

**TESTIMONY OF
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**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND
CLIMATE CHANGE**

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Good morning, Chairman Tonko, Ranking Member Shimkus, Chairman Pallone, Ranking Member Walden, and distinguished members of the Subcommittee.

My name is Lilian Sotolongo Dorka and I am the Director of the U.S. Environmental Protection Agency's (EPA) Office of General Counsel's (OGC) External Civil Rights Compliance Office (ECRCO). I have been working in the civil rights enforcement arena for over 30 years and consider it my life's work. Prior to coming to EPA in 2014, I worked for the U.S. Department of Education's Office for Civil Rights since 1987, where I served in various legal, management and public relations and press capacities, including, most recently, as the Senior Counsel to the Assistant Secretary for Civil Rights for over 10 years.

I thank you for the privilege of appearing before you today and look forward to sharing information with you about ECRCO's civil rights role, ECRCO's recent accomplishments, and our commitment to ensuring that the promise of EPA's mission – the protection of human health and the environment – is available to all persons in the United States, regardless of race, color, national origin, disability, sex or age. ECRCO is responsible for enforcing several federal civil

rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited English proficiency), disability, sex, and age, in programs or activities that apply for or receive financial assistance from EPA. ECRCO investigates and resolves external complaints, develops policy, conducts proactive compliance initiatives and reviews, and provides technical assistance to recipients and outreach to communities.

EPA has made significant strides in achieving its external civil rights mission through the hard work and dedication of committed civil rights staff. Over the past three years, ECRCO has keenly focused its energy and resources on effectively managing its complaint docket, including addressing in full its docket of unresolved/overaged cases and markedly improving its case processing times for new cases. ECRCO has undertaken these efficiency improvements while continuously emphasizing the quality and effectiveness of its complaint resolutions and achieving successful outcomes for recipients and the communities they serve.

EPA has faced past challenges in addressing a sizeable docket of overaged cases. EPA's nondiscrimination regulation requires that after we acknowledge receipt of a complaint, we make a jurisdiction determination within 20 days to decide whether we will accept the complaint for investigation or reject it. Additionally, the regulation requires that for complaints accepted for investigation and that remain under investigation, our office issue preliminary findings within 180 days. For years, EPA had a significant number of overaged cases. As an example, by the end of 2016, we had 61 cases pending in various stages – most of which had missed all of the regulatory deadlines. In 2017, we received 24 additional complaints, further increasing the significant number of unresolved cases.

This was a pivotal time for our office that called for significant strategic and transformational efforts. To effectively meet our civil rights mission, we put a plan in place for addressing overaged cases in a prompt and effective manner. The first step was to develop foundational accountability tools, critical for any federal civil rights office, and a first for our office. In FY 2017, we finalized three critical documents: (1) A Strategic Plan for our office that includes measurable goals to address strategic docket management, proactive compliance and technical assistance program, and develop and strengthen our staff through training, core competencies assessments and providing essential tools and resources; (2) a Case Resolution Manual that provides clear guidance to staff about how to process a complaint from start to finish; and (3) a Compliance Toolkit (“Toolkit”), which explains the application of the federal civil rights laws and the civil rights legal standards used in investigating and resolving civil rights complaints.

We made sure all ECRCO staff, as well as other critical internal EPA stakeholders in headquarters and our regions, were fully trained on these documents. In addition, we recommitted to our pledge of transparency and to timely and effective communication with our external customers - our recipients, complainants and communities -- by making all of these documents publicly available on our website, along with copies of all our case letters of finding and resolution agreements, to facilitate a better understanding of EPA’s civil rights program.

Finally, but perhaps most notably, our office began to make full use of resolution tools available to us, such as the informal resolution of complaints specifically authorized in our regulation. EPA’s regulation requires that it seek the cooperation of EPA recipients in securing compliance with the federal civil rights laws and that we attempt to resolve complaints informally whenever

possible. To that end, we began to more vigorously pursue voluntary informal resolution agreements with recipient agencies as quickly and effectively as possible and were able to resolve many of our overage cases through informal resolution. We also invested considerable resources in resolving cases through Alternative Dispute Resolution (ADR) which yielded comprehensive ADR Settlement Agreements between complainants and recipients and has helped to bring communities together.

