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Center for Biological Diversity * Center for Environmental Health
Conservation Law Foundation * Greater-Birmingham Alliance to Stop Pollution
Earthjustice * Environmental Justice Clinic, Vermont Law School * Environmental Justice Law Society
Maurice and Jane Sugar Law Center for Economic and Social Justice * Metropolitan Group
New Mexico Environmental Law Center * New York Lawyers for the Public Interest
North Carolina Conservation Network * North Shore Waterfront Conservancy * Ocean Futures Society
People Organized in Defense of Earth & Her Resources * Poverty & Race Research Action Council
WE ACT for Environmental Justice * West End Revitalization Association

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**Achieving Meaningful Change in a Time of Both Crisis and Opportunity:
Ensuring Equal Protection to Achieve Environmental Justice**

Title VI EJ Alliance
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As President-elect Biden’s Plan to Secure Environmental Justice and Equitable Economic Opportunity emphasizes, the COVID-19 pandemic lays bare “how profoundly the energy and environmental policy decisions of the past have failed communities of color”¹ and how the legacy of these decisions and inequitable practices have led to disparities in illness and death on the basis of race, ethnicity, and income level today. The undersigned applaud President-elect Biden and Vice President-elect Harris for committing to achieving environmental justice — including an overhaul of the Environmental Protection Agency’s (EPA) External Civil Rights Compliance Office. We, the undersigned environmental justice groups, activists, partners, and allies, present the following recommendations to guide concrete steps on day one, in the first 100 days, and in the longer term, to fulfill this commitment.

Background

COVID-19 has taken the lives of almost 300,000 people in the United States, and the number climbs each day.² The incoming administration has the opportunity to launch a meaningful and sustained response to inequities that have caused COVID-19 to infect and kill a disproportionate number of people subjected to systemic racism and the denial of self-determination throughout the United States.

¹ The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity, <https://joebiden.com/environmental-justice-plan/> (last visited Dec. 9, 2020).

² Center for Disease Control and Prevention, *CDC COVID Data Tracker* (last visited Dec. 8, 2020), https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days

Over time, racism, xenophobia, and the valuation of some lives over others have been used to justify the clustering of environmental and public health risks, creating what have become sacrifice zones, with pollution placed out of sight and out of mind for the wealthier, whiter, and privileged few. These forces have been both intentional and unintentional, often operating through market-based mechanisms. Recent research shows that the same communities facing increased exposure to fine particle air pollution experience higher rates of COVID-19 mortality.³ Lack of access to clean water is undoubtedly also a factor.⁴

Thus, the pandemic has painfully and fatally exacerbated long-standing injustices for Black, Brown, and Immigrant communities, Indigenous peoples, people with disabilities, people who are incarcerated or detained, and low-wage workers across many sectors. This is, tragically and unsurprisingly, a consequence of the long history of colonization, housing segregation, and land use in this country, and the relationship between communities' racial composition and the location of polluting facilities that contribute to poor health status. Communities of Black, Indigenous, and People of Color (BIPOC), as well as low-income communities, are confronting the cumulative impacts of public health and economic crises, on top of environmental and climate risks and perpetual state-sanctioned violence. As the demographic with the highest mortality rate, Black Americans have experienced 21.5% of all COVID-19 deaths nationwide, despite representing just 12.4% of the population.⁵ Along the same lines, the Latinx population's death rate from COVID-19 is 14.2% higher than their population share.⁶ Filipino American health workers have also experienced higher rates of death.⁷ Native communities have some of the highest per capita rates of COVID-19 nationwide.⁸

Each population faces unique challenges that demand attention. Immigrant communities experience disproportionately low socioeconomic status, limited English-language proficiency, racial and ethnic group status, and disproportionately high representation in occupations with

³ See Xiao Wu, Rachel C. Nethery, Benjamin M. Sabath, Danielle Braun, & Francesca Dominici, *Exposure to air pollution and COVID-19 mortality in the United States: A nationwide cross-sectional study*, NIH Preprint, Apr. 7, 2020, <https://doi.org/10.1101/2020.04.05.20054502>; see also Brookings Institution, *Amid COVID-19, don't ignore the links between poor air quality and public health* (Aug. 19, 2020), <https://brook.gs/2Y7WAjH>.

⁴ See The New York Times, *Checkpoints, Curfews, Airlifts: Virus Rips Through Navajo Nation* (Apr. 20, 2020), <https://www.nytimes.com/2020/04/09/us/coronavirus-navajo-nation.html> (reporting that several factors, including scarcity of running water, have enabled the virus to spread quickly in the Navajo nation).

⁵ APM Research Lab, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.* (Nov. 12, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>.

⁶ *Id.*

⁷ See National Nurses United, *Sins of Omission How Government Failures to Track Covid-19 Data Have Led to More Than 1,700 Health Care Worker Deaths and Jeopardize Public Health* (2020), https://www.nationalnursesunited.org/sites/default/files/nnu/graphics/documents/0920_Covid19_SinsOfOmission_D ata_Report.pdf.

⁸ APM Research Lab, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.* (Nov. 12, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>.

increased risk of COVID-19.⁹ These vulnerabilities have led to disparate exposure to pollution by creating social vulnerability and barriers to measures that would limit risks associated with environmental threats.¹⁰

Indigenous people, who have witnessed the theft and degradation of their lands caused by development and extraction of resources, are now experiencing the profound impact of COVID-19 nationwide. As the group with the second-highest mortality rate, Indigenous peoples have experienced the greatest absolute disparities in COVID-19 mortality rates compared to white residents, even when adjusted for age.¹¹

The systemic injustices faced by Black, Brown, and Immigrant communities, along with Indigenous peoples, are shared among people with disabilities, people who are incarcerated or detained, and low-wage workers across many sectors.

This document is meant to outline key executive and legislative actions to ensure that environmentally overburdened BIPOC and low-income communities have a meaningful and determinative say in decisions affecting their health and welfare, to correct long-standing practices that have deprived people of the right to determine their own economic, political, and cultural futures, and to address racial, ethnic, and income-based inequalities in exposure to pollution that has led to disparities in health, welfare, and their very life expectancy. They include specific measures to move the country closer to the constitutionally-guaranteed promise of equal protection before the law to achieve environmental justice.

