

Congress of the United States
Washington, DC 20510

May 26, 2020

The Honorable Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave, NW, Suite 1150
Washington, DC 20425

Dear Chair Lhamon:

We write to request that the U.S. Commission on Civil Rights update the findings and recommendations of its report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*,¹ in light of the ongoing impacts that the coronavirus pandemic (COVID-19) is having on Native Nations across the United States.

We were pleased to learn that at the Commission's meeting that took place on Friday, May 8, 2020, the Commissioners voted to examine the civil rights impacts of the pandemic. We wholeheartedly agree with the Commission's statement that day: "As the nation's civil rights watchdog, we have a unique responsibility during times of crisis to speak out on behalf of communities who are directly or indirectly impacted by the crisis."² This unprecedented pandemic is having a severe impact on American Indian, Alaska Native, and Native Hawaiian people. The Administration's failure to uphold the trust responsibility to provide adequate relief, health services, and public safety resources to tribal communities has exacerbated the pandemic's impact. This failure requires the Commission's voice.

Federal action to empower the United States' 574 federally recognized Native Nations and uphold trust and treaty responsibilities is more important than ever. For instance, as of last week, the Navajo Nation had a coronavirus infection rate higher than any state or territory,³ and as of two weeks ago, it had a death rate higher than all but four states.⁴ The pandemic has forced closure of tribal businesses that serve as many tribes' economic backbone. The pandemic, coupled with inadequate federal funding, has contributed to the devastation of Nation Nations' economies, and has prevented tribal citizens from accessing healthcare, education, employment,

¹ U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, December 2018, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

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

³ CNN, "Navajo Nation surpasses New York state for the highest Covid-19 infection rate in the US," Hollie Silverman, Konstantin Toropin, Sara Sidner, and Leslie Perrot, May 18, 2020, <https://www.cnn.com/2020/05/18/us/navajo-nation-infection-rate-trnd/index.html>.

⁴ New York Times, "Tribal Nations Face Most Severe Crisis in Decades as the Coronavirus Closes Casinos," Simon Romero and Jack Healy, May 13, 2020, <https://www.nytimes.com/2020/05/11/us/coronavirus-native-americans-indian-country.html>.

and public safety resources.⁵ This has been especially harmful because Native Americans disproportionately suffer from preexisting health conditions, high poverty and unemployment rates, and other circumstances that make them especially susceptible to complications from COVID-19.⁶ All of this only underscores the importance of the Commission’s work and the need for robust and immediate action.

The federal government’s insufficient response to this crisis to date represents yet another broken promise to sovereign tribal governments. The White House reportedly opposed the provision of direct aid to tribal governments in the Coronavirus Aid, Relief, and Economic Security (CARES) Act⁷—aid that is crucial for tribal nations to provide needed government services to their citizens.⁸ Fortunately, due to the efforts of some in Congress, the CARES Act provided this aid under the Coronavirus Relief Fund.⁹ After the enactment of the law, however, the Department of the Treasury delayed disbursement of the funds for weeks.¹⁰ The Administration also initially excluded important tribal businesses from the CARES Act’s Paycheck Protection Program (PPP),¹¹ despite the statute’s clear wording indicating that Congress intended *all* small tribal businesses to be included.¹²

The federal response to the health care aspects of the crisis—particularly a lack of funding for the Indian Health Service (IHS)—has also fallen short of what Indian Country needs. *Broken Promises* noted that per capita IHS health care expenditures in 2017 were \$3,332, compared to \$9,207 per person for federal health care spending nationally¹³—a situation it rightly called “inequitable and unequal.”¹⁴ This was before the pandemic. Since the pandemic, the situation has only gotten worse. IHS, tribal health programs, and urban Indian organizations are suffering major losses due to a lack of third-party reimbursements from private insurance, Medicare, Medicaid, and the Veterans Health Administration.¹⁵ Tribal nations and urban Indian

⁵ *Id.*

⁶ See, e.g., Health Affairs, “Native American Communities And COVID-19: How Foundations Can Help,” Heidi A. Schultz, March 31, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200331.659944/full/>.

⁷ P.L. 116-136.

⁸ HuffPost, “The White House Wanted To Give \$0 To Tribes In The \$2 Trillion Stimulus Bill,” Jennifer Bendery, April 1, 2020, https://www.huffpost.com/entry/tribes-stimulus-coronavirus-white-house-republicans_n_5e839c10c5b6871702a5dc10.

⁹ P.L. 116-136, Sec. 5001.

