hud.gov/sites/dfiles/Main/documents/Letter\\_of\\_Finding\\_05-20-0419\\_City\\_of\\_Chicago.pdf](https://www.hud.gov/sites/dfiles/Main/documents/Letter_of_Finding_05-20-0419_City_of_Chicago.pdf).

implementation of Title VI over the last four years, in contrast to some of the federal agencies named above. The stories of the frontline communities described above remind us—as do the many other stories of communities awaiting redress for civil rights violations<sup>139</sup>—that countless individuals and families nationwide face ongoing discrimination that continues to exacerbate the impacts of historic discrimination. The result is disproportionate exposure to a catastrophic array of environmental harms and increased climate risks. Environmental laws alone are not sufficient to prevent these harms. One state has recently responded to a civil rights complaint filed by community members through the state’s grievance procedure by committing to consider the cumulative impacts of their permitting decisions. On August 29, 2024, in response to a Title VI Complaint filed by Michigan Environmental Justice Coalition, Sierra Club and individual residents, Michigan’s EGLE reached an agreement regarding a hazardous waste facility by making several commitments including among other things: (1) requiring an environmental justice analysis and cumulative impact review before issuing a renewing a license to a hazardous facility; (2) requiring the denial of a license for a hazardous waste facility if it will cause unlawful impacts to the environment or human health; and (3) requiring improved access and public participation in hazardous waste permitting decisions.<sup>140</sup> Several other states, including New Jersey, New York, Colorado, Minnesota, and North Carolina, have passed legislation intended to provide similar guardrails, protecting already overburdened communities from further disproportionate cumulative impacts in various permitting contexts.<sup>141</sup> These types of

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<sup>139</sup> See, e.g., South Baltimore Community Land Trust, *South Baltimore Advocates File Civil Rights Complaint on Incinerator Pollution Threats* (May 29, 2024), <https://www.cbf.org/news-media/newsroom/2024/maryland/south-baltimore-advocates-file-civil-rights-complaint-on-incinerator-pollution-threats.html> (regarding the adoption and implementation of the City’s 10-Year Solid Waste Management Plan, which disparately impacts residents of several predominately Black and Latinx communities); Mobile Env’t Just. Action Coal. et al., Title VI Complaint against Ala. Dep’t of Env’t Mgmt. (ADEM) (Dec. 26, 2023), [https://www.epa.gov/system/files/documents/2024-03/06r-24-r4-complaint\\_redacted.pdf](https://www.epa.gov/system/files/documents/2024-03/06r-24-r4-complaint_redacted.pdf) (alleging that ADEM’s policies or practices for reviewing and issuing Clean Air Act Title V Permits, including ADEM’s review and issuance of permits for Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP’s permits, discriminate against the communities, on the basis of race); Ctr. for Rural Enterprise & Env’t Just. et al., Title VI Complaint against State of Ala. & Ala. Dep’t of Env’t Mgmt. (Mar. 6, 2023), [https://www.epa.gov/system/files/documents/2023-03/03R-23-R4%20Complaint\\_Redacted.pdf](https://www.epa.gov/system/files/documents/2023-03/03R-23-R4%20Complaint_Redacted.pdf) (alleging discrimination in the administration of the Clean Water State Revolving Fund); Shingle Springs Band of Miwok Indians et al., Title VI Complaint against Cal. State Water Res. Control Bd. (Dec. 16, 2022), <https://www.restorethedelta.org/wp-content/uploads/2022-12-16-Bay-Delta-Complaint-and-Petition.pdf> (alleging disparate impacts of policies and practices in the San Francisco Bay/Sacramento-San Joaquin Delta); Brownsville Green Justice et al., Title VI Complaint against N.Y. State Dep’t of Pub. Serv. et al. (Aug. 30, 2021), <https://nclej.org/wp-content/uploads/2021/08/brownsville-green-justice-title-vi-complaint.pdf> (alleging the agencies bypassed federal and state environmental and pipeline safety laws to construct and operate a fracked gas pipeline through predominately Black and Latinx communities in Brooklyn, New York).

<sup>140</sup> Agreement between Mich. Dep’t of Env’t, Great Lakes, and Energy and Complainants Michigan Environmental Justice Coalition, Sierra Club, Pamela McWilliams, Irene Sinclair, Kheir Arabi, Mark Covington, and Sharon Buttry, EGLE Complaint No. 20-001-D (Aug. 2024), <https://www.sierraclub.org/sites/default/files/2024-08/title-vi-use-north-2024-08-29-title-vi-complaint-agreement-complaint-no-20-001-d-use-north-final.pdf>.

<sup>141</sup> See, e.g., N.J.S.A. 13:1D-157; S.B. S8830 § 1, 244th Sess. (N.Y. 2021); Colo. Rev. Stat. § 34-60-106(9)(c)(III) et seq.; Minn. Stat. 116.065 (2023); N.C. Gen. Stat. § 130A-294 (2019).

state commitments reflect what is needed and possible to advance civil rights and environmental justice.

Title VI was enacted to impose an affirmative obligation on federal agencies to prevent federal funding from being “used to finance or otherwise abet discrimination on the basis of race, color, or national origin.”<sup>142</sup> For EPA to fulfill its mission to protect human health and the environment, and ensure that all communities benefit from that protection, EPA must do more—not less—to ensure that recipients of federal funding comply with the requirements of Title VI of the Civil Rights Act. A future rulemaking by EPA would only be warranted if the central goal of that effort was to bolster the agency’s ability to enforce Title VI. The Civil Rights Rollback Petition’s goal could not be further from that need to strengthen Title VI. Thus, we urge EPA to thoroughly evaluate the petition in the context of the lived experiences of frontline communities and the purpose of Title VI. We urge EPA to reject the Civil Rights Rollback Petition, maintain the agency’s disparate impact regulations, and enforce our civil rights and environmental laws with more rigor.

Sincerely,

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<sup>142</sup> Yang, *supra* note 17, at 124.

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