STRENGTHENING ENVIRONMENTAL JUSTICE POLICIES

The environmental justice movement was ignited by members of Black, Brown, Asian, Pacific Islander, Indigenous, and low-income communities. The movement has been centered around the

⁹See EPA Order 1000.32, *Compliance with Executive Order 13166: Improving Access to Services to Persons with Limited English Proficiency* (updated Feb. 10, 2017), https://www.epa.gov/sites/production/files/2017-03/documents/epa_order_1000.32_compliance_with_executive_order_13166_02.10.2017.pdf; EPA, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (2004), <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>; Maryia Bakhtsiyarava & Raphael J. Nawrotzki, *Environmental Inequality and Pollution Advantage among Immigrants in the United States*, *Applied Geography*, Mar. 3, 2017, <https://doi.org/10.1016/j.apgeog.2017.02.013>.

¹⁰ Maryia Bakhtsiyarava & Raphael J. Nawrotzki, *Environmental Inequality and Pollution Advantage among Immigrants in the United States*, *Applied Geography*, Mar. 3, 2017, <https://doi.org/10.1016/j.apgeog.2017.02.013>.

¹¹ APM Research Lab, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.* (Nov. 12, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>.

principles of self-determination and meaningful engagement and addresses the disproportionate burden of the nation's pollution affecting BIPOC and low-income communities.¹²

Twenty-six years after President Clinton signed Executive Order 12898 (EO 12898), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*,¹³ residential zip code remains the strongest predictor of life expectancy in the United States.¹⁴ In neighborhoods with facilities whose emissions are reported in the federal Toxic Release Inventory (TRI), people of color comprise 56% of the population on average.¹⁵ Black Americans, specifically, are 75% more likely to live near facilities that contribute to contamination and pollution — and it's not by accident.¹⁶ Oil refineries and other facilities that are known to have negative environmental and health impacts have consistently and intentionally been placed in counties home to communities of color that are often also low-income.¹⁷

Over the last four years, the federal government has moved the country in the wrong direction. As recently as July of 2020, the Council on Environmental Quality (CEQ) finalized amendments to National Environmental Policy Act (NEPA) regulations¹⁸ that limited, rather than expanded, public participation and rendered invisible the language around cumulative impacts that are disproportionately affecting communities of color and low-income communities. As an initial step, the administration needs to restore and strengthen NEPA. In addition, however, the following recommendations should act as a roadmap for the Biden-Harris administration to address long-standing injustices faced by communities seeking environmental justice — including people of color, Indigenous, and low-income communities — who are disproportionately impacted by environmental harms. As the Plan to Secure Environmental Justice and Equitable Opportunity outlines, the first 100 days should include concrete steps to support community-based monitoring in fence-line communities, target resources to communities that are most impacted, and overhaul civil rights enforcement. The proposals below are intended to amplify and support recommendations by environmental justice groups that have been presented to President-elect Biden's Transition Team.

¹² Principles of Environmental Justice (1991), <https://www.ejnet.org/ej/principles.html>.

¹³ Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 16, 1994).

¹⁴ Laura Dwyer-Lindgren, Amelia Bertozzi-Villa, Rebecca W. Stubbs, Chloe Morozoff, Johan P. Mackenbach, Frank J. van Lenthe, Ali H. Mokdad, Christopher J. L. Murray, *Inequalities in Life Expectancy Among US Counties, 1980 to 2014: Temporal Trends and Key Drivers*, *JAMA Intern. Med.*, Jul. 1, 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5543324/>.

¹⁵ Clean Air Task Force & National Association for the Advancement of Colored People, *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, (2017), https://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. Gov't Accountability Office, B-332373, *Council on Environmental Quality: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (2020).

Executive Actions to Strengthen Environmental Justice Policies

EPA & Environmental Justice

1. In conjunction with other federal agencies, the EPA must ensure adequate and thorough implementation of EO 12898.
 - a. From day one, require all federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities of color and low-income communities. This mandate can be reinforced by issuing an updated Executive Order and/or memo to all federal agencies.
 - b. Require all federal agencies to develop robust policy and enforcement strategies for the implementation of environmental justice (EJ).
 - c. As detailed below, require all federal agencies to prevent discrimination and prohibit disproportionate impact in federal programs affecting human health and the environment by strengthening enforcement of Title VI of the Civil Rights Act of 1964. This includes ensuring that all communities have meaningful access to public information and meaningful public participation opportunities in civil rights complaint adjudication and decision-making.
2. From day one, clarify and implement across the board the requirement that federal agencies conduct meaningful EJ analyses of policies, rules, and permit approval decisions pursuant to EO 12898.
 - a. Currently, such analyses are formulaic and appear as conclusory language in proposed rules even if the federal action will, in fact, have a substantial disproportionate impact. The Biden administration must:
 - i. Require meaningful analysis and thorough review rather than conclusory statements in rulemaking.
 - ii. Set standards and systems to ensure consideration of these analyses.
 - iii. Prioritize finalizing methodology for evaluating cumulative impacts both under Title VI and in the EJ context more generally:
 1. Utilize available data by, for example, following approaches taken in California to compare the vulnerabilities of populations by census tract using mapping tools such as CalEnviroScreen;
 2. Prioritize adapting EJ Screen to allow evaluation of relative vulnerabilities by census tract.
 - b. From day one, allocate sufficient resources and staffing to conduct and consider EJ analyses.
 - c. Re-establish the Title VI Subcommittee within a reinvigorated National Environmental Justice Advisory Council (NEJAC).
 - d. Require more robust language access pursuant to both Title VI and EO 12898, including translation of materials (such as notices of hearings, the actual notices

of proposed rulemaking, and advanced notices of proposed rulemaking), and expanded interpretation services to ensure meaningful language access in agency rulemaking and permitting more generally.