¹⁰ Congresswoman Deb Haaland, “Haaland, Gallego Lead Lawmakers Calling on Treasury to Immediately Release CARES Act Funding to Tribes,” press release, April 29, 2020, <https://haaland.house.gov/media/press-releases/haaland-gallego-lead-lawmakers-calling-treasury-immediately-release-cares-act>; U.S. Senator Tina Smith, “U.S. Senator Tina Smith to Mnuchin: Disburse \$8 Billion in Critical COVID-19 Relief to Tribal Governments Immediately,” press release, May 1, 2020, <https://www.smith.senate.gov/us-senator-tina-smith-mnuchin-disburse-8-billion-critical-covid-19-relief-tribal-governments>;

¹¹ Letter from Representative Sharice L. Davids, et al. to Treasury Secretary Steve Mnuchin and Small Business Administrator Jovita Carranza, April 8, 2020, <https://www.warren.senate.gov/imo/media/doc/04.08.2020%20Letter%20to%20Treasury-SBA%20on%20Tribal%20Eligibility%20for%20PPP.pdf>.

¹² P.L. 116-136, Sec. 1102.

¹³ U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, December 2018, pp. 66–67, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

¹⁴ *Id.* at p. 209.

¹⁵ Law360, “Tribal Health Programs Face Pandemic Visit ‘Nosedive,’” Emma Whitford, April 30, 2020, <https://www.law360.com/nativeamerican/articles/1269155/tribal-health-programs-face-pandemic-visit-nosedive->

organizations have had to navigate red tape in order to receive desperately needed supplies and relief funds.¹⁶ The CARES Act provided less than Indian Country requested for pandemic health care needs,¹⁷ and as telehealth becomes increasingly important, approximately half of IHS facilities lack access to broadband or reliable bandwidth,¹⁸ as do many people living on tribal lands.¹⁹

We are alarmed by the federal government’s lack of urgency in responding to the health and economic crisis facing Native communities. We recognize that the *Broken Promises* report entailed years of work, and that a shorter timeframe is appropriate for this request. As a result, we understand that any updates will be narrower in scope than the *Broken Promises* report was. We respectfully request that the Commission consider examining COVID-19’s civil rights impacts on Native peoples, with an eye to answering the following questions:

1. How have the problems identified in the *Broken Promises* report been exacerbated by the pandemic? Have these problems made it more difficult for Native populations to cope with and react to the pandemic?
2. Have the congressional responses to the pandemic—especially the passage of the CARES Act and prior stimulus packages—done enough to help Native peoples cope with the challenges posed by COVID-19? If not, how have they fallen short?
3. Has the Executive Branch’s responses to the pandemic—including its statutory interpretation and administrative implementation of laws passed by Congress—done enough to help Native peoples cope with the challenges posed by COVID-19? If not, how have the responses been inadequate?
4. Have any of the findings or recommendations from the *Broken Promises* report changed or been reinforced since the arrival of COVID-19? If so, how?
5. How has the lack of wireless networks on tribal lands—specifically broadband and telephone service—created additional barriers for Native Americans to cope with and react to the pandemic?

¹⁶ See, e.g., Washington Post, “Indian Country, where residents suffer disproportionately from disease, is bracing for coronavirus,” Dana Hedgpeth, Darryl Fears, and Gregory Scruggs, April 4, 2020, <https://www.washingtonpost.com/climate-environment/2020/04/04/native-american-coronavirus/>.

¹⁷ Letter from National Congress of American Indians, et al., to Senate Majority Leader Mitch McConnell and Senate Minority Leader Charles Schumer, March 20, 2020, http://www.ncai.org/Tribal_Priorities_for_Health_Education_and_Nutrition_for_COVID-19_Stimulus_Package_FINAL.pdf.

¹⁸ Comment Letter from National Congress of American Indians and National Indian Health Board to FCC, “Lack of Broadband Infrastructure,” May 24, 2018, p. 3, <https://www.nihb.org/tribalhealthreform/wp-content/uploads/2017/05/FCC-Comment-NIHB-NCAI-Joint-Recommendations.pdf>.

¹⁹ U.S. Government Accountability Office, “FCC’s Data Overstate Access on Tribal Lands,” September 2018, <https://www.gao.gov/assets/700/694386.pdf>.

- a. In answering this question, please consider at least the following: equal access to health care services (including telehealth and IT modernization at IHS facilities²⁰); education (especially students attending Bureau of Indian Education schools²¹ and tribal colleges and universities); public safety and life-saving measures; hindrances to economic development²² (including telework and employment opportunities); COVID-19 response (including accessibility to stimulus funds or PPP applications); and social distancing efforts to digitalize federal Census count and voting through online portals.

We greatly appreciate your time and attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Deb Haaland
Member of Congress

²⁰ *Id.* note 17.

²¹ NPR, “Navajo Families Without Internet Struggle To Home-School During COVID-19 Pandemic,” Kate Groetzinger, April 22, 2020, <https://www.npr.org/2020/04/22/839948923/navajo-families-without-internet-struggle-to-homeschool-during-covid-19-pandemic>.

²² Arizona State University American Indian Policy Institute, “Tribal Technology Assessment: The State of Internet Service on Tribal Lands,” Brian Howard and Traci Morris, Fall 2019, p. 39, https://aiapi.asu.edu/sites/default/files/tribal_tech_assessment_compressed.pdf.