We have seen these transformational efforts yield real and impactful results. By December 2018, EPA had completely cleared its docket of all overdue jurisdictional determinations and as of November 2019, we have resolved all overaged complaints that required preliminary findings.

Moving forward, EPA has implemented stringent accountability measures for all of its processes, including tracking critical process points with strict internal timeframes to ensure that we adhere to required regulatory timeframes for complaint processing and investigation and that informal resolution occurs promptly and without undue delay. EPA's progress in meeting its stated goal of becoming a model civil rights agency is noteworthy. For example, whereas in FY 2017 EPA issued jurisdictional review decisions within the 20 days required by the regulation in only 12% of our complaints, we are currently meeting this requirement in 100% percent of our complaints.

Since clearing our overaged cases, all of our "new cases" are meeting or exceeding our internal performance measures on timeliness. We currently have two cases awaiting jurisdictional review, three currently under investigation and five cases, including a compliance review, that

are being resolved with informal resolution agreements. Again, all of these are proceeding within regulatory timeframes as well as in keeping with our own internal performance measures.

Further, through skillfully crafted Informal Resolution Agreements between EPA and state and local agencies, we continue to obtain enforceable results and benefits for recipients and communities alike; while substantively addressing the civil rights issues raised in the complaints without the need for formal findings which often requires resource intensive and time-consuming investigations. EPA currently has 14 cases in monitoring as a result of entering into informal resolution agreements with various with state and local recipient agencies. When informal resolution is not possible, EPA is committed to conducting thorough investigations and issuing preliminary findings within the regulatory deadlines.

Along with its focus on complaint processing and docket management, EPA is acutely focused on proactive compliance assistance measures with its federal funding recipients. EPA does so by partnering with our EPA Headquarters and Regional Offices, including the Office of Environmental Justice (OEJ), to leverage already existing lines of communication and collaboration with state and local recipients. For example, within the last fiscal year alone, EPA proactively engaged approximately 40 state agencies and organizations, as well as local agencies and tribes, across all ten EPA regional offices. Through technical assistance and training, we have cooperatively assisted state and local recipient agencies in strengthening the effectiveness of their civil rights programs, such as through implementing nondiscrimination coordinator positions and grievance procedures required by EPA's regulations and developing language and disability access policies and procedures.

Also, in resolving complaints over the last three years, EPA's proactive efforts have included the routine integration of foundational nondiscrimination program requirements, including procedural safeguards required by EPA's regulations and access for persons with disabilities and limited-English proficiency, into the resolution of all pending complaints. As a result, through complaint resolutions, EPA's efforts have resulted in the implementation of robust civil rights programs at over 30 different state and local recipient agencies.

In FY 2018 and into FY 2019, ECRCO undertook an initiative with EPA's Region 1 (New England) Office, which brought together ECRCO and Regional Counsel and EJ staff, along with state civil rights and EJ representatives from the six New England states, for multiple trainings and discussions. From this initiative, EPA has identified replicable "promising practices" for building strong and effective nondiscrimination programs that it can share with states and local agencies in other regions across the nation. Going forward, ECRCO has interest from two other EPA regions for similar training for their respective states (nine in total). From a national perspective, EPA anticipates that civil rights complaints and concerns that otherwise would be elevated to EPA at the federal level are more likely to be handled effectively by state recipients through robust state civil rights programs that provide prompt and fair resolution of civil rights complaints.

An additional proactive initiative is ECRCO's continued coordination and collaboration with EPA's environmental justice program. The agency-wide sharing of knowledge and experience in

identifying and responding to community concerns serves to strengthen both EPA's civil rights and environmental justice efforts.

