BEFORE THE FEMA OFFICE OF EQUAL RIGHTS
EXTERNAL CIVIL RIGHTS DIVISION &
THE HHS OFFICE OF CIVIL RIGHTS

NAACP and Mississippi State Conference NAACP,

Complainants,

v.

State of Mississippi, Mississippi State Department of Health, and Mississippi Emergency Management Agency,

Respondents.

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ADMINISTRATIVE COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C.§ 2000d

I. Introduction

On March 13, 2020, the COVID-19 pandemic was declared a national emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act).[1] Civil rights protections apply during emergencies, including the ongoing public health crisis caused by the COVID-19 pandemic.[2] The State of Mississippi has received billions of dollars in federal funding since the inception of the COVID-19 pandemic to provide residents of the state with access to vaccines. As a recipient of federal financial assistance that is engaged in emergency management, the State of Mississippi and its divisions, the Mississippi State Department of Health ("MSDH") and the Mississippi Emergency Management Agency ("MEMA"), have a duty to ensure that individuals and communities affected by disasters do not face discrimination on the basis of race, color, or national origin (including limited English proficiency). The state has engaged in ongoing, unlawful race discrimination by failing to plan, distribute, or otherwise

[1] Letter to Federal Agencies on an Emergency Determination for the Coronavirus Disease 2019 (COVID-19) Pandemic Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 2020 Daily Comp. Pres. Doc. 159 (Mar. 13, 2020); Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020).
[2] *See, e.g,* Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; Stafford Act, 42 U.S.C. § 5121 et seq.

provide COVID-19 vaccine access in an equitable manner in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. This is a breach of its legal duty to ensure nondiscrimination in federally assisted emergency preparedness, response, mitigation, and recovery programs and activities with devastating impacts by race, ethnicity, and national origin, especially in low-income communities.

At the start of the Delta variant surge in July 2021, Mississippi's vaccine rate ranked number 50 in the country.[3] By mid-August 2021, "Mississippi was the COVID capital of the world."[4] Four of Mississippi's counties were among the national top 10 list for highest caseloads per capita in the country, including the top spot.[5] The state's overwhelmed healthcare system pushed the entire hospital network to the brink of systemic collapse, with tent hospitals erected in parking garages during the summer of 2021.[6] And by September 2021, Mississippi had the highest death rate from COVID-19 in the country and one of the highest in the world.[7] The state's death rate of 320 deaths per 100,000 residents equated to about 1 in every 320 residents dead from the virus.[8] As high as the official counts are, Mississippi's own public health officials have admitted that the state is "almost certainly undercounting" the number of people who have died from COVID-19.[9] From 2019 to 2020, Mississippi was among the states with the nation's

[3] Ashton Pittman, *Mississippi Now No. 1 in All-Time COVID Deaths Per 100,000, Dethroning New Jersey*, Mississippi Free Press (Sept. 14, 2021), https://www.mississippifreepress.org/15908/mississippi-now-no-1-in-all-time-covid-deaths-per-100000-dethroning-new-jersey/
[4] Will Stribling, *Inside Mississippi's darkest month of the COVID-19 pandemic*, Mississippi Today (Sept. 7, 2021), https://mississippitoday.org/2021/09/07/covid-mississippi-august-darkest-month/
[5] *Id*.
[6] *Id*.
[7] Sarah Al-Arshani, *If Mississippi were a country, it'd have reported the world's 2nd-most COVID-19 deaths per capita, but Gov. Tate Reeves won't say how he plans to fix it*, Business Insider (Sept. 20, 2021), https://www.businessinsider.com/mississippi-gov-tate-reeves-downplays-states-covid-19-death-toll-2021-9
[8] *Id*.
[9] Ashton Pittman, *Mississippi COVID-19 Deaths 'Almost Certainly Undercounted,' Top Health Official Says*, Mississippi Free Press (Sept. 10, 2020), https://www.mississippifreepress.org/5753/mississippi-covid-19-deaths-almost-certainly-undercounted-top-health-official-says/

highest increases in deaths attributed to natural causes, indicating a significant undercounting of COVID-19 deaths.[10]

Mississippi continues to have one of the lowest vaccine rates nationally.[11] The devastating impacts of the COVID-19 pandemic continue to impact all Mississippi residents with disproportionate impacts on Black, Native Americans, and Hispanic/Latino residents and communities. Mississippi has some of the highest death rates in the country for all racial demographics (including its white residents), and the highest death rate in the country (when adjusted for age) among its Native American residents, with 1,466 per 100,000 losing their lives to COVID-19.[12] Despite receiving billions of dollars in federal financial assistance, the state has failed to develop a plan to distribute vaccines equitably, which has resulted in disproportionate rates of sickness, hospitalization, and death.

Community health organizations and advocacy groups were prepared to assist in disseminating information and vaccines, but they were not included in planning or provided with opportunities to receive federal funds. Instead, organizations such as the Complainants, the NAACP and Mississippi State Conference NAACP ("MS NAACP"), have diverted their own resources to filling the gap left by the state's failures to prioritize communities that were particularly vulnerable and continue to lack access to health information and vaccines. Despite repeated attempts and queries, the state has failed to produce an equity plan. The state's deliberate choice not to utilize federal funding to ensure equitable access to vaccines for communities of color that were vulnerable and already being devastated by the COVID-19

[10] Dillon Bergin et al., *Uncounted: Inaccurate death certificates across the country hide the true toll of COVID-19*, USA Today (Dec. 22, 2021), https://www.usatoday.com/in-depth/news/nation/2021/12/22/covid-deaths-obscured-inaccurate-death-certificates/8899157002/
[11] Adriana Rezal, *States With the Worst COVID-19 Vaccination Rates*, U.S. News & World Report (Mar. 9, 2022), https://www.usnews.com/news/best-states/articles/these-states-have-the-lowest-covid-19-vaccination-rates
[12] APM Research Lab Staff, The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S., APM Research Lab (Mar. 5, 2021), https://www.apmresearchlab.org/covid/deaths-by-race#black

pandemic is unlawful discrimination in violation of Title VI. Complainants NAACP and MS NAACP respectfully request that the federal government open an investigation to remedy the ongoing discrimination in Mississippi.

II. The Complainants – NAACP and Mississippi State Conference NAACP

The NAACP is a national 501(c)(4) civil rights and social justice nonprofit organization that has state conferences, branches, college chapters, and youth councils across the country. The MS NAACP is a 501(c)(4) membership-based organization comprising local branches that, for over 100 years, have fought for justice and equity across the state of Mississippi. The organization works "to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination,"[13] by promoting civic engagement, such as voter registration drives; providing direct services, such as rental assistance programs; and undertaking advocacy at the state and local level. The MS NAACP believes that "[o]ngoing systems of oppression are at the root of health inequities" and that health optimization will be achieved through "the redistribution of money, power, and resources as well as the adoption of proactive policies at the national, state, and local levels."[14]

The MS NAACP's work involves issue advocacy and civic engagement around several program areas, such as housing, education, voting, environmental justice, and healthcare. The organization's local branches and members have consistently been on the frontline of these issues, with one of the most recent examples being their response to the COVID-19 pandemic and vaccine access. With high poverty rates, underlying health conditions, and housing instability disproportionately affecting communities of color, the MS NAACP believes that the

[13] MS NAACP Home Page, http://naacpms.org/mississippi-naacp/ (last visited Feb. 10, 2022).
[14] *Health & Well-Being*, NAACP, https://naacp.org/issues/health-wellbeing.

state's response to any public health crisis should be rooted in racial equity.[15] This includes guaranteeing that communities of color and other vulnerable, underserved communities are equipped with the resources they need to reduce the impact of events that could exacerbate pre-existing issues.

Throughout the COVID-19 pandemic, the MS NAACP has called upon the federal government "to strengthen their civil rights and health equity efforts in implementing federal policies and programs."[16] The organization has further advocated for the federal government to develop "an education and outreach campaign that provides clear, comprehensive, and culturally meaningful information about vaccines" and to "[i]mplement a vaccine and therapeutics distribution plan that aligns with data-driven need, incorporates appropriate monitoring of and treatment for vaccinated persons over time, and requires no out-of-pocket costs."[17]

As a result of the failure of the state to directly provide needed assistance to Black communities, the MS NAACP has diverted its limited capacity and resources to fill the void. To protect these communities, the organization has exhausted its resources by promoting vaccine campaigns and assisting its over 11,000 members across the state in accessing COVID-19 vaccines, personal protective equipment, and other resources that are not readily available to local NAACP branches.

In several underserved communities across the state, local branches have deployed and diverted their resources from their mission of issue advocacy and civic engagement to provide direct public health services. For example, the Jackson City Branch, Oktibbeha County Branch, Panola County Branch, and Pearl River County Branch diverted their resources to host vaccine

[15] D.B. Matthew, E. Rodrigue, & R.V. Reeves, *Time for Justice: Tackling Race Inequalities in Health and Housing*," Brookings Institution https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/ (last visited Feb. 10, 2022).
[16] *Health & Well-Being*, *supra* note 14.
[17] *Id.*

clinics and to distribute information about the vaccine. These branches also partnered with other local organizations and community members to help coordinate and publicize their clinics and receive and distribute critical donations such as masks and hand sanitizer. The MS NAACP also hosted a joint rental assistance and vaccine clinic in Greenville, since housing insecure households are more susceptible to COVID-19 transmission.[18]

In addition, some of the MS NAACP members have been directly impacted by a lack of transparency and outreach from the state related to vaccine access. As community members in rural and underserved communities struggled to schedule online appointments, suffered from a limited supply of vaccines, and experienced transportation barriers, the state failed to effectively communicate an equity plan. The state even denied members of MS NAACP access to personal protective equipment ("PPE") for local businesses such as barbershops. Members also report a lack of investment by the State of Mississippi in capacity-building resources for minority-owned health clinics that provide vaccine services. Moreover, with a membership base composed primarily of African Americans, a group disproportionately impacted by COVID-19 in Mississippi and nationwide, MS NAACP members have put their health and safety at risk by hosting vaccine clinics and distributing PPE.

According to the Centers for Disease Control and Prevention's ("CDC") social vulnerability index, all the communities where MS NAACP branches and members have hosted clinics experience moderate to high levels of social vulnerability. The social vulnerability index uses socioeconomic indicators such as housing quality, transportation barriers, and poverty to determine how well-prepared a community is to respond to natural disasters or a public health

[18] Consumer Financial Protection Bureau, *Housing insecurity and the COVID-19 pandemic* (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

crisis.[19] The NAACP and the MS NAACP and its members understand the social vulnerability of the communities they serve, and they have worked with limited resources and capacity to address disparities caused by COVID-19 and inequitable and discriminatory state actions.