- i. This will impact Title VI enforcement: States and other recipients look to federal practice and guidance when determining what are considered vital documents, for example.
3. Reinvigorate the Interagency Working Group on Environmental Justice (IWG).
 - a. A reinvigorated IWG should take responsibility for updating the 2011 Memorandum of Understanding, guide agencies toward progress in clearly-defined EJ goals, and lay out methods to measure progress. IWG will work to ensure there are adequate staff and resources provided in agency budgets to work toward these goals. A reinvigorated IWG will ensure agencies publish annual Environmental Justice Progress Reports.
4. The IWG must provide guidance on steps and goals all agencies must consider in their EJ strategic plans and release progress reports on their EJ efforts each year. In 2019, the Government Accountability Office reported the Departments of Commerce, Defense, Education, Homeland Security, Housing and Urban Development, Justice, and Labor failed to update their EJ strategic plans, and the Small Business Administration has not developed a strategic plan.¹⁹ Moreover, the Departments of Agriculture, Commerce, Defense, and Veterans Affairs have not released progress reports on the department's EJ efforts each year.²⁰ They should be accountable for taking these actions on an annual basis.
5. IWG must reinstate its Committee on the Impacts of Climate Change.
 - a. IWG must also create a committee on just transition to provide guidance to agencies on the protection of workers and communities most affected by fossil fuel extraction and the decline of the fossil fuel industry and to consider ways to develop vocational opportunities for jobs in clean energy.
6. The EPA must expand EJ grant programs, including EJ Small Grants, Community Action for a Renewed Environment (CARE) Grants, and Collaborative Problem Solving Grants, as well as Technical Assistance Services for Communities (TASC) technical assistance contractor support.
 - a. The EPA must also ensure transparency with grant funding and grant recipients. Information on total award amounts and number of awards is available for FY 1994-2005; however, award information for every following year is restricted to descriptions of the projects funded.

¹⁹ U.S. Gov't Accountability Office, GAO-19-543, *Environmental Justice: Federal Efforts Need Better Planning, Coordination, and Methods to Assess Progress* (2019).

²⁰ *Id.*

CEQ

7. The Biden administration must select a chair and top officials at the White House Council on Environmental Quality (CEQ) who are committed to advancing and prioritizing civil rights and EJ, akin to the leadership at CEQ in 1993-1999, who led the effort to draft the Executive Order on Environmental Justice and the NEPA Environmental Justice Guidance report.
8. As our partners in the environmental and EJ movements have recommended, the CEQ must restore consideration of cumulative impacts and indirect effects, opportunities for participation, and other provisions regarding the application and scope of review during the decision-making process under NEPA.
 - a. Changes should include a broadened definition of “effects” to expressly identify EJ communities and reinstate the inclusion of cumulative impact and indirect effects. Specifically, CEQ should be directed to rescind Trump administration NEPA regulation amendments at 40 C.F.R. § 1508.1(g).
 - b. CEQ must empower communities by allowing adequate time to comment on and participate in environmental impact assessments.
 - i. CEQ should amend NEPA regulations 40 C.F.R. § 1501.10 and 1503 to extend the time allotted for environmental impact statements and public comment.
 - ii. A limitation on the number of pages is a limitation on public input. CEQ must remove the 150- and 300-page limits on environmental impact statements.
 - iii. Adherence to a tiering system can ignore vital information in environmental impact assessments by focusing on outdated studies and analyses. Clarify when agencies can use existing studies and environmental analyses in the NEPA process and when agencies would need to supplement such studies and analyses.
9. Give serious consideration to awarding mitigation funds to EJ communities that demonstrate adverse impacts from federally funded projects permitted under NEPA. Thus far, over the National Environmental Policy Act’s life, only one EJ community in the nation has been awarded mitigation funds. North Charleston, SC, and the non-profit organization LAM-C arduously pursued mitigation funding while assessing the impacts of the expansion of the Port of Charleston and were ultimately successful. No other EJ community has accomplished a similar feat.
10. Provisions and resources should afford to fund technical assistance to community groups to participate in public comment and hearing processes under NEPA, possibly utilizing U.S. EPA’s Technical Assistance Services for Communities (TASC) technical assistance contractor support vehicle.
11. CEQ must coordinate with EPA’s Office of Environmental Justice in the exercise of its authority to oversee NEPA and ensure compliance with EO 12898 in this context.

EPA, Civil Rights, and COVID-19

12. The Biden administration must address racial disparities exacerbated by COVID-19 and build an effective civil rights enforcement office at EPA.
 - a. Within the first 100 days, the External Civil Rights Compliance Office (ECRCO) must target geographic areas experiencing significant racial disparities in COVID-19 morbidity and mortality, in coordination with the Office of Air and Radiation (OAR), Office of Enforcement and Compliance Assurance (OECA), Office of Environmental Justice (OEJ), Office of Research and Development (ORD), and other relevant offices at EPA to address disproportionate environmental exposures.
 - b. Within the first 100 days, ECRCO must initiate affirmative compliance reviews, as authorized by 40 CFR § 7.115(a), in geographic areas experiencing significant racial disparities in COVID-19 morbidity and mortality that coincide with potential environmental exposure (including, but not limited to Detroit, Michigan, and Richmond, Virginia).
 - c. In consultation with OAR and OECA, there needs to be targeted immediate assessments of violations of the PM 2.5 Standard in EJ communities experiencing elevated levels of cases and death from COVID-19. Targeted enforcement actions are also necessary to bring these areas into compliance.
 - d. EPA's Office of Air Quality Planning and Standards (OAR/OAQPS) and OMB's Office of Information and Regulatory Affairs (OIRA) need to immediately review the recent decision (12/7/20) not to lower the PM standard from the current 12 ug/m³ to the widely recommended 10 ug/m³. Lowering this standard and vigorously enforcing it can be an immediate COVID-19 mitigation strategy for EJ communities across the country.
13. Change the culture at EPA: The Biden administration must appoint an EPA Administrator committed to civil rights and EJ and ensure the selection of top leaders committed to civil rights enforcement and EJ principles.
 - a. From day one, the Administrator must convey to top management that civil rights enforcement is a priority at EPA and that they will be responsible and held accountable for civil rights enforcement (in addition to enforcement of environmental laws); concomitantly, this means that the person selected to lead EPA must also come with these values and commitments; otherwise, the effort will ring hollow.
 - b. Select strong leadership at ECRCO, OECA, and OEJ with expertise in civil rights enforcement and EJ and provide access to and support from the Administrator.
 - c. From day one, through memoranda and in initial meetings, the EPA Administrator must make clear that civil rights enforcement is a priority (including to Assistant Administrators (AA), staff, ECRCO and OECA staff, and to the Environmental Council of the States (ECOS)) and convey that management

and staff will be held strictly accountable for civil rights enforcement and compliance. This could include incorporating civil rights enforcement and EJ compliance as critical elements in key officials' performance plans.