ECRCO has coordinated with EPA's environmental justice program on a number of occasions with respect to the investigation and resolution of civil rights complaints brought under Title VI of the Civil Rights Act, especially where EPA's environmental justice program has worked with the relevant communities prior to the filing of a civil rights complaint. In addition, ECRCO has participated in meetings and conferences sponsored by EPA's environmental justice program to provide training and technical assistance to approximately 40 state agencies and organizations, as well as local agencies and tribes, across all ten EPA Regions, on how to proactively address civil rights obligations.

This past May, ECRCO, through the Office of Environmental Justice, was invited to present at the National Environmental Justice Advisory Council (NEJAC) meeting to share information about EPA's civil rights role, accomplishments, and its commitment to ensuring that the promise of EPA's mission - the protection of human health and the environment - is available to all persons in the United States, regardless of race, color, national origin, disability, sex or age.

Also, annually for the past four years, the U.S Department of Justice has invited ECRCO to present and train at the National Environmental Justice Conference and Training Program in Washington, D.C. on such topics as limited-English proficiency, Title VI enforcement and updates on EPA's program and initiatives. These initiatives accomplish our strategic plan goals to address issues of strategic significance in civil rights areas and provide an efficient and

effective vehicle for providing states and other recipients, as well as communities, with important compliance information and assistance.

Finally, during the last three years, EPA focused its resources on developing and strengthening our EPA external civil rights workforce to ensure that our civil rights staff are engaged, motivated and empowered with the knowledge, skills, and tools they need to carry out EPA's civil rights mission. To this end, we have developed and continue to improve and implement a Competency Framework which promotes the development of a highly effective, performance-based organization. This Framework organizes the observable knowledge, skills and abilities that impact the quality of civil rights case investigation and case management. The Framework outlines the critical competencies needed by all staff at the appropriate levels of proficiency to accomplish EPA's civil rights mission as a "high performing organization." It also provides the opportunity to identify, acknowledge, and emphasize staff strengths as well as identify opportunities for growth and development through an individual development plan for each ECRCO staff member.

In addition, we continue to engage in a "One EPA" approach to fulfilling our agency's civil rights mission. ECRCO continues to work closely with experts across EPA to leverage the EPA-wide expertise, and technical support needed to address civil rights compliance. While ECRCO retains the primary authority and responsibility for carrying out the civil rights program, we can count on the commitment and support of a network of Deputy Civil Rights Officials (DCROs) throughout EPA. ECRCO engages frequently with staff in program and regional offices,

including EJ staff, on individual case matters to exchange information regarding specific programmatic, policy, regulatory, technical or scientific information relevant to cases.

ECRCO, its staff, and its internal partners are committed to fulfilling our civil rights mission and to the continuous improvement of our processes and procedures to make sure they support robust, effective, and efficient docket management. We continue to develop and hone reference and management tools that provide aspirational guidelines for achieving timely and effective processing of cases. In addition, we continue to seek opportunities for proactive engagement with recipients as well as communities – partnerships that will yield long-lasting and effective civil rights results.

As my testimony demonstrates, EPA has made substantial forward progress in accomplishing its external civil rights mission. Nevertheless, EPA’s accomplishments are often overlooked and instead we are too frequently evaluated on outdated critiques and reports, including by the U.S. Commission on Civil Rights (USCCR or Commission). Although we have not yet reviewed the final report – “Are Rights Reality,” we did have an opportunity to review a draft. On June 18, 2019, EPA provided USCCR with extensive comments and proposed edits to that draft. In transmitting our comments and proposed edits, we expressed concern about the significant number of inaccuracies, inconsistencies and misrepresentations about ECRCO.

As we expressed in writing to the Commission on August 22, 2019, EPA has been fully cooperative and engaged with USCCR throughout its process to ensure that we have provided complete and factually accurate information, including my in-person testimony

before the Commission on November 2, 2018, when many other agencies did not appear. Accordingly, given our transparency about past challenges and our significant forward strides, we feel it is imperative for USCCR, and other organizations, to report on EPA's civil rights program in a way which is credible, grounded in fact and based on a clear understanding of the legal framework within which EPA operates.

Thank you again for the opportunity to appear before you today. I am happy to take any questions you may have.