III. Timeliness of the complaint

This Complaint is timely filed because the discriminatory acts and impacts complained of herein have occurred on an ongoing basis, since COVID-19 vaccines were made available to the public in the United States on or after December 14, 2020, until the present.[20] As discussed in more detail below, Mississippi's continuing practice and policy of failing to provide equitable vaccine access is part of an ongoing pattern of discrimination.[21] Accordingly, this Complaint is timely filed within the 180-day period of the discriminatory acts.[22]

IV. Financial assistance to a program

Title VI prohibits all programs or activities that receive federal financial assistance from discriminating against individuals based on their race, color, or national origin.[23] A program or activity includes "all of the operations of a department, agency…or other instrumentality of a State."[24] Title VI ensures that no federal funds are used to support racial discrimination without the need for nondiscrimination provisions in each piece of legislation authorizing financial assistance.[25]

A. Programs and activities

[19] Agency for Toxic Substances and Disease Registry, *CDC/ATSDR Social Vulnerability Index* (2021), https://www.atsdr.cdc.gov/placeandhealth/svi/index.html.
[20] https://www.hhs.gov/coronavirus/covid-19-vaccines/index.html
[21] *See, e.g.*, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380-81 (1982).
[22] 7 C.F.R. § 15.6.
[23] 42 U.S.C. §§ 2000d, 2000d-4(a).
[24] 42 U.S.C. § 2000d-4(a)(1)(A).
[25] 6 Op. O.L.C. 83, 93 (1982) (Title VI is "intended to apply to all programs or activities receiving federal financial assistance without being explicitly referenced in subsequent legislation.")

In early 2020, the U.S. Congress appropriated funds in response to the COVID-19 pandemic. These funds were made possible through the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and other supplemental legislation. In March 2021, additional funds were appropriated through the American Rescue Plan Act.[26] The State of Mississippi and other public and private organizations in the state received $15.7 billion in total COVID-19 related funding.

The CDC invested more than $80 million in vaccine preparedness in Mississippi. Most of the money was allocated to MSDH. Much of this money was provided under the Immunization & Vaccines for Children CDC-RFA-IP19-1901 project. This funding:

> supports MS public health systems to ensure high vaccination coverage, low incidence of vaccine preventable diseases (VPD), and the ability to respond to VPD threats. The Vaccines for Children (VFC) program allows increased access to vaccines for eligible children by supplying government-purchased vaccines to enrolled health care providers. Section 317 of the Public Health Service Act assists to help meet the costs of prevention health services in MS. Priorities for the MS Section 317 immunization program is to preserve public health immunization infrastructure; maintain adequate vaccine supply as a safety net for uninsured adults, and other urgent vaccine needs; and to respond to VPD outbreaks. Also, rapidly identify and investigate VPD cases/outbreaks, conduct surveillance and laboratory testing, implement vaccination and other measures to control the spread of VPD and prevent future outbreaks.[27]

Starting with the CARES Act, the Federal Emergency Management Agency ("FEMA") began allocating funds under its Public Assistance Disaster Grants to states. Mississippi distributed the money it received through its legislature. Through the Mississippi Legislature's HB 1799 and SB 3047, MEMA was allocated nearly $70 million of CARES Act money to assist counties and municipalities with their COVID-19 expenses.[28] Counties and municipalities

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[26] *The Federal Response to COVID-19*, USA Spending (Dec. 31, 2021), https://www.usaspending.gov/disaster/covid-19?publicLaw=all.

[27] Department of Health and Human Services, Centers for Disease Control and Prevention, *Notice of Award,* (June 4, 2020), https://taggs.hhs.gov/Detail/AwardDetail?arg_AwardNum=NH23IP922605&arg_ProgOfficeCode=197 .

[28] Mississippi Emergency Management Agency, *2021 Annual Report,* (July 2021), https://www.msema.org/wp-content/uploads/2022/01/48064_-Mema-Annual-Report.pdf .

claimed $68 million of "Mississippi Emergency Relief" funding.[29] The remaining money was returned to the state legislature.[30]

The U.S. Department of the Treasury also distributed at least $1.25 billion to the state of Mississippi.[31] The state was permitted to spend these funds on costs that met the following requirements:

> (1) necessary expenditures incurred due to the public health emergency with respect to the ...COVID–19; (2) were not accounted for in the budget most recently approved as of March 27, 2020...for the State or government; (3) and were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.[32]

Because they received federal financial assistance throughout the COVID-19 pandemic, the State of Mississippi, MSDH, and MEMA are "programs and activities" for purposes of Title VI.

B. Financial assistance

The State of Mississippi, MSDH, and MEMA must comply with Title VI statutory and regulatory requirements because they each received a significant amount of government funds awarded by the CDC, FEMA and the Treasury Department under the CARES Act and other related federal COVID-19 programs.

V. Statutory background

Title VI provides that "[n]o 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

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[29] *Id*.
[30] *Id*. at 23.
[31] *Payments to State and Eligible Units of Local Government*, U.S. Dep't of the Treasury 4, https://home.treasury.gov/system/files/136/Payments-to-States-and-Units-of-Local-Government.pdf.
[32] *Coronavirus Relief Fund*, U.S. Dep't of the Treasury, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/coronavirus-relief-fund ; *see also* CARES Act, H.R. 748, 116th Cong. (2021), https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.

assistance."[33] Recipients of federal funding may not administer those funds in a way that has the "effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."[34] Title VI applies to emergency and disaster management; although its requirements vary depending on the factual circumstances, its provisions cannot be waived.[35]

Title VI bars intentional discrimination, prohibiting recipients from intentionally or knowingly causing harm because of a person's race, color, or national origin.[36] Regulations interpreting Title VI prohibit intentional discrimination in any "disposition, service, financial aid, or benefit" provided by the recipient of federal funds.[37] Recipients are likewise prohibited from using "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."[38] Federal agencies are responsible for ensuring compliance with Title VI in the administration of their programs, and the U.S. Department of Justice retains enforcement authority for noncompliance.[39]

A. Title VI requires non-discrimination in the administration of vaccine programs by states that receive federal funding

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[33] 42 U.S.C. § 2000d.
[34] *Nondiscrimination in Federally Assisted Programs – Implementation of Title VI of the Civil Rights Act of 1964* (DOJ), 28 C.F.R. § 42.104(b).
[35] *See* U.S. Dep't of Just., *Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964*, https://www.justice.gov/crt/fcs/EmergenciesGuidance.
[36] *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 607–08 (1983).
[37] *Discrimination Prohibited* (DOJ), 28 C.F.R. § 42.104(b)(1).
[38] *Id.* at § (b)(2).
[39] *Guidelines for the enforcement of Title VI, Civil Rights Act of 1964* (DOJ), 28 C.F.R. § 50.3; *Methods of resolving noncompliance* (DOJ), 28 C.F.R. § 42.411.

As recipients of federal funds engaged in emergency management activities, states have obligations to ensure individuals and communities affected by disasters do not experience unlawful discrimination under Title VI.[40] This has been an ongoing challenge related to disaster preparedness and recovery efforts, especially in the aftermath of Hurricanes Katrina and Rita and other natural disasters. For example, after a federal investigation, the U.S. Department of Housing and Urban Development reached a settlement with the state of New Jersey after African Americans and Latinos were disproportionately denied assistance, and insufficient outreach resulted in low application rates for Hurricane Sandy recovery programs.[41] These same Title VI obligations apply during the COVID-19 response and recovery.[42]

1. FEMA Office of Equal Rights External Civil Rights Division

The FEMA Office of Equal Rights External Civil Rights Division has jurisdiction over this Complaint. FEMA is responsible for ensuring compliance with federal civil rights laws in connection with FEMA activities or FEMA-funded programs and activities. Throughout this pandemic, the state of Mississippi has received millions of dollars from FEMA to aid in vaccine distribution. Accordingly, FEMA has jurisdiction over this complaint to ensure compliance with Title VI.

States have obligations to ensure equitable access and non-discrimination in their administration of programs and services to ensure vaccine distribution is equitable and accessible to all.[43] FEMA issued guidance to assist state partners in understanding their civil rights obligations in vaccine distribution, which include inclusive planning, effective communication

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[40] *See Guidance to State and Local Governments*, *supra* note 35.
[41] *Id*.
[42] FEMA Civil Rights Bulletin, *Ensuring Civil Rights During the COVID-19 Response* (Apr. 9, 2020), https://www.fema.gov/sites/default/files/2020-07/fema_ensuring-civil-rights-during-covid-19-response.pdf.
[43] FEMA Advisory, *Civil Rights Considerations During COVID-19 Distribution Efforts* (Feb. 2021), https://www.fema.gov/sites/default/files/documents/fema_civil-rights-covid-19_vaccine_checklist_02-06-2021.pdf.

access, language access, and physical accessibility.[44] Inclusive planning strategies include reviewing community demographics data to identify:

(1) Limited English proficient communities and languages for interpretation and translation of critical vaccination information;
(2) Communities comprised of individuals who are unable to travel to vaccination sites because of lack of public transportation or other reasons, such as older adults, people without cars, and people with disabilities;
(3) Communities without available or affordable internet access; and
(4) Other underserved communities.[45]

States that equitably administer their vaccine programs are ones that "[d]evelop plans to ensure equitable access to information and vaccination sites for all communities and those protected by law (e.g., race, color, national origin, religion, sex, age, disability, English proficiency, and economic status)."[46] In addition, ensuring access to vaccinations will include developing "plans to conduct vaccinations for communities unable to travel, including the use of accessible mobile units, to reach individuals most at-risk due to underlying health condition and rural or hard to reach communities."[47] All recipients of federal financial assistance are also required to collect and maintain data and information necessary to ensure nondiscrimination in federally assisted programs and activities. States are encouraged to share information with community organizations and groups to determine which populations are affected, to "make changes to address gaps in services and barriers, and to ensure that plans do not disproportionately exclude or negatively affect populations in violation of federal civil rights laws."[48]

2. U.S. Department of Health and Human Services Office of Civil Rights

[44] *Id*.
[45] *Id*. at 1-2.
[46] *Id*. at 2.
[47] *Id*.
[48] FEMA Advisory, *Civil Rights Data Collection* (Feb. 2021), https://www.fema.gov/sites/default/files/documents/fema_civil-rights-data-collection_advisory_02-06-2021.pdf.