- d. Ensure collaboration between ECRCO, OECA, and OEJ, as well as the relevant program offices (including OAR, the Office of Water, and others) — starting with mechanisms for ensuring collaboration around these same areas where high rates of racial disparities in COVID-19 morbidity and mortality coincide with potential environmental exposure.
 - i. Place mechanisms and structures to ensure this collaboration occurs, such as workgroups and high-level personnel to direct this work.
14. Implement necessary cultural and structural changes to ensure ECRCO has sufficient autonomy, clout, and resources to enforce civil rights.
 - a. From day one, grant ECRCO the authority to hire attorneys with the independent ability to pursue civil rights enforcement. Like the other Title VI staff, these attorneys should work in OECA, not the Office of General Counsel (OGC).
15. From day one, move ECRCO to OECA for greater collaboration and reinforcement of ECRCO's role in enforcement activity.
 - a. While support from the General Counsel is critical, placing ECRCO within the OGC creates tension with OGC's role in defending the agency and protecting it from liability.
 - b. ECRCO must integrate with EPA's EJ Program, which can be accomplished in a number of ways — through reorganization — for example, if both offices are in OECA, through the implementation of a task force or working group, and/or by creating a new high-level position with responsibility for ensuring greater coordination to address discrimination and advance EJ. These mechanisms must ensure that ECRCO and OEJ coordinate and focus affirmative attention to high priority areas — such as those most impacted by COVID-19. Greater coordination must include the following:
 - i. OEJ must include Title VI references and resources in policies, outreach, and training.
 - ii. Integration of Title VI into OEJ's outreach and training on EJ tools and methodologies, such as multi-stakeholder collaborative problem-solving.
 - iii. Cross referrals between, for example, ECRCO and OEJ (i.e., a referral from OEJ to ECRCO to launch an affirmative investigation) and collaboration — for example, now, in locations with significant disparities in COVID rates and mortality.
 - iv. Modifying ECRCO's Case Resolution Manual and practice to ensure that EPA consults with complainants and/or stakeholder communities during the course of investigations and before reaching a resolution agreement or final determination in a case, in conformity with principles of EJ: Note

that while the case resolution manual was published for comment, it contemplated future modifications and can be modified without notice and comment rulemaking.

- v. Issue an executive order and/or revise EO 12898 to update the text, and require each agency to ensure full implementation and enforcement of Title VI.
 - c. More broadly, EPA must take an interagency approach to civil rights enforcement and recognize that decisions happen on the local and state level. ECRCO must engage local and state recipients from day one, making clear that they too are responsible for civil rights compliance as recipients of federal funding.
16. Racial and ethnic diversity, diversity of background, civil rights experience, and expertise are critical criteria for personnel in civil rights and OEJ. Just as EPA staff in the media programs are chosen for experience and expertise, leadership and staff in the areas of civil rights compliance and EJ should be selected for their experience and expertise in civil rights and EJ.
17. In the first 100 days, all AAs, as well as relevant offices (such as the Intergovernmental Relations Office), must receive training on what civil rights enforcement and compliance involves in their specific spheres of responsibility. EPA must develop and deliver training for the deputy civil rights officials and EPA regional staff that focuses on their respective roles and responsibilities within the EPA's Title VI program. Roles at the regional level should be strengthened and clarified, with information about regional responsibilities and points of contact posted on EPA's website.
18. The EPA must communicate to the Environmental Council of the States (ECOS) and recipients of EPA funding that they cannot continue to take actions that have an unjustified disproportionate impact on the basis of race and national origin, whether intentionally or unintentionally. For example, the EPA should clearly communicate that conditions on or denials of permits on EJ grounds are available actions that states can take.
- a. Ultimately, the goal is emissions reduction/pollution reduction, environmental restoration, and diminished environmental health disparities in overburdened communities of color to address disparities on the basis of race and national origin.
 - b. It must be clear that decisions on applications for new permits and expansions must consider whether the facilities will have a disproportionate impact on the basis of race or national origin and, if so, whether there's a less discriminatory alternative.
 - c. Such decisions (major operating permits, permit renewals, and regulations) require that the recipient of federal funds evaluate racial and ethnicity data and conduct analyses of compliance with Title VI.

- d. States must also demonstrate affirmative compliance in their broader programs: For example, all state implementation plan submissions should affirmatively demonstrate compliance with Title VI pursuant to section 110(a)(2)(E) of the Clean Air Act, 42 U.S.C. § 7410(a)(2)(E).
19. EPA should also supplement its internal and Title VI LEP Guidance to strengthen requirements to ensure meaningful language access — for example, by clarifying what vital documents are. Currently, neither EPA nor recipients of federal funds translate the text of proposed rules, for example.
20. ECRCO must be proactive in ensuring that funding recipients comply with Title VI prior to disbursement, conduct reviews to ensure continued compliance, and set forth a strong plan for noncompliance or referral to the Department of Justice (DOJ). Engaging in affirmative compliance does not require new rulemaking: Current regulations provide affirmative authority to conduct pre- and post-award compliance reviews and initiate investigations.²¹ Consistent with a recent report from the EPA Office of Inspector General (OIG), which called for “systematic compliance reviews to determine full compliance with the Title VI program,”²² we strongly recommend that ECRCO exercise this authority within the first 100 days.
- a. ECRCO should stop waiting passively for complaints to be filed before initiating action. Currently, EPA regulations allow for compliance reviews and data collection (and site visits if there is reason to believe there is noncompliance).ⁱ EPA should be proactive in ensuring that applicants and recipients of federal funds report to EPA on compliance with Title VI and use its affirmative authority to initiate compliance reviews. In the first 100 days, ECRCO should proactively focus on places where significant disparities in COVID-19 morbidity and mortality may be associated with disparities in environmental exposures.
- b. Conduct audits to ensure compliance with requirements: The investigation from the OIG revealed significant gaps in necessary elements that would ensure compliance with Title VI.²³ For example, only 19% of state environmental agencies’ websites addressed foundational elements of Title VI compliance, which included posting nondiscrimination notices, grievance procedures readily available to the public, and information published in languages other than English.
- c. Include clear, forceful language in Performance Partnership Agreements (PPAs) that delineate what compliance with Title VI of the Civil Rights Act requires. ECRCO needs to create an evaluation mechanism to determine that agency grant recipients are, in fact, complying with Title VI. Failure to comply must result in

²¹ See 40 CFR § 7.115(a).

²² EPA Office of Inspector General, *Improved EPA Oversight of Funding Recipients’ Title VI Programs Could Prevent Discrimination* (2020), https://www.epa.gov/sites/production/files/2020-09/documents/_epaig_20200928-20-e-0333.pdf.

²³ *Id.*

the de-awarding of grants until grant recipients can demonstrate compliance. A periodic review of recipients should be undertaken to demonstrate the seriousness of agency intentions.

21. ECRCO, specifically the associate deputy administrator, must work with EPA programs, regional offices, and other relevant departments to incorporate Title VI into best practices on permitting and cumulative impacts. ECRCO must develop guidelines and train employees on how best practices are implemented and what goals they should achieve.
 - a. ECRCO must train, develop, and implement a plan to complete systematic compliance reviews to determine full compliance with the Title VI program.
 - b. ECRCO must assess the effectiveness of the Cooperative Federalism initiative. If successful, best practices from the initiative should be implemented in a broader context.
 - c. Determine how to use existing or new data to identify and target funding recipients for proactive compliance reviews, and develop or update policy, guidance, and standard operating procedures to collect and use those data.
22. Within the first 100 days, issue a draft programmatic guidance setting forth requirements for recipients of federal funds, using the Federal Transit Administration Circular as a model.²⁴
 - a. The guidance should be aligned with civil rights standards and finally make clear, consistent with the President-elect's commitment to "rescind EPA's decision in Select Steel,"²⁵ that compliance with environmental laws is not a defense to a civil rights claim. In particular, EPA must clarify that recipients of EPA funding have distinct obligations to comply with Title VI. Although EPA released Chapter 1 of its External Civil Rights Compliance Office Compliance Toolkit and FAQ on January 18, 2017, in part to withdraw what has been called the "rebuttable presumption" that compliance with environmental laws is a defense to the adversity prong of a disparate impact analysis,²⁶ time and again in its decisions, EPA continues to either conflate environmental and civil rights standards or gets the standards wrong.¹¹ To ensure standards are applied appropriately, ECRCO needs training in assessing and applying civil rights standards.

²⁴ See Federal Transit Administration, FTA C 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients* (2012), https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Title_VI_FINAL.pdf.

²⁵ The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity, <https://joebiden.com/environmental-justice-plan/> (last visited Dec. 9, 2020).

²⁶ EPA, Dear Colleague Letter, External Civil Rights Compliance Office Compliance Toolkit, Frequently Asked Questions (FAQs) for Chapter 1 of the U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit (Jan. 18, 2017), FAQ at 3, https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf ("Does compliance with environmental laws in a given situation equate to compliance with federal civil rights laws? No. If in a given circumstance a recipient is in compliance with applicable environmental laws that fact alone does not necessarily mean that the recipient is in compliance with federal civil rights laws.").

- b. The guidance should also set forth affirmative programmatic requirements for recipients of federal funds — including the collection and submission of racial data (on a revised form 4700),²⁷ analysis of whether decisions comply with Title VI and agency regulations (including whether decisions have a disparate impact on the basis of race or national origin), and other reporting requirements.
 - c. The guidance should also elaborate on the requirements included in “EPA General Terms and Conditions Effective November 12, 2020.”²⁸
 - d. The guidance should specifically address requirements that recipients’ programs or activities do not employ criteria, administration methods, or site selection practices causing or contributing to discriminatory impacts or effects.²⁹
 - e. EPA should engage stakeholders to form and finalize the guidance.
23. Commit to transparency in EPA’s civil rights enforcement program.
- a. Take a more inclusive approach to its relationship with complainants. ECRCO’s Case Resolution Manual incorporated language developed in a white paper in 2013, as a result of concerns raised by complainants across the country about being locked out of deliberations in the case resolution process, most notably in the Angelita C. case.³⁰ Principles of Environmental Justice require “the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation.”³¹ ECRCO’s Case Resolution Manual should be amended to clarify that consultation with complainants is required, not discretionary.³²
 - b. Within the first 100 days, ECRCO should upload its docket of civil rights cases, including links to public documents for stakeholders to download without having to file a FOIA request.
24. Allocate and prioritize resources to do the work, particularly affirmative compliance activities.

²⁷ See EPA, Preward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance, Form 4700-4 (2014), https://www.epa.gov/sites/production/files/2015-05/documents/epa_form_4700_4.pdf (requiring only that applicants and recipients respond to whether they “maintain demographic data on the race, color, national origin, sex, age, or handicap of the population” served, but not that applicants and recipients report or provide analyses of such data).

²⁸ See EPA, EPA General Title VI Terms and Conditions Effective November 12, 2020 (2020), https://www.epa.gov/sites/production/files/2020-11/documents/fy_2021_epa_general_terms_and_conditions_effective_november_12_2020.pdf.

²⁹ See 40 CFR § 7.35(b) & (c).

³⁰ See Center for Race, Poverty & the Environment, *A Right without a Remedy: How the EPA Failed to Protect the Civil Rights of Latino Schoolchildren*, at 8, 18 (2016), <https://crpe-ej.org/wp-content/uploads/2016/12/Right-without-a-Remedy-FINAL.pdf> (describing the demand that “EPA give complainants a seat at the table when EPA negotiates a settlement”).

³¹ Principles of Environmental Justice (1991), <https://www.ejnet.org/ej/principles.html> (Principle 7).

³² See Section 3.13, Case Resolution Manual, at 22 (“Engagement with Complainants and Recipients during Informal Resolution”), which currently emphasizes ECRCO’s discretion (“ECRCO will use its discretion, when appropriate, to engage complainants who want to provide input on potential resolution issues. ECRCO will determine, based on its enforcement discretion, when such engagement may occur during the process....”).

- a. The Biden administration’s budget proposals must ensure ECRCO has sufficient staffing and resources to initiate and conduct investigations.
- b. This includes adequate resources for the alternative dispute resolution programs, which should be made more widely available to civil rights complainants, with funding also available for technical assistance in addition to mediation services.