The U.S. Department of Health and Human Services ("HHS"), Office of Civil Rights has jurisdiction to enforce Title VI when recipients of federal funding from HHS violate its prohibition on discrimination. Throughout the COVID-19 pandemic, HHS, through the CDC, invested millions of dollars in Mississippi for the purpose of vaccine preparedness. Accordingly, HHS's Office of Civil Rights has jurisdiction over this complaint to ensure compliance with Title VI.

HHS Office of Civil Rights Director Roger Severino stated that "HHS is committed to helping populations hardest hit by COVID-19, including African-American, Native American, and Hispanic communities."[49] To comply with Title VI, recipients of HHS funding should "[c]onfirm that existing policies and procedures with respect to COVID-19 related services (including testing) do not exclude or otherwise deny persons on the basis of race, color, or national origin" and "[e]nsure . . . that Community- Based Testing Sites and Alternate Care Sites, are accessible to racial and ethnic minority populations."[50] Persons with limited English proficiency ("LEP") must have meaningful access to programs, information, and emergency messaging "through the use of qualified interpreters and through other means."[51] Past examples of discrimination in emergency preparedness include the failure to consider the transportation needs of all segments of the population; the requirement of proof of identity, residence, or citizenship to access emergency resources; and the failure to provide emergency resources in languages other than English.[52]

B. Title VI's prohibition on discrimination based on national origin & language access

[49] HHS Office for Civil Rights Bulletin, *Civil Rights Protections Prohibiting Race, Color and National Origin Discrimination During COVID-19* (July 20, 2020), https://www.hhs.gov/sites/default/files/title-vi-bulletin.pdf.
[50] *Id.*
[51] HHS Office of Civil Rights Bulletin, *Ensuring the Rights of Persons with Limited English Proficiency in Health Care During COVID-19* (May 15, 2020), https://www.hhs.gov/sites/default/files/lep-bulletin-5-15-2020-english.pdf.
[52] *See Guidance to State and Local Governments*, *supra* note 35.

Title VI's prohibition on discrimination based on national origin includes discrimination against persons with LEP. Title VI requires recipients of federal funding to ensure that LEP persons have meaningful access to programs or activities, benefits, services, and vital information.[53] Meaningful access means that states should make language services—such as in-person interpretation, telephonic interpretation, translation services, monolingual communication in the LEP person's language, and sight-translation—available in all public-facing programs or activities.[54] Additionally, states must directly engage with diverse racial, ethnic, and LEP populations; include immigrant communities in all stages of disaster management, including preparedness, response, mitigation, and recovery efforts; and consider working with legal aid and community-based organizations to disseminate information to affected communities and to solicit information about the needs and difficulties of these populations.[55]

Most public services for protection of life and safety provided by recipients of federal financial assistance do not have immigration status restrictions, and individuals are entitled to public health assistance for immunizations, testing, and treatment of symptoms of communicable diseases regardless of their immigration status.[56] Accordingly, Title VI prohibits recipients of federal funding from requiring additional verification or documentation from individuals or threatening to call Immigration and Customs Enforcement based on their appearance, skin color, name, accent, limited English proficiency, or suspected immigration status.[57]

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[53] *Id.*

[54] *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 68 Fed. Reg. 47311-02 (Aug. 8, 2003).

[55] *See Guidance to State and Local Governments*, *supra* note 35.

[56] An exception to the general rule that non-citizens are not entitled to federal public benefits is for "[p]ublic health assistance (not including any assistance under title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease." 8 U.S.C.A. § 1611(b)(1)(C).

[57] *See Guidance to State and Local Governments*, *supra* note 35.

VI. Complaint- The State's failure to ensure vaccine equity violates Title VI

On March 11, 2020, Mississippi confirmed its first case of COVID-19.[58] The first death in the state was confirmed on March 19, 2020.[59] On April 8, 2020, MSDH released the first demographics on COVID-19 cases, demonstrating racial disparities harming Black residents of the state, who make up 38% of the population but 52% of all cases and 71% of all deaths.[60] However, up to a third of the tests did not have associated demographic data, likely concealing even higher disparities.[61] Women, and particularly Black women, were dying more frequently of COVID-19 in April 2020.[62] By June 2020, state health officials warned that the state's hospital system would be inevitably overwhelmed and facing crisis standards of care.[63] In October 2020, white Mississippians accounted for the most COVID-19 cases and deaths, a significant change from the spring of that year, when Black residents, accounting for 38% of the population, made up 50% of all cases and 70% of all deaths.[64] State health officials explained that they believed the turnaround was due to compliance with mitigation efforts in the Black community.[65]

Mississippi is uniquely vulnerable to the devastating effects of COVID-19 as a result of its demographics and medical infrastructure. Thirteen percent of Mississippi's population does not have health insurance, and the state has the fewest active physicians per capita.[66] According to a 2020 report from the Commonwealth Fund, a New York nonprofit group, Mississippi ranks at or near the bottom among states on key health care measurements, including infant mortality,

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[58] Nick Judin and Ashton Pittman, *Pandemic Timeline: COVID-19 in Mississippi*, Mississippi Free Press, https://www.mississippifreepress.org/9913/mississippcovid-19-timeline/ (last visited Mar. 8, 2022).
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *See Mississippi Physician Workforce Profile*, Assoc. of Am. Med. Colls., https://www.aamc.org/media/37956/download; *Mississippi*, U.S. Census Bureau, https://data.census.gov/cedsci/profile?g=0400000US28.

childhood and adult obesity, and adults who have gone without medical care because they could not afford it.[67] Of the individuals who died of COVID-19 in Mississippi and who had underlying conditions, Black residents of the state disproportionately accounted for over half of those deaths.[68] High blood pressure, heart disease, and diabetes were the leading underlying conditions in Mississippi's COVID-19 deaths.[69]

A. Factual Overview & Historical Background

Even prior to the COVID-19 pandemic, Mississippi had one of the most vulnerable health care systems in the country. Approximately 20 percent of Mississippians live in poverty,[70] with the state claiming the highest poverty rate in the United States.[71] The poverty rate for Black Mississippians is 30.5 percent; for Hispanic or Latino Mississippians is 30.8 percent; and for Native American Mississippians is 36.2 percent.[72]

Poverty has been recognized as one of the greatest barriers to health care access.[73] "[P]overty affects both the likelihood that an individual will have risk factors for disease and [the]

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[67] Richard Fausset, *When the New Covid Surge Struck, Mississippi Was Uniquely Unprepared*, The New York Times (Aug. 30, 2021), https://www.nytimes.com/2021/08/29/us/when-the-new-covid-surge-struck-mississippi-was-uniquely-unprepared.html.

[68] Sarah Haselhorst, *Mississippi ranks 49th in nation for No. 1 underlying condition in COVID-19 deaths*, Clarion Ledger (Sept. 20, 2021), https://www.clarionledger.com/story/news/2021/09/21/hypertension-underlying-death-condition-mississippi-covid-deaths/8418084002/

[69] *Id*.

[70] *Quick Facts: Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/MS/INC110219.

[71] Andrew DePietro, *U.S. Poverty Rate by State in 2021*, Forbes (Nov. 4, 2021), https://www.forbes.com/sites/andrewdepietro/2021/11/04/us-poverty-rate-by-state-in-2021/?sh=3a7d3ec1b38f.

[72] *State Health Facts: Poverty by Race/Ethnicity*, Kaiser Family Foundation (2019), https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[73] *See, e.g.*, *Poverty Fact Sheet: Poor and in Poor Health*, Univ. of Wisconsin-Madison Institute for Research on Poverty, https://www.irp.wisc.edu/publications/factsheets/pdfs/PoorInPoorHealth.pdf; Sara Heath, *Top Social Determinants of Health Barring Patient Care Access*, Patient Engagement Hit (Feb. 1, 2021), https://patientengagementhit.com/news/top-social-determinants-of-health-barring-patient-care-access.

ability and opportunity to prevent and manage disease."[74] "Adults with incomes below 200% of the federal poverty level are more likely to go without medical care."[75] In 2019, 17.2 percent of Mississippians—the second highest figure among states—reported not visiting a doctor when they needed to due to medical costs.[76]

Mississippi's uninsured rate is 14.5 percent, amounting to 351,794 nonelderly residents without health coverage.[77] "Uninsured adults are less likely to receive preventive services for chronic conditions such as diabetes, cancer, and cardiovascular disease."[78] "Most uninsured adults in Mississippi are working full-time but are either at or below 138% of the Federal Poverty Level (FPL)."[79] These adults would be eligible for health coverage if the state expanded Medicaid.[80] As described below, Mississippi has not chosen to do so to date.

Availability of primary care providers is also a barrier to care in Mississippi, where the ratio of county population to primary care physicians is an average of 1,890:1, compared to the national primary care ratio of 1,330:1.[81] "Approximately 50% of Mississippians live in underserved counties with greater than 2,000 persons per primary care physician."[82] Mississippi

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[74] *Poverty and Health - The Family Medicine Perspective (Position Paper)*, American Academy of Family Physicians, https://www.aafp.org/about/policies/all/poverty-health.html.
[75] Jared Ortaliza, Lucas Fox, Gary Claxton, & Krutika Amin, *How Does Cost Affect Access to Care*, Petereson-KFF Health System Tracker (Jan. 14, 2022), https://www.healthsystemtracker.org/chart-collection/cost-affect-access-care/.
[76] *State Healthcare Snapshots: Mississippi*, Kaiser Family Foundation (2020), https://www.kff.org/statedata/election-state-fact-sheets/mississippi/.
[77] *Id.*
[78] *Access to Health Services*, U.S. Dep't of Human Servs., Off. of Disease Prevention and Health Promotion, https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/access-to-health.
[79] *Health Coverage & Uninsured*, Ctr. for Miss. Health Pol'y, https://mshealthpolicy.com/health-coverage-and-uninsured/.
[80] *Health Coverage & Uninsured: Uninsured Adults by County*, Ctr. for Miss. Health Pol'y, https://mshealthpolicy.com/health-coverage-and-uninsured/#countyuninsurance.
[81] Miss. State Dep't of Health, *Mississippi Primary Care Needs Assessment* 5 (March 2021), https://msdh.ms.gov/msdhsite/_static/resources/7357.pdf.
[82] *Id.* at 25.

has the worst physician shortage in the nation.[83] Lack of access to primary care providers undermines the ability to receive accurate health care information and to receive vaccines from trusted providers.[84]

Mississippians face other practical impediments to accessing medical care and health information. Mississippi is a "majority rural state."[85] "In 2019, fifty-three (53.2) percent of Mississippi's population or 1,582,360 resided in rural counties."[86] "A disproportionate number of Black families reside in rural Mississippi, living in small towns and communities where the poverty rates are among the highest in the state and the country."[87] Rural counties in Mississippi have a disproportionately higher share of diabetes and a higher infant mortality rate—key measures of health—than the state overall.[88]

"In a rural state like Mississippi, reliable transportation is vital for people to get where they are going. However, many Mississippians lack the resources needed to get them from place to place."[89] Households lacking automobile access are disproportionately poor and minority.[90] In rural areas, the lack of transportation is a critical barrier to medical treatment. "Studies have shown

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[83] M. Maya McDoom, Cyril Chang, John Gnuschke, & David Mirvis, *The Economic Impact of Potential Closures of Rural Hospitals in Mississippi: A Focus on the Economic and Policy Implications & Alternative Models for Rural Hospitals in Mississippi* 19 (Aug. 2015), https://ssrc.msstate.edu/wp-content/uploads/2018/01/The-Economic-Impact-of-Potential-Closures-of-Rural-Hospitals-in-Mississippi_FINAL.pdf.