FEMA, USDA, & Other Federal Agencies

Fifty-six years after the passage of Title VI, it’s mind-boggling that recipients of not only EPA funding but also recipients of funding from the family of environmental, agricultural, natural resource, land management, and energy-related agencies continue to make decisions every day without regard to compliance with civil rights laws. Addressing racial disparities in environmental exposure and ensuring EJ requires a reexamination of civil rights enforcement across these agencies, including but not limited to the following:

25. The Federal Emergency Management Agency (FEMA) must apply Title VI protections when it enacts the Stafford Disaster and Relief Emergency Assistance Act to ensure wealth and racial inequalities are not exacerbated.

- a. As climate change makes natural disasters more deadly, communities of color are disproportionately impacted by wealth loss and climate gentrification. The evolving severity due to climate change must be considered when determining the disbursement of federal funding after a natural disaster.

26. The Department of Agriculture (USDA) must comply with EO 12898, enforce Title VI, and ensure equity in funding farmworkers and protecting communities of color, Indigenous and low-income communities from the externalities that pollution from industrial agriculture is imposing on nearby populations.

- a. Target support for Black farmers who are subjected to the adverse impacts of climate change on agriculture while also having to contend with historical racial discrimination from the USDA. New farmer programs must also be targeted to support new prospective farmers of color who want to acquire land and start farming.
- b. Ensure active enforcement of civil rights laws to address discrimination in allocating funding and grant and loan assistance for farmers to prevent farmers of color from falling further behind.

Civil rights enforcement must also address the disproportionate adverse impacts of industrial agriculture on the basis of race and national origin in places such as the eastern shore of the Delmarva region, eastern North Carolina, Iowa, and central and southern California, which are disproportionately impacted by the hog and poultry industries on the one hand, and dairy facilities on the other.

DOJ & Title VI

27. Executive Order 12250 vested responsibilities in the DOJ to “coordinate the implementation and enforcement by Executive agencies” of Title VI and other laws prohibiting discrimination.³³ The administration must make clear that DOJ has a mandate to ensure civil rights enforcement. DOJ must affirmatively set standards and actively ensure that they are implemented. DOJ must ensure consistent implementation of Title VI and various other nondiscrimination laws across agencies.
28. Within the first 100 days, the DOJ must require uniform reporting from agencies to ensure consistent and effective implementation. Data and data collection methods must be transparent and made publicly available to foster accountability.
29. The DOJ must republish the DOJ Title VI Legal Manual and other guidance documents removed from the DOJ website during the last four years.
30. The DOJ must coordinate with other agencies to expand language access and strengthen guidance documents on language accessibility and Title VI compliance, more generally. Specific requirements related to language access should include the following:
 - a. The criteria/definition for what a vital document must be expanded and clarified. Currently, practice does not include, for example, translation of the text of rules for states or other government actors who are recipients of federal funds. Often recipients are under the impression that translating notices and short fact sheets are sufficient.
31. Reinvigorate the DOJ’s role in the Title VI Work Group of the IWG to share best practices and ensure greater interagency coordination.

Legislative Actions to Strengthen Environmental Justice Policies

32. The administration’s legislative agenda should prioritize passage of provisions in H.R. 5986, Environmental Justice for All Act, <https://www.congress.gov/bill/116th-congress/house-bill/5986/text> (Grijalva, McEachin) and S. 2236, Environmental Justice Act of 2019, <https://www.congress.gov/bill/116th-congress/senate-bill/2236> (Booker, Ruiz), which include enactment of measures to ensure the meaningful assessment of cumulative impacts in the permitting process.
33. Advance equal protection under the law by restoring access to the courts for communities fighting race discrimination in environmental decision-making, and specifically access to the courts to challenge actions with a racially disparate impact by passing a fix for *Alexander v. Sandoval*, 532 U.S. 275 (2001). The Supreme Court ruling in *Sandoval* has prevented aggrieved persons from bringing private actions to enforce Title VI of the Civil Rights Act unless they can demonstrate an intent to

³³ Executive Order 12250, *Leadership and Coordination of Nondiscrimination Laws* (Nov. 2, 1980).

- discriminate. This has prevented people living in EJ communities from going to court to enforce the law, which differs from rights afforded to impacted communities under many other bedrock environmental laws. Communities need the ability to go to court to enforce Title VI. There are various legislative proposals — including the EJ For All Act and EJ Act of 2019 — that would provide for this right. To fully realize the promise of Title VI, community members must be able to bring enforcement actions in court.
- a. A more ambitious legislative proposal might be to consider legislation to create a Title VI enforcement agency, either within DOJ or along the lines of an EEOC. This agency could delegate responsibility back to agencies that have the capability (such as the Department of Education) but would relieve EPA and other smaller agencies of a job they've never done well.
34. Codify EO 12898 to ensure environmental and health protections are guaranteed by law.
 35. Codify the NEJAC to ensure the continuation of critical input on EJ issues to federal agencies under federal law.
 36. Codify and expand EJ grant programs.
 - a. Congressional authorization of EJ grant programs, including Environmental Justice Small Grants, CARE, and Collaborative Problem Solving grants, provide communities with assurances that the missions behind these grants will continue to be supported and not left to the discretion of agency administrators.
 - b. EJ grant programs should be expanded to improve compliance oversight down to the smallest grants.
 37. Funding must be allocated to historically black colleges and universities (HBCU) to facilitate community-based research and community and citizen science.
 - a. HBCUs are uniquely positioned to tackle EJ issues, as students of these institutions have endured the consequences of systemic racism and policy decisions that have exacerbated pollution and contamination of their communities.
 - i. Investments must be made in HBCUs to upgrade facilities, provide grants to expand STEM offerings, and facilitate climate change research.
 38. Legislation must go beyond minimum monitoring requirements and address the underlying issue of insufficient data or poor data collection.³⁴ Legislation must allocate resources for data to be collected, peer-reviewed, and publicly available. Legislation must provide significant funding for testing and mitigation of environmental pollution in communities of color and low-income communities.
 39. Prioritize cleanup and regulation of legacy sites, including Superfund and RCRA sites, abandoned coal mines, coal ash impoundments and landfills, Brownfields, and formerly used Defense and Department of Energy sites by supporting proposals such

³⁴ U.S. Gov't Accountability Office, GAO-21-38, *Air Pollution: Opportunities to Better Sustain and Modernize the National Air Quality Monitoring System* (2020).

- as S. 4617, Environmental Justice Legacy Pollution Cleanup Act of 2020, <https://www.justice.gov/crt/executive-order-12250> (Booker, Haaland).
- a. Funds must be invested to support the cleanup of legacy sites.
 - b. Amendments should be made to permitting criteria and the process for permitting hazardous waste facilities. Regulations must be strengthened to emphasize community protection and conformity with EO 12898 and Title VI.
40. Support enactment of H.R. 8019, Climate Equity Act of 2020 <https://www.congress.gov/bill/116th-congress/house-bill/8019> (Harris, Ocasio-Cortez).
41. Support enactment of the Justice for Black Farmers Act, S. ___, <https://www.booker.senate.gov/imo/media/doc/Justice%20for%20Black%20Farmers%20Act%20of%202020%20Bill.pdf> (Booker, Warren, and Gillibrand) subsequent policies within the USDA.

FAIR HOUSING & INFRASTRUCTURE

Environmental racism is intertwined with structural discrimination in other areas of land use, including our nation’s housing policies. A long history of racial segregation — created and then maintained by both government and private actors — has allowed for the distribution of benefits and burdens along designated neighborhood and community boundaries and census tracts and resulted in the geographic concentration of discriminatory outcomes, including a concentration of polluting facilities, along with the continuation of financial and political disempowerment codified in local land use and zoning. We must redress these injustices through policy reforms across multiple issue areas — including housing policy and infrastructure policy, as well as environmental enforcement — to re-envision our built environment and land-use practices in ways that will break from the long cycle of structural discrimination in our country, and to ensure that our policy responses reflect the lived reality of EJ communities (who face multiple injustices from multiple policy sectors). Housing policy, in particular, is closely linked to EJ policy because of the ways that racial residential segregation continues to serve as a mechanism for discrimination — necessitating that we focus needed resources (such as infrastructure funding and environmental remediation funding) on disinvested communities; ensure the basic human right to safe, healthy housing for all; and ensure that public- and private-sector policies no longer serve as drivers of racial segregation.

Executive Actions to Strengthen Fair Housing and Infrastructure Policies

42. The Department of Housing and Urban Development (HUD) must effectively implement the Fair Housing Act’s protections against discrimination, as it is charged with doing under the Act.

- a. HUD must restore the 2013 discriminatory effects (disparate impact) regulation, a key measure for addressing structural discrimination and perpetuating segregation, if not restored by Congress. HUD should issue additional guidance or regulations to clarify emerging questions in case law, such as the appropriate causation requirements, to provide robust and meaningful access to fair housing protections.
 - b. HUD should update and clarify the Fair Housing Act's application to post-acquisition cases to comprehensively address discriminatory municipal service provision and land use and zoning policies.
 - c. HUD should fully staff the Office of Fair Housing and Equal Opportunity, ensure responsiveness to complaints by Regional Offices by better oversight, and bring in and empower qualified, senior staff with expertise in promoting justice in municipal services, land use, and climate change, to further agency and inter-agency policy development in these areas.
43. HUD must restore the Affirmatively Furthering Fair Housing regulation and improve its operation.
- a. If Congress does not restore the 2015 Affirmatively Furthering Fair Housing (AFFH) rule, HUD must immediately embark on its restoration. HUD should use the opportunity presented by this new rulemaking process to improve the (already effective) rule, including the addition of a complaint process and the requirement that program participants commit to specific, measurable action steps.
 - b. Additional agencies — such as DOT and EPA — must implement policies coordinating with the AFFH requirement, such that local, state, and regional government agencies working on inter-related issues are working together to address segregation and remediate disinvestment and discriminatory land use and zoning practices.
44. HUD must implement reforms to the Housing Choice Voucher program to ensure that households participating in the program can exercise housing choice in a full range of communities.
- a. Expand the Small Area Fair Market Rent Regulation to cover additional metropolitan regions, and issue guidance clarifying the rule's operation for public housing authorities.
 - b. Update regulations to provide better regional coordination among public housing agencies to ease moves, including across jurisdictional lines, for voucher households that wish to exercise such options.
45. HUD must enact policies to provide oversight and appropriate responses to health conditions arising in subsidized housing stock across all its programs — at both the development/unit level and the neighborhood level. This must entail improved, rigorous site standards and complaint/inspection protocols, with meaningful recourse for impacted residents.

Legislative Actions to Strengthen Fair Housing and Infrastructure Policies

46. Congress should use the Congressional Review Act to restore fair housing regulations rolled back by the Trump administration — specifically, the discriminatory effects rule and the affirmatively furthering fair housing rule.
47. Congress should appropriate sufficient funding to provide safe and habitable public housing throughout our nation, addressing the significant backlog of capital funding needs for repairs and improvements.
48. Congress should appropriate sufficient funding to provide Housing Choice Vouchers for all households that qualify to meet the immediate need. The stock of affordable units must also be expanded through increased funding for the Housing Trust Fund and expanded financial and technical support for community-owned affordable housing (such as land trusts and other social housing models).
49. Congress should provide for lead remediation resources and increase standards and oversight to protect against lead exposure among subsidized and other low-income households.
50. Add source of income as a protected class in federal law to prevent discrimination against housing choice voucher holders and others.
51. Require that federal funding recipients (of a broad array of funds, such that this requirement is not limited to entitlement jurisdictions) reform discriminatory policies, such as exclusionary zoning laws.
52. Provide sufficient funding for safe and sanitary farmworker housing.
53. Ensure that residents of subsidized housing are sufficiently protected from climate change impacts by providing funding for retrofits, repairs and improvements, and the creation of new subsidized units in healthy and climate-resilient areas.
54. Require that HUD and Army Corps of Engineers collaborate to assess new flood zone designations and maps (perhaps in collaboration with ESRI) to update local knowledge about climate-related flooding threats to public, low income, and subsidized housing, and for vulnerable EJ and Tribal communities. Provide federal resources for legal services organizations and other community groups advocating for fair and healthy housing.
55. Provide additional funding to expand HUD staff tasked with fair housing enforcement at the national and regional level, including staff to process complaints and provide front-end civil rights reviews of redevelopment plans, AFFH plans, and other local, state, and public housing initiatives.