[84] Scott Ratzan,, Eric C. Schneider,, Hilary Hatch, & Joseph Cacchione, *Missing the Point — How Primary Care Can Overcome Covid-19 Vaccine "Hesitancy"*, New Eng. J. Med. (Jun. 24, 2021), https://www.nejm.org/doi/full/10.1056/NEJMp2106137.

[85] *Mississippi Primary Care*, *supra* note 81, at 7.

[86] *Id.* at 10.

[87] *Id.*

[88] McDoom et al., *supra* note 83, at 15.

[89] *Connecting Mississippi through Public Transit*, Miss. Dep't of Transp., https://mdot.ms.gov/connectms/ (last visited Feb. 10, 2022).

[90] *See* Alan Berube, Elizabeth Deakin, & Stephen Raphael, *Socioeconomic Differences in Household Automobile Ownership Rates: Implications for Evacuation Policy* 9 (June 2006), https://gspp.berkeley.edu/assets/uploads/research/pdf/berubedeakenraphael.pdf.

that lack of transportation can lead to patients, especially those from vulnerable populations, delaying or skipping medication, rescheduling or missing appointments, and postponing care."[91]

Mass communication of health information also poses a challenge in Mississippi, where 28.5 percent of households lack a broadband internet subscription,[92] compared to the national average of 15 percent.[93] A 2015 report from the Southern Black Women's Initiative for Economic and Social Justice, which works in rural counties in Mississippi, Alabama, and Georgia, concluded that "[a] lack of Internet access and reliable transportation isolates low-income families in the rural South from good jobs, health care, education and even quality grocery stores,"[94] which are all recognized as social determinants of health.[95]

Given the barriers to accessing preventive care, poor Mississippians often must rely on hospital services to meet their medical needs. High rates of hospital admission for diabetes, hypertension, and asthma—particularly in rural counties—are "an indication of the limitations of the primary care systems . . . that would optimally be expected to prevent such hospital admissions."[96] "Many safety-net hospitals, including many small hospitals that are often the sole hospital in a rural county, treat a disproportionate share of uninsured, Medicare, and Medicaid patients. The uncompensated care costs and shortfalls related to treating these patients places a

[91] *Access to Health Services*, *supra* note 78.
[92] *QuickFacts*, *supra* note 70.
[93] *Computer and Internet Use in the United States: 2018*, U.S. Census Bureau (April 21, 2021), https://www.census.gov/newsroom/press-releases/2021/computer-internet-use.html.
[94] Jerry Mitchell, *Lack of Internet, Transportation Isolates Families*, Clarion Ledger (Nov. 10, 2015), https://www.clarionledger.com/story/news/2015/11/10/lack-internet-isolates-families/75453892/.
[95] *See Social Determinants of Health*, U.S. Dep't of Health and Human Servs., Off. of Disease Prevention & Health Promotion, https://health.gov/healthypeople/objectives-and-data/social-determinants-health.
[96] McDoom et al., *supra* note 83, at 15.

significant financial strain on these hospitals."[97] "According to the Mississippi Hospital Association, total uncompensated care costs in the state totaled $616 million in 2019."[98]

In the years preceding the COVID-19 pandemic, Mississippi suffered a spate of rural hospital closures,[99] with many remaining hospitals experiencing high risk of financial failure.[100] The hospital closures in Mississippi are consistent with other states that have not expanded Medicaid.[101] Both the Mississippi State Medical Association and Mississippi Hospital Association have endorsed Medicaid expansion as a solution to the financial crisis endangering Mississippi's hospitals.[102] Additionally, Mississippi's state economist determined that Medicaid expansion would result in approximately a 25 percent reduction in uncompensated care costs, an average savings of $169.3 million per year,[103] while providing coverage to 228,000 to 233,000 currently uninsured Mississippians.[104] Nevertheless, the state has chosen not to expand Medicaid at the expense of its hospitals.

Consistent with the barriers to prevention and care identified above, Mississippi has a high prevalence of diseases recognized as comorbidities for COVID-19.[105] 40.8 percent of Mississippians are obese; 14.8 percent of Mississippians have been diagnosed with diabetes; and

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[97] *Id.* at 22.
[98] J. Corey Miller & Sondra Collins, *A Fiscal and Economic Analysis of Medicaid Expansion in Mississippi Under the Affordable Care Act (State Economist's Report)* 13 (Sept. 2021), http://www.mississippi.edu/urc/downloads/urcmedicaid2021.pdf.
[99] *See* Ayla Ellison, *State-by-State Breakdown of 120 Rural Hospital Closures*, Becker's Hospital CFO Report (Jan. 15, 2020), https://www.beckershospitalreview.com/finance/state-by-state-breakdown-of-120-rural-hospital-closures.html.
[100] *See* McDoom et al., *supra* note 83, at 5.
[101] *See* Ellison, *supra* note 99.
[102] Jimmie E. Gates, *Mississippi Physicians' Group Lobbies for Options to Expand Medicaid*, Miss. Ctr. for Investigative Reporting (Oct. 1, 2021), https://www.mississippicir.org/news/mississippi-physicians-group-lobbies-for-options-to-expand-medicaid.
[103] *State Economist's Report*, *supra* note 98, at 13.
[104] *Id.* at 17.
[105] *See Underlying Medical Conditions Associated with Higher Risk for Severe COVID-19: Information for Healthcare Providers*, Ctrs. for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/underlyingconditions.html.

eight percent of Mississippians have been diagnosed with cardiovascular disease.[106] In Mississippi, one in every ten children, and one in every fourteen adults, have asthma.[107] In 2016, 4 percent of Mississippians reported being diagnosed with chronic kidney disease.[108]

Against this backdrop, Mississippi confronted the COVID-19 pandemic with numerous preexisting vulnerabilities in its healthcare system. On March 25, 2020, Complainant MS NAACP sent a letter to the MDOH highlighting the urgent need for Mississippi's COVID-19 response to include a health equity component.[109] Complainant detailed the pre-existing vulnerabilities in Mississippi's healthcare system, including the closure of rural health facilities and the state's claim to one of the nation's highest uninsured rates, with a disproportionate impact on African Americans:

> With one of highest percentage of African Americans in the country, African Americans living in Mississippi are disproportionately impacted by inequities in health care access, health insurance coverage and health outcomes. The burden of these health-related inequities is deepened by the negative effects of social determinants of health that many African Americans experience including higher rates [of] poverty and worse educational outcomes. The state's long history of systemic and structural racism has been a contributing factor to these inequities.[110]

To protect the public and reduce the loss of life, developing a plan to equitably disseminate vaccines and information to all eligible demographics and communities is imperative. In November 2021, Complainant's counsel requested documents under the Mississippi Public Records Act from MEMA and the MSDH. The requests asked for details on the funding these agencies received from the federal government for the COVID-19 vaccine, who received this money when the agencies districted it, and the agencies' plans to ensure equitable access to the

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[106] *See State Healthcare Snapshots*, *supra* note 76.
[107] *About Asthma*, Miss. State Dep't of Health, https://msdh.ms.gov/msdhsite/_static/43,7183,235,425.html#:~:text=In%20Mississippi%2C%201%20in%20every%2014%20adults%20ages%2018%20and,black%20and%20white%20Mississippi%20adults.
[108] *America's Health Rating Annual Report 2021: Chronic Kidney Disease*, United Health Foundation, https://www.americashealthrankings.org/explore/annual/measure/CKD/state/MS.
[109] Letter from Corey Wiggins, MSPH, Ph.D., Executive Director, MS NAACP, to Dr. Thomas Dobbs, Mississippi State Department of Health (Mar. 25, 2020) (Attachment A).
[110] *Id.*

vaccine. Complainant's counsel requested plans detailing access for underserved communities, individuals with disabilities or those who are unable to travel, individuals with limited or no internet access, and individuals with limited English proficiency. In response, MEMA produced its annual report for fiscal years 2020 and 2021. The MSDH produced seven notices of awards from the CDC. Both agencies said they did not have any further documents that were responsive to the additional requests. Accordingly, one of two realities exist: Either the agencies do not have an equity plan, or it has been withheld from Complainants and from the public.

B. Discriminatory intent in use of federal funds to ensure vaccine equity

Just as Mississippi Governor Tate Reeves has disavowed the existence of systemic racism,[111] so too has the state's COVID-19 vaccine program failed to account for these systemic deficiencies and vulnerabilities. The state's vaccine program discriminates against communities on the basis of race, color, or national origin, even when disparities in access to COVID-19 testing foreshadowed these problems.[112] For example, Governor Reeves often communicates critical vaccine information to the public via social media,[113] which excludes those who do not have reliable internet access and may exclude those with limited English proficiency. He has also prioritized drive-through vaccination sites—directing more than 80% of the state's vaccine supply to these sites as of January 2021—which are only accessible to those with a means of transportation.[114] Governor Reeves has further deflected responsibility for low vaccination rates

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[111] Ashton Pittman, *Systemic Racism Built Mississippi. Gov. Reeves Says it Doesn't Exist*, Mississippi Free Press (Apr. 30, 2021), https://www.mississippifreepress.org/11705/systemic-racism-built-mississippi-gov-reeves-says-it-doesnt-exist/.

[112] Nick Judin, *Q&A with Dr. Thomas Dobbs on Racial Inequity of COVID-19 in Mississippi*, Jackson Free Press (Apr. 22, 2021), https://www.jacksonfreepress.com/news/2020/apr/22/q-dr-thomas-dobbs-racial-inequity-covid-19-mississ/.

[113] Bracey Harris, *In Mississippi, Black Residents are Desperate to Get Vaccinated. But They Face Access Barriers*, NBC News (Feb. 4, 2021), https://www.nbcnews.com/news/us-news/mississippi-black-residents-are-desperate-get-vaccinated-they-face-access-n1256652.

[114] Alex Rozier, *'We're Failing Minority Communities': Why Black Mississippians Are Receiving Fewer COVID-19 Vaccines Than White Mississippians*," The Northside Sun (Feb. 11, 2021),

in Mississippi's Black communities away from his administration, instead blaming the federal government[115] and vaccine hesitancy in these communities, despite the efforts of state and local officials who represent these communities to challenge that narrative.[116]

Governor Reeves's statements and actions are often at odds with public health officials, publicly available data, and the needs of communities.[117] For example, Dr. Thomas Dobbs, Mississippi's state health officer, acknowledged that vaccine access is a bigger barrier than vaccine hesitancy for Black residents, many of whom "want to get [the vaccine] from their doctor or from their local clinic because that's where the trust is."[118] According to Chigozie Udemgba, director of the office for health equity at MSDH, "[t]rust and access are related issues," and inability to access the vaccine amplifies mistrust "of the government providing the vaccine . . . [.]"[119] Jackson, Mississippi Mayor Chokwe Lumumba stated that the state's vaccine program was discriminatory in the sense that it "depends on a level of privilege" such as internet access or transportation and that vaccine skepticism can grow when individuals cannot access the vaccine because they do not have a computer or a car.[120]

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https://www.northsidesun.com/most-recent/were-failing-minority-communities-why-black-mississippians-are-receiving-fewer-covid-19#sthash.SjXTyH09.dpbs.

[115] Anoa Changa, *Mississippi Governor Deflects from Having 2nd Highest COVID-19 Death Rate in the World*, NewsOne (Sept. 19, 2021), https://newsone.com/4212854/mississippi-governor-covid-19-deaths/.

[116] Anthony Warren, *Jackson City Council calls out racial inequities in state's COVID-19 vaccination plan*, WLBT (Feb. 2, 2021), https://www.wlbt.com/2021/02/02/jackson-city-council-calls-out-racial-inequties-states-covid-vaccination-plan/.

[117] Changa, *supra* note 115.

[118] Nick Judin, *Racial Disparities in Vaccinations Continue in Mississippi As COVID-19 Declines*, Mississippi Free Press (Feb. 2, 2021), https://www.mississippifreepress.org/8913/racial-disparities-in-vaccinations-continue-in-mississippi-as-covid-19-declines/; Carla K. Johnson, Angeliki Kastanis, & Kat Stafford, *AP Analysis: Racial Disparity Seen in US Vaccination Drive*," AP News (Jan. 30, 2021), https://apnews.com/article/race-and-ethnicity-health-coronavirus-pandemic-hispanics-d0746b028cf56231dbcdeda0fba24314.

[119] Isabelle Taft, *There are Racial Gaps in COVID Vaccine Distribution in MS. It's Worse on the Coast*, SunHerald (Feb, 19, 2021), https://www.sunherald.com/news/coronavirus/article249280980.html.

[120] Isabelle Taft, *Seeking COVID Vaccine, Coast's Vietnamese Seniors Battle Language, Tech Barriers*, Sun Herald (Feb. 3, 2021), https://www.sunherald.com/news/local/counties/harrison-county/article248920919.html.

What is more, though Mississippi received approximately $1.8 billion in funding from the American Rescue Plan, Governor Reeves has repeatedly rejected calls from lawmakers from both parties to hold a special session on how to use these funds and rejected proposals to allocate some of that funding to retain nurses in the midst of the "calamitous labor shortage" plaguing hospitals,[121] stating that "he did not plan on calling a special session for COVID-19 relief."[122] In November 2021, chief nursing officers at 36 hospitals across Mississippi pleaded with Governor Reeves to step in, predicting that staffing shortages would "result in closing over 500 acute care hospital beds."[123] Ignoring these pleas, Reeves announced his own plan to spend $1.2 billion in federal funding on a range of items, including eliminating the state income tax; $5 million to recruit law enforcement who Reeves said have been "mistreated" in Democratic areas; $50 million to revitalize downtown Jackson; and $100 million for local water and sewer grant projects.[124] Thus, despite many state and local health officials' publicly shared understanding of how the state could make its vaccine distribution program more equitable—and Mississippi's receipt of billions of dollars in federal funding to make vaccine equity a reality—Mississippi's vaccine program remains plagued with deficiencies that discriminate against communities on the basis of race, color, or national origin.

C. Disparate impacts of inequitable access to vaccines

[121] Andrew Jacobs, *A Shrinking Band of Southern Nurses, Neck-Deep in Another Covid Wave*, New York Times (Jan. 23, 2022), https://www.nytimes.com/2022/01/23/health/covid-mississippi-nurses.html.
[122] Lee O. Sanderlin, *State leaders want a special session to address COVID relief and medical marijuana*, Clarion Ledger (Sept. 24, 2021), https://www.clarionledger.com/story/news/politics/2021/09/24/lawmakers-special-session-could-use-arpa-money-pay-covid-workers/5833758001/; *see also* Sara DiNatale, *Gov. Reeves: No immediate plans to call special session for nursing crisis, medical marijuana*, Mississippi Today (Nov. 9, 2021), https://mississippitoday.org/2021/11/09/tate-reeves-special-session/ .
[123] DiNatale, *supra* note 122.
[124] Bobby Harrison, *Gov. Tate Reeves offers his own plan for spending $1.2 billion in federal funds*, Mississippi Today (Nov. 15, 2021), https://mississippitoday.org/2021/11/15/tate-reeves-american-rescue-plan-funds/.

On January 31, 2020, the Secretary of HHS determined that there was a public health emergency under section 319 of the Public Health Service Act.[125] HHS issued a separate declaration effective February 4, 2020 under the Public Readiness and Emergency Preparedness ("PREP") Act that provided liability protections for medical countermeasures and paved the way for vaccine distribution.[126] On March 14, 2020, Governor Reeves declared a state of emergency in response to COVID-19's impact on Mississippi.[127] HHS issued an Emergency Use Authorization ("EUA") Declaration on March 27, 2020 to allow the United States Food and Drug Administration ("FDA") to authorize the emergency use of unapproved drugs during the COVID-19 pandemic.[128] The FDA's ability to issue an EUA was critical to making vaccines available prior to full FDA approval during the public health emergency.[129]

On December 11 and December 18, 2020, the FDA issued an EUA for the Pfizer-BioNTech COVID-19 Vaccine and the Moderna COVID-19 Vaccine, respectively.[130] The FDA issued an EUA for the use of the Janssen COVID-19 Vaccine on February 27, 2021.[131] On May 10, 2021, the FDA issued an EUA for use of the Pfizer Vaccine for children aged 12 through 15

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[125] Alex M. Azar, *Determination that a Public Health Emergency Exists*, U.S. Dep't of Health and Human Servs. (Jan. 31, 2020), https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.
[126] *Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19*, U.S. Dep't of Health and Human Servs. (Mar. 17, 2020), https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures.
[127] *Proclamation of the Governor of the State of Mississippi* (Mar. 14, 2020), https://governorreeves.ms.gov/wp-content/uploads/State-of-Emergency-Declaration.pdf.
[128] *Emergency Use Authorization Declaration*, U.S. Dep't of Health and Human Servs. (Apr. 1, 2020), https://www.federalregister.gov/documents/2020/04/01/2020-06905/emergency-use-authorization-declaration.
[129] *Emergency Use Authorization for Vaccines Explained*, U.S. Food and Drug Admin., https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained.
[130] *COVID-19 Frequently Asked Questions*, U.S. Food and Drug Admin., https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-frequently-asked-questions#:~:text=On%20December%2011%2C%202020,)%20of%20a%20vaccine.
[131] *Id.*

years old.[132] On August 23, 2021, the FDA fully approved the Pfizer-BioNTech COVID-19 Vaccine to protect people aged 16 and older from COVID-19.[133]

Authorized vaccines became available for qualified individuals in the United States on December 14, 2020, and each state, tribe, and territory developed its own plan for distributing the vaccines that were allocated for their communities.[134] The federal government also created programs to target "high-risk communities."[135] The Rural Health Clinic COVID-19 Vaccine Distribution Program, the Health Center COVID-19 Vaccine Program, and the Federal Retail Pharmacy Program were all created to make sure that COVID-19 vaccines were distributed equitably to high-risk and medically underserved communities.[136] On March 16, 2021, Mississippi made all individuals 16 and older eligible to receive a vaccine.[137] However, when asked for a copy of Mississippi's vaccine distribution plan via Complainants' counsel's open records request, MEMA and MSDH did not produce any responsive documents.

1. Statewide overview

The COVID-19 pandemic has been destructive throughout the country, but Mississippi's failure to plan, distribute, or otherwise provide COVID-19 vaccine access in an equitable manner has made the state uniquely unprepared to handle the devastating effects of the outbreaks

[132] Press Release, U.S. Food and Drug Admin., *FDA Approves First COVID-19 Vaccine* (Aug. 23, 2021), https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine#:~:text=Since%20Dec.%2011%2C%202020%2C,age%20on%20May%2010%2C%202021.
[133] *Id.*
[134] *COVID-19 Vaccines*, U.S. Dep't of Health and Human Servs., https://www.hhs.gov/coronavirus/covid-19-vaccines/index.html
[135] *Id.*
[136] *Id.*
[137] Kaia Hubbard, *Who is Eligible for a COVID-19 Vaccine in Your State?*, U.S. News and World Report (May 28, 2021), https://www.usnews.com/news/best-states/articles/covid-19-vaccine-eligibility-by-state#miss.

throughout the past two years. Since the COVID-19 vaccine was authorized, Mississippi has consistently trailed behind the rest of the country in distributing the vaccine and related federal resources. These delays have not only affected those who contracted the virus, but also entire communities.