RESPECTING INDIGENOUS SOVEREIGNTY AND SELF DETERMINATION

The nation-to-nation relationship with sovereign Native Nations must be strengthened and healed by honoring the federal trust responsibilities to Native Nations and their Peoples. Systemic changes in federal policies are essential to tackling economic, environmental, and health crises. The government must fully enforce Indian treaty rights, honor federal trust responsibilities, and recognize the inherent self-governance and sovereignty of these nations and their citizens.

Executive Actions to Respect Indigenous Sovereignty and Self Determination

56. The Biden administration must uphold the existing treaty rights of sovereign tribal nations.
57. Through executive order, the Biden administration should mandate that no federal action that impacts a tribal land or a tribal ancestral landscape shall be taken without the free, prior and informed consent (FPIC) of the impacted tribal nations. Likewise, federal agencies must immediately adopt regulations and orders stating that they will not proceed without FPIC of impacted tribal nations.
58. The U.S. and its agencies, and state and local agencies to which it delegates authority or provides funding or other support, should commit to incorporating Traditional Ecological Knowledge (TEK) into their policies and practices affecting Native peoples. Executive orders should be adopted mandating that TEK shall be incorporated into any research, assessments, mitigation plans, or other remedial actions. Best practices should be identified, shared, and implemented.
59. Through executive order, the Biden administration should restore Bears Ears to the status sanctioned by the Obama administration and continue the collaborative joint management of this resource as provided for under the prior administration.
60. The Biden administration should review, address, and adopt to the extent possible the “Tribal Recommendations” as included in the report by the Departments of Justice, Army, and Interior, *“Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions.”*³⁵ Some of the recommendations will require legislative action.
61. The Department of Interior’s (DOI) Bureau of Indian Affairs and Bureau of Land Management should immediately adopt an executive order to suspend its attempts to ram through a revision of the Farmington Mancos-Gallup Resource Management Plan Amendment and its accompanying draft environmental impact statement at Eastern Navajo/Chaco Canyon Resource Management Plan (RMP).
 - a. DOI should also restart the consultation process on the RMP and environmental impact statement, based on a Programmatic Agreement as provided for at 36 CFR

³⁵ Dep't of Army, Dep't of Interior, Dep't of Justice, *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions* (2017), <https://www.achp.gov/sites/default/files/reports/2018-06/ImprovingTribalConsultationandTribalInvolvementinFederalInfrastructureDecisionsJanuary2017.pdf>.

800.14(b) and with the advice of the Advisory Council on Historic Preservation. Advice should also be sought from long-time experts in the field, such as Thomas F. King, who has advised many parties, including federal agencies, over his long involvement in such consultation issues.

62. The EPA's action, dated October 1, 2020, in response to *McGirt v. Oklahoma* to place environmental regulation into the hands of the Oklahoma state government and out of the hands of tribal governments should be rescinded.
63. Appoint individuals to the U.S. Nuclear Regulatory Commission (NRC) who have a background in indigenous and civil rights.
64. Rescind the Trump administration's Department of Energy strategy to revive and strengthen the uranium mining industry.
65. Rescind Memorandum of Understanding between EPA and NRC, which diminishes EPA authority over uranium clean up.
66. Immediately scrap the EPA's use of aquifer exemptions from regulations under the Safe Drinking Water Act to protect Underground Sources of Drinking Water from uranium development.
67. Immediately re-initiate the EPA's rulemaking — originally proposed in January 2017, but subsequently rescinded by the Trump administration — to 40 C.F.R. Part 192, which would provide in-situ leaching-specific public health and water quality regulation.
68. Immediately withdraw any regulatory and policy initiatives implemented pursuant to the Trump administration's *Restoring America's Competitive Nuclear Energy Advantage* plan.³⁶

Legislative Actions to Respect Indigenous Sovereignty and Self Determination

69. Legislation must fully recognize and support the inherent self-governance and sovereignty of Native Nations and their citizens.
70. Legislation must include initiatives that reflect the nuanced relationships between the Native Nations, including:
 - a. The confirmation by Congress that Tribal nations can exercise their full and inherent civil regulatory and adjudicatory authority over their citizens, lands, and resources, and over activities within their Tribal lands;
 - b. The codification of FPIC as it relates to Tribal consultation; and
 - c. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples, without qualification.
71. Building on *McGirt v. Oklahoma*, 592 U.S. ___, 140 S. Ct. 2452 (2020), Native American Treaty Rights should be expanded beyond reservation boundaries to

³⁶ Dep't of Energy, *Restoring America's Competitive Nuclear Energy Advantage* (2020), <https://www.energy.gov/sites/prod/files/2020/04/f74/Restoring%20America%27s%20Competitive%20Nuclear%20Advantage-Blue%20version%5B1%5D.pdf>.

include the broad spectrum of rights due to Native Americans under such treaties with the federal government.

72. Support enactment of H.R. 2579, Hardrock Leasing and Reclamation Act <https://www.congress.gov/bill/116th-congress/house-bill/2579> (Grijalva), which seeks to reform the 1872 Mining Law by establishing reclamation standards and bonding requirements, creating a fund to reclaim and restore abandoned mines and areas impacted by mining activities, requiring mining operators to report data on amount and value of minerals being extracted from public lands, and establishing a royalty on new mining operations, similar to oil and gas development. Importantly, H.R. 2579 includes a requirement for meaningful tribal consultation prior to undertaking any mineral activities that may have substantial direct, or indirect, or cumulative impacts on the lands or interests of a tribal nation.

We hope President-elect Biden and Vice President-elect Harris fully consider all of the recommendations listed above. Building off of the Principles of Environmental Justice, including the right to participate as equal partners at every level of decision-making, the undersigned support these recommendations in guiding concrete steps to fulfill the Biden-Harris administration's commitment to achieving environmental justice.

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The following short bibliography is offered to provide additional background on the recommendations above.

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- EPA Office of Inspector General, *Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination*, Report No. 20-E-0222 (Sept. 28, 2020).
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Key Title VI Enforcement Materials

- Repository of Title VI Materials, at https://drive.google.com/drive/folders/0B__743UjVspgRTAxMGszanBKOXc,

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 - EPA Form 4700, Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance, https://www.epa.gov/sites/production/files/2014-09/documents/epa_form_4700_4.pdf (including a check-off of procedural requirements but no requirement that recipients submit data or analyses).