Shortly after large quantities of federal aid and the COVID-19 vaccine began to be distributed around the country, health disparities were apparent in Mississippi. In February 2021, the state's Black residents were already vastly underrepresented among Mississippians who had been vaccinated.[138] Mississippi has the highest percentage of Black residents in the nation at 38%, but Black residents only made up only 17% of those who have received the vaccine.[139] That discrepancy left Mississippi with one of the worst racial gaps in vaccine access in the country.[140]

By August 2021, Mississippi was averaging 108 new cases per 100,000 residents per week, "a crisis fueled by a dismal statewide vaccination rate of 37% and made worse by a shortage of professionals to care for the sick."[141] As a result, hospitals had to limit access to treatment for all patients, even those who did not have COVID-19.[142] For example, Memorial Hospital in Gulfport has been forced to cancel brain and heart surgeries due to a lack of available intensive care unit beds.[143]

Mississippi also lagged behind in distributing federal aid money. As of November 17, 2021, Mississippi was one of only a small number of states that had not spent any money from

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[138] Harris, *supra* note 113.
[139] *Id.*
[140] Hannah Recht and Lauren Weber, *As Covid vaccine rollout expands, Black Americans still left behind.* (Jan. 29, 2021), https://www.nbcnews.com/health/health-news/covid-vaccine-rollout-expands-black-americans-still-left-behind-n1256089.
[141] Fausset, *supra* note 67.
[142] *Id.*
[143] *Id.*

the American Rescue Plan.[144] The state received about $1.8 billion and $900 million was distributed to local governments.[145] It was not until January 24, 2022 that the state approved a spending plan for this money.[146]

As the outbreak has continued into a third year, discrepancies in access have become even more apparent. As of January 12, 2022, there had been 608,768 reported COVID-19 infections and 10,563 reported COVID-19 deaths in Mississippi.[147] The state has also seen more serious sickness than many other states and its vaccination rates continue to severely lag behind the average for the rest of the county.[148] Fifty-eight percent of the total population has received one dose of a COVID 19 vaccine while 50% of the population is fully vaccinated.[149] For the United States overall, 76% of the total populations has received one dose of a COVID 19 vaccine while 64% is fully vaccinated.[150]

Even those communities that have managed to outperform the poor statewide vaccination rate have done so without needed financial and logistical support from the State of Mississippi, instead relying on underfunded volunteers and community organizations, including Complainant MS NAACP, to address the health needs of Mississippi's citizens. For instance, Delta Health Center, which receives federal funding to care for patients regardless of their inability to pay, has

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[144] Geoff Pender, *How are other states spending COVID-19 stimulus money?*, Mississippi Today, (Nov. 17, 2021), https://mississippitoday.org/2021/11/17/how-other-states-are-spending-federal-stimulus-money/.
[145] *Id.*
[146] Geoff Pender and Bobby Harrison, *Senate unveils plan for spending $1.8 billion in federal pandemic stimulus*, Mississippi Today, (Jan. 24, 2022), https://mississippitoday.org/2022/01/24/senate-unveils-plan-for-spending-1-8-billion-in-federal-pandemic-stimulus/ .
[147] *Tracking Coronavirus in Mississippi*, New York Times, https://www.nytimes.com/interactive/2021/us/mississippi-covid-cases.html (last visited Feb. 10, 2022).
[148] Sarah Haselhorst, *COVID cases are at an all time high in Mississippi. Are vaccination rates following?*, Clarion Ledger, (Jan. 16, 2022), https://www.clarionledger.com/story/news/2022/01/17/covid-19-surges-mississippi-vaccination-rate-stays-stagnant/6539131001/ .
[149] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[150] *Tracking Coronavirus in the U.S.*, New York Times, https://www.nytimes.com/interactive/2021/us/covid-cases.html (last visited Feb. 10, 2022).

vaccinated thousands of people across the Mississippi Delta region.[151] But in doing so, Delta Health Center has had to overcome barriers to vaccine access, including "only receiving a couple hundred doses a week [from MSDH] early on."[152] Additionally, Delta Health Center did not receive assistance from the state or National Guard in managing its vaccination clinic and instead staffed its own employees to run the site and administer vaccines.[153]

The difficulties continue today for residents who need vaccinations and treatment. In Mississippi, there are currently only 805 healthcare facilities that can administer COVID-19 vaccines.[154] There are 469 pharmacies, 54 rural health clinics, 54 outpatient hospital departments and 228 federally qualified health centers.[155] However, these clinics may be very difficult for many residents to access, especially residents of color.[156] Mississippi is the state with the sixth most counties where Black residents had a significantly higher risk than white residents of having a driving distance greater than 10 miles to the closest facility for a COVID-19 vaccine, and it is the state with the second most counties where Black residents had a significantly higher risk than white residents of having a driving distance greater than 1 mile to the closest facility.[157]

2. County analysis

While COVID-19 has destructively impacted the entire State of Mississippi, some counties were particularly vulnerable. Rural counties were disproportionately impacted by COVID-19, with as many as 310 out of 100,000 Black residents of rural counties dying of

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[151] Shalina Chatlani, *Miss. Community Health Center is Crucial to Vaccinating Rural Residents*, NPR (June 1, 2021), https://www.npr.org/2021/06/01/1002018169/miss-community-health-center-is-crucial-to-vaccinating-rural-residents.
[152] *Id.*
[153] *Id.*
[154] *VaxMap 2.0: West Health Policy Center and University of Pittsburgh School of Pharmacy Develop County-Level Map of Potential COVID-19 Vaccine Locations*, West Health, https://www.westhealth.org/resource/vaxmap-potential-covid-19-vaccine-locations/ (last visited Feb. 10, 2022).
[155] *Id.*
[156] *Id.*
[157] *Id.*

COVID-19 as of April 2021.[158] The counties highlighted below are some of the least healthy counties in Mississippi that have consequently been the most vulnerable to COVID-19 impacts. Specifically, these counties have high percentages of uninsured residents and obese adults. These counties also have inadequate medical infrastructure to respond to COVID-19. There are a limited number of hospitals and, if the county or its nearby counties have a hospital, it is likely at risk for financial failure. Approximately 48% of rural hospitals in Mississippi are considered high financial risk.[159] Many of the hospitals lack an intensive care unit and have too few acute, or short-term, hospital beds. Several of these counties have limited vaccination sites, and a significant percentage of the residents live more than 10 miles from a vaccination site. Without a robust public transportation system, distance from a vaccination site can be a veritable barrier to accessing the vaccine.

Vaccine rates among the Black community in Mississippi demonstrated significant inequities in vaccine distribution due to lack of access, starting out with one of the worst racial gaps in vaccination rates in the country.[160] As of March 2022, there has been remarkable progress with the Black community achieving close to parity with the white community in vaccination rates.[161] However, this parity still reflects one of the lowest vaccination rates in the country at just over 50%.[162] Additionally, to achieve even this rate of vaccinations required the efforts of numerous community groups and leaders who expended their own time and resources to overcome significant barriers to vaccine access, including lack of transportation, internet

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[158] Aallyah Wright, *COVID Racial Disparities Loom Large in Rural Counties*, Pew Charitable Trusts (Apr. 9, 2021), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/04/09/covid-racial-disparities-loom-large-in-rural-counties

[159] Navigant, *Protecting Rural Healthcare: Mississippi* (2019)

[160] Harris, *supra* note 113.

[161] Nambi Ndugga, Latoya Hill, Samantha Artiga, and Sweta Haldar, *Latest Data on COVID-19 Vaccinations by Race/Ethnicity*, Kaiser Family Foundation (Mar. 9, 2022), https://www.kff.org/coronavirus-covid-19/issue-brief/latest-data-on-covid-19-vaccinations-by-race-ethnicity/

[162] *Id.*

access or cell service, medical infrastructure, and health care providers.[163] Since community efforts have been pivotal to vaccine access, equity in vaccines have been variable by county. For example, a pediatrician in Tupelo, Mississippi, who identified barriers to access caused by the state's reliance on the internet to make appointments and drive-through vaccination sites located in predominantly urban and white areas, directed people to contact his wife, who made more than 100 appointments for people in March 2021 to be able to access vaccine sites.[164]

1. Adams County

Adams County, Mississippi has a total population of 30,693 people, of whom 44.4% are white, 53.4% are Black, 0.5% are Native American, 0.6% are Asian, and 10.1% are Hispanic or Latino.[165] The county is ranked in the lower 25-50% quartile of Mississippi's healthiest counties, with 17% of residents uninsured (as of 2018) and 38% of adult residents obese (as of 2017).[166] As of January 13, 2022, only 18,757 people, or 59% of the population of Adams County, had received one dose of the COVID-19 vaccine, and only 15,783 people, or 50% of the population, were fully vaccinated.[167] Adams County has had 5,531 recorded COVID-19 cases and 125 deaths to date.[168] As of January 14, 2022, cases of COVID-19 in Adams County were very high with evidence that cases were being significantly undercounted.[169]

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[163] Andrew Jacobs, *'All Hands on Deck': When Vaccinating Black People Is a Communal Effort*, NY Times (Mar. 28, 2021), https://www.nytimes.com/2021/03/28/health/covid-19-vaccine-african-americans.html
[164] *Id.*
[165] *Quick Facts: Adams County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/adamscountymississippi/PST045219.
[166] *Mississippi (Adams)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/adams/county/outcomes/overall/snapshot.
[167] *Adams County, MS COVID-19 Vaccine Tracker*, Tennessean, https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/adams-county-ms/28001/ (last visited Feb. 10, 2022).
[168] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[169] *Id.*

The risk to residents of Adams County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Adams County and surrounding counties. Since the pandemic began, there has been only one state vaccination site in Adams County: the Adams County Health Department. About 11% of the population of Adams County resides over 10 miles from a vaccination facility, and about 21% of the population over 65 years of age resides over 10 miles from a vaccination facility.[170]

The Merit Health Natchez-Community Campus, formerly Natchez Community Hospital, closed in 2015.[171] Natchez Regional Medical Center in Adams County has been listed among the nine most at-risk hospitals in Mississippi.[172] It is an acute care, short term facility.[173] Another nearby hospital, Southwest Regional Medical Center in Pike County, has been placed in the "Watch" category for hospital failure risk.[174]

2. Amite County

Amite County, Mississippi has a total population of 12,297 people, of whom 58.6% are white, 40% are Black, 0.4% are Native American, 0.2% are Asian, and 1.3% are Hispanic or Latino.[175] The county is ranked in the lower 25-50% quartile of Mississippi's healthiest counties, with 17% of residents uninsured (as of 2018) and approximately 40% of adults obese (as of

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[170] *VaxMap 2.0, supra* note 154.
[171] Kelly Gooch, *Mississippi Hospital Campus to Close as Services Consolidate,* Becker's Hospital Rev. (Oct. 14, 2015), https://www.beckershospitalreview.com/patient-flow/mississippi-campus-to-close-nov-11-as-services-consolidate.html; Cain Madden, *Former Natchez Community Hospital Demolition Planned*, Natchez Democrat (Aug. 9, 2017), https://www.natchezdemocrat.com/2017/08/09/former-natchez-community-hospital-demolition-planned/.
[172] McDoom et al., *supra* note 83, at 30.
[173] *COVID-19 Hospitalizations: Merit Health Natchez (Natchez, MS)*, Reno Gazette Journal, https://data.rgj.com/covid-19-hospital-capacity/facility/merit-health-natchez/250084/ (last visited Feb. 10, 2022).
[174] *Id.*
[175] *Quick Facts: Amite County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/amitecountymississippi/PST045219.

2017).[176] Additionally, 96.6% of Amite County residents lacked access to broadband internet to access COVID-19-related information in November 2021.[177]

Amite County is the least vaccinated county in the Southwest Mississippi region.[178] As of January 11, 2022, only 5,351 people, or 42.92% of the population, received one dose of a COVOD-19 vaccine, and only 4,684 people, or 37.57% of population, were fully vaccinated.[179] Amite County has had 2,410 recorded COVID-19 cases and 59 deaths to date.[180]

The risk to residents of Amite County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Amite County and its surrounding counties. Approximately 41% of the population resides over 10 miles from a vaccination facility, and 35% of the population over 65 years of age resides over 10 miles from a vaccination facility.[181] The only state-run vaccination site in the county is Amite County Health Department, and there are no major private vaccination providers, such as Walmart, CVS, or Walgreens. Additionally, there is no hospital in Amite County, and the capacity of hospitals in surrounding counties to serve Amite County residents and to accommodate the state's soaring COVID-19 case counts is doubtful. In nearby Adams County, Merit Health Natchez-Community Campus, formerly Natchez Community Hospital, closed in 2015.[182] The remaining hospital, Natchez Regional Medical Center in Adams County, has been listed among the nine most at-risk

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[176] *Mississippi (Amite)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/amite/county/outcomes/overall/snapshot.
[177] *Mississippi Internet Coverage and Availability*, Broadband Now, https://broadbandnow.com/Mississippi (last visited Feb. 10, 2020).
[178] Matt Williamson, *Virus Cases Down, Deaths Still High*, Enterprise-Journal (Oct. 12, 2021), https://www.enterprise-journal.com/local-news-top-stories/virus-cases-down-deaths-still-high#sthash.eSy1qRez.dpbs.
[179] *Amite County, MS COVID-19 Vaccine Tracker*, Tennessean, https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/amite-county-ms/28005/ (last visited Feb. 11, 2022).
[180] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[181] *VaxMap 2.0*, *supra* note 154.
[182] Gooch, *supra* note 171.

hospitals in Mississippi.[183] Another nearby hospital, Southwest Regional Medical Center in Pike County, has been placed in the "Watch" category for hospital failure risk.[184]

3. Bolivar County

Bolivar County, Mississippi has a total population of 30,628 people, of whom 34.2% are white, 63.7% are Black, 0.2% are Native American, 1.1% are Asian, and 2.2% are Hispanic or Latino.[185] The county is ranked in the lowest quartile of Mississippi's healthiest counties, with 16% of residents uninsured (as of 2018) and approximately 40% of adult residents obese (as of 2017).[186] Additionally, approximately 23% of Bolivar County residents lacked access to broadband internet to access COVID-19 related information in November 2021.[187]

As of January 13, 2022, only 19,645 people, or 60% of the population of Bolivar County, had received one dose of the COVID-19 vaccine, and only 17,068 people, or 52% of the population, were fully vaccinated.[188] Bolivar County has had 7,496 recorded COVID-19 cases and 155 deaths to date.[189] As of January 14, 2022, cases of COVID-19 in Bolivar County were very high, with evidence that cases were being significantly undercounted.[190]

The risk to residents of Bolivar County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Bolivar County and its surrounding counties. Since the pandemic began, there has been only one state vaccination site in Bolivar County: Bolivar County Health Department. About 27% of the population of

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[183] McDoom et al., *supra* note 83.
[184] *Id.* at 52.
[185] *Quick Facts: Bolivar County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/bolivarcountymississippi/PST045219.
[186] *Mississippi (Bolivar)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/bolivar/county/outcomes/overall/snapshot.
[187] *Mississippi Internet Coverage*, *supra* note 177.
[188] *Bolivar County, MS COVID-19 Vaccine Tracker*, Tennessean, https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/bolivar-county/28011/.
[189] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[190] *Id.*

Bolivar County resides over 10 miles from a vaccination facility, and about 38% of the population over 65 years of age resides over 10 miles from a vaccination facility.[191] There are very few private vaccination providers in Bolivar County. There is one Walgreens and one Walmart located in Cleveland, Mississippi. Bolivar County's only hospital, Bolivar Medical Center, is an acute care, short term facility that has a high financial risk of closing.[192]

4. Coahoma County

Coahoma County, Mississippi has a total population of 22,124 people, of whom 20.9% are white, 77.6% are Black, 0.2% are Native American, 0.5% are Asian, and 1.7% Hispanic or Latino.[193] The county is ranked among the least healthy counties in Mississippi with 15% of residents uninsured (as of 2018) and approximately 54% of the adult population obese (as of 2017).[194] Coahoma County has had 5,472 COVID-19 cases, and 114 deaths as of January 18, 2022.[195] As of January 11, 2022, only 54% of the total population received at least one dose of a COVID-19 vaccine, and only 48% of the population was fully vaccinated.[196]

Approximately 15.15% of the population lives more than 10 miles from a vaccination facility, and 15.38% of the population older than 65 lives more than 10 miles from a facility.[197] There is only one state vaccination site in Coahoma County, and it is located at the Coahoma County Health Department. There is one Walmart in Clarksdale, Mississippi, but there are no CVS or Walgreens locations in Coahoma County to provide additional vaccination sites.

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[191] *VaxMap 2.0*, *supra* note 154.
[192] Navigant, *supra* note 159.
[193] *Quick Facts: Coahoma County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/bolivarcountymississippi/PST045219.
[194] *Mississippi (Coahoma)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/coahoma/county/outcomes/overall/snapshot
[195] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[196] *Mississippi State Department of Health COVID-19 Vaccination Reporting*, Mississippi State Department of Health (Jan. 11, 2022), https://msdh.ms.gov/msdhsite/_static/resources/12130.pdf.
[197] V*axMap 2.0*, *supra* note 154.

The risk to residents of Coahoma County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure. There is only one hospital in Coahoma County. Northwest Mississippi Regional Medical Center, recently renamed Delta Health-Northwest Regional, is at medium financial risk of closing and is "critically" essential.[198] The hospital has 181 acute care beds, and there is an intensive care unit.[199] The hospital is substantially less equitable for Black residents compared to the country, but equitable in the community and improving.[200]

5. Holmes County

Holmes County, Mississippi has a total population of 17,010 people, of whom 15.7% are white, 83.1% are Black, 0.2% are Native American, 0.3% are Asian, and 1.2% are Hispanic or Latino.[201] The county is ranked in the lowest quartile of Mississippi's healthiest counties, with 15% of residents uninsured (as of 2018) and 51% of adult residents obese (as of 2017).[202] Additionally, approximately 34% of Holmes County residents lacked access to broadband internet to access COVID-19 related information in November 2021.[203] As of January 13, 2022, only 10,684 people, or 59% of the population of Holmes County, had received one dose of a COVID-19 vaccine, and only 9,365 people, or 52% of the population, were fully vaccinated.[204] Holmes County has had 3,564 recorded COVID-19 cases and 94 deaths to date.[205] As of January

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[198] Navigant, *supra* note 159.
[199] *Delta Health-Northwest Regional*, U.S. News and World Report (Feb. 2022), https://health.usnews.com/best-hospitals/area/ms/northwest-mississippi-regional-medical-center-6540156.
[200] *Id*.
[201] *Quick Facts: Holmes County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/holmescountymississippi/PST045219.
[202] *Mississippi (Holmes)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/holmes/county/outcomes/overall/snapshot.
[203] *Mississippi Internet Coverage*, *supra* note 177.
[204] *Adams County, MS COVID-19 Vaccine Tracker*, Tennessean (last visited Feb. 11, 2022), https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/adams-county-ms/28001/.
[205] *Tracking Coronavirus in Mississippi*, *supra* note 147.

14, 2022, cases of COVID-19 in Holmes County were very high with evidence that cases were being significantly undercounted.[206]

The risk to residents of Holmes County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Holmes County and surrounding counties. Since the pandemic began, there has been two state-run vaccination sites in the county: Holmes County Health Department and Holmes County Hospital. There are no Walmart, CVS, or Walgreens locations to provide additional vaccine sites.

There is one hospital in Holmes County. The Holmes County Hospital is publicly owned and is a critical access hospital.[207] It is at high financial risk of closing and is "moderately" essential.[208] It is one of the nine most at-risk hospitals in Mississippi.[209] The nearest hospital is 29 miles away.[210]

6. Humphreys County

Humphreys County, Mississippi has a total population of 8,064 people of whom 22.3% are white, 75.8% are Black, 0.2% are Native American, 0.4% are Asian, and 3.8% are Hispanic or Latino.[211] The county is ranked among the least healthy counties in Mississippi with 15% of residents uninsured (as of 2018) and approximately 53% of adult residents obese (as of 2017).[212] Humphreys County had 1,688 COVID-19 cases, and 39 deaths as of January 18, 2022.[213] As of

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[206] *Id.*
[207] *COVID-19 Hospitalizations, Holmes County Hospital and Clinics (Lexington, MS*), Reno Gazette Journal, (Feb. 2022), https://data.rgj.com/covid-19-hospital-capacity/facility/holmes-county-hospital-and-clinics/251319/.
[208] Navigant, *supra* note 159.
[209] McDoom et al., *supra* note 83, at 30.
[210] *Id.* at 31.
[211] *Quick Facts: Humphreys County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/humphreyscountymississippi/PST045219.
[212] *Mississippi (Humphreys)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/humphreys/county/outcomes/overall/snapshot.
[213] Navigant, *supra* note 159.

January 11, 2022, 64% of the total population received at least one dose of a COVID-19 vaccine, and 55% of the population was fully vaccinated.[214]

Approximately 31.9% of the population lives more than 10 miles from a vaccination facility, and 66.67% of the population older than 65 lives more than 10 miles from a facility.[215] The only state vaccination site in Humphreys County is at the Humphreys County Health Department. There are no Walmart, CVS, or Walgreens locations in Humphreys County to provide additional vaccine sites.

The risk to residents of Humphreys County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure. There are no hospitals in Humphreys County after the last hospital closed in 2013.[216] The lack of 24-hour emergency care has had a devastating impact on the community, including the death of a mother and her unborn child.[217] There are hospitals in five of the six bordering counties, but two are at high financial risk and two are at medium financial risk of closure.[218]

7. Issaquena County

Issaquena County, Mississippi has a total population of 1,327 people, of whom 34.9% are white, 63.8% are Black, 0.5% are Native American, 0.2% are Asian, and 1.7% are Hispanic or Latino.[219] It is the least populous county in the United States east of the Mississippi River. With

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[214] *Vaccination Reporting*, *supra* note 196.
[215] *VaxMap 2.0*, *supra* note 154.
[216] Guy Gugliotta, *Rural Hospital Closures Increasing*, The Daily Yonder (Mar. 17, 2015), https://dailyyonder.com/rural-hospitals-face-increasing-pressure/2015/03/17/.
[217] Patrice Clark, *Mississippi mother & unborn child die due to no available 24-hour emergency care in their rural city*, WLBT (Oct. 7, 2021), https://www.wlbt.com/2021/10/07/mississippi-mother-unborn-child-die-due-no-available-24-hour-emergency-care-their-rural-city/#:~:text=Press%20Releases-,Mississippi%20mother%20%26%20unborn%20child%20die%20due%20to%20no%20available%2024,care%20in%20their%20rural%20city&text=BELZONI%2C%20Miss.&text=Belzoni%20is%20known%20to%20many,closed%20around%20eight%20years%20ago.
[218] Navigant, *supra* note 159.
[219] *Quick Facts: Issaquena County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/issaquenacountymississippi/PST045221.

a per-capita income of $18,598, Issaquena County is also the poorest county in the United States. The county is ranked in the lowest quartile of Mississippi's healthiest counties, with 18% of residents uninsured (as of 2018) and 22% of adult residents obese (as of 2017).[220] Additionally, approximately 85% of Issaquena County residents lacked access to broadband internet to access COVID-19 related information in November 2021.[221]

Issaquena County has had 200 recorded COVID-19 cases and 7 deaths to date.[222] As of January 14, 2022, cases of COVID-19 in Issaquena County were very high with evidence that cases were being significantly undercounted.[223] As of January 13, 2022, only 527 people, or 40% of the population of Issaquena County, had received one dose of the COVID-19 vaccine, and only 466 people, or 35% of the population, were fully vaccinated.[224] There are no state sponsored vaccination sites in the county, and there are no Walmart, CVS, or Walgreens locations to provide private vaccination sites. About 23% of the population of Issaquena County live more than 10 miles from a vaccination facility, and about 27% of the population over 65 years of age lives over 10 miles from a vaccination facility.[225]

The risk to residents of Issaquena County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Issaquena County and surrounding counties. There are no hospitals in the county. There has not been a doctor, nurse practitioner, or rural health clinic in the county since at least 2010.[226] In nearby Sharkey

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[220] *Mississippi (Issaquena)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/issaquena/county/outcomes/overall/snapshot.
[221] *Mississippi Internet Coverage*, *supra* note 177.
[222] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[223] *Id.*
[224] *Adams County, MS COVID-19 Vaccine Tracker*, Tennessean, https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/adams-county-ms/28001/.
[225] *VaxMap 2.0*, *supra* note 154.
[226] Jill Riepenhoff et al., *Large swaths of rural America are health care deserts with too few primary care doctors, pediatricians, and OB-GYNs to care for residents*, KNOE (Apr. 5, 2021),

County, Sharkey-Issaquena Community Hospital does not have an intensive care unit and is at medium financial risk of closing.[227]

8. Neshoba County

Neshoba County, Mississippi has a total population of 29,118 people, of whom 58.8% are white, 21.3% are Black, 17.5% are Native American, 0.4% are Asian, and 2.2% are Hispanic or Latino. The county is ranked in the lower 25-50% quartile of Mississippi's healthiest counties, with 17% of residents uninsured (as of 2018) and approximately 41% of adults obese (as of 2017).[228] Additionally, approximately 34% of Neshoba County residents lacked access to broadband internet to access COVID-19 related information in November 2021.[229]

As of February 10, 2022, only 14,010 people, or 47.69% of the population, received one dose of the COVID-19 vaccine, and only 11,677 people, or 39.75% of the population, were fully vaccinated.[230] Approximately 11% of the population resides over 10 miles from a vaccination facility, and 15% of the population over 65 years of age resides over 10 miles from a vaccination facility.[231] The only state-run vaccination site in the county is the Neshoba County Health Department. There are only two major, private vaccination providers in the county: a Walmart and a Walgreens, both located in Philadelphia. In July 2020, Neshoba County had the second highest number of deaths and the eighth highest number of cases in Mississippi.[232] By September

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https://www.knoe.com/2021/04/05/large-swaths-of-rural-america-are-health-care-deserts-with-too-few-primary-care-doctors-pediatricians-and-ob-gyns-to-care-for-residents/.

[227] Navigant, *supra* note 159.

[228] *Mississippi (Neshoba)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/neshoba/county/outcomes/overall/snapshot.

[229] *Mississippi Internet Coverage*, *supra* note 177.

[230] *Neshoba County, MS COVID-19 Vaccine Tracker*, Tennessean, https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/neshoba-county-ms/28099/ (last visited Feb. 11, 2022).

[231] *VaxMap 2.0*, *supra* note 154.

[232] Erin Kelly, *"It's very devastating": COVID-19 ravages Mississippi Band of Choctaw Indians*, Clarion Ledger (Jul. 19, 2020), https://www.clarionledger.com/story/news/2020/07/19/covid-toll-mississippi-band-choctaw-indians/5467655002/.

2021, Neshoba County had the third highest death rate of all counties in the United States, with about 1 in every 145 people deceased from COVID-19.[233] To date, Neshoba County has had 7,670 recorded COVID-19 cases and 211 deaths.[234]

Approximately 10% of Neshoba County's residents speak a language other than English at home,[235] making the provision of vaccine information in other languages critical. Notably, Pearl River in Neshoba County is home to the largest community of the Mississippi Band of Choctaw Indians,[236] the state's only federally recognized tribe, which has been disproportionately impacted by COVID-19.[237] In September 2020, more than 10% of the 10,000 members of the Mississippi Band of Choctaw Indians had tested positive for COVID-19, accounting for more than half of all cases in Neshoba County and nearly two-thirds of all deaths.[238] By June 2021, 63%, or 114 of the 180 total COVID-19 deaths in Neshoba County, were Choctaw people.[239] Despite safety precautions implemented early in the pandemic by Tribal Chief Cyrus Ben, COVID-19 ravaged the Choctaw community, in large part because the virus remained unchecked throughout the rest of the county and the state.[240]

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[233] Jemima McEvoy, *Mississippi Now Has The Highest Covid Death Rate In The U.S.—And One Of The Highest In The World*, Forbes (Sept. 16, 2021), https://www.forbes.com/sites/jemimamcevoy/2021/09/16/mississippi-now-has-the-highest-covid-death-rate-in-the-us-and-one-of-the-highest-in-the-world/?sh=19271390643d.

[234] *Tracking Coronavirus in Mississippi*, *supra* note 147.

[235] *Quick Facts: Neshoba County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/neshobacountymississippi.

[236] MBCI COMMUNITIES, https://www.choctaw.org/aboutMBCI/community/index.html (last visited Feb. 11, 2022); Kelly, *supra* note 232.

[237] *Vaccination Reporting*, *supra* note 196.

[238] Jerry Mitchell, James Finn, & Samuel Boudreau, *More Choctaws have died of COVID than those who died of the disease in Hawaii. Or Alaska. Or Wyoming*, Miss. Center for Investigative Reporting (Sept. 9, 2020), https://www.mississippicir.org/news/more-choctaws-have-died-of-covid-than-those-who-died-of-the-disease-in-hawaii-or-alaska-or-wyoming; Mark Walker, *"A Devastating Blow": Virus Kills 81 Members of Native American Tribe*, New York Times (Oct. 8, 2020), https://www.nytimes.com/2020/10/08/us/choctaw-indians-coronavirus.html.

[239] John Lee, *10 new cases of COVID in county*, The Neshoba Democrat (June 30, 2021), https://neshobademocrat.com/stories/10-new-cases-of-covid-in-county,50673.

[240] Kelly, *supra* note 232.

The risk to residents of Neshoba County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Neshoba County and its surrounding counties. The only hospital in the county is the Neshoba County General Hospital, a publicly owned facility that is licensed to have 72 acute care beds but only has 38 acute care beds set up.[241] The facility has an emergency department but no intensive care unit,[242] and it is not equipped to care for patients with the most severe COVID-19 symptoms.[243] The rate of potentially preventable hospitalizations among Black residents in the hospital's service area is substantially less equitable compared to the national average.[244] Additionally, the capacity of hospitals in surrounding counties to serve Neshoba County residents and to accommodate the state's soaring COVID-19 case counts is doubtful. Nearby Pioneer Community Hospital of Choctaw (Newton County) has only 21 acute care beds; Baptist Medical Center Leake (Leake County) has only 25 acute care beds and has been designated as a Level I Risk of failure; Winston Medical Center (Winston County) has only 27 acute care beds; and John C. Stennis Memorial Hospital (Kemper County) has only 25 acute care beds.[245]

Indeed, the inadequacy of the existing medical infrastructure in Neshoba County and its surrounding areas was evident when the area experienced a major outbreak in August 2021, following the Neshoba County Fair, which attracted thousands of people.[246] Governor Reeves

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[241] McDoom et al., *supra* note 83 at 49; In August 2021, the Neshoba County General Hospital was described as having only 25 beds. *See* Emily Wagster Pettus, *Governor, "where are you?": COVID hits community, hospital hard after Neshoba County Fair*, Clarion Ledger (Aug. 13, 2021) https://www.clarionledger.com/story/news/politics/2021/08/13/neshoba-county-fair-mississippi-covid-outbreak-hospital-reeves/8124851002/.
[242] *Neshoba General Hospital*, U.S. News & World Report, https://health.usnews.com/best-hospitals/area/ms/neshoba-county-general-hospital-6549165 (last visited Feb. 11, 2022).
[243] Kobee Vance, *Neshoba County leads nation in new coronavirus cases per capita*, Miss. Public Broadcasting News (Aug. 17, 2021), https://www.mpbonline.org/blogs/news/neshoba-county-leads-the-nation-in-new-coronavirus-cases-per-capita/.
[244] *Neshoba General Hospital*, *supra* note 242.
[245]McDoom et al., *supra* note 83, at 48-50, 52.
[246] Pettus, *supra* note 241; Vance, *supra* note 243.

was also in attendance and called the federal guidance on masks "foolish" and "harmful" in a speech during the event.[247] Two weeks later, Neshoba County had the highest per-capita COVID-19 caseload in Mississippi.[248] Lee McCall, CEO of the Neshoba County General Hospital, called on Governor Reeves to "help us," stating on Twitter: "We are overwhelmed with the surge of COVID and understaffed to safely care for our patients. Our incredible staff are holding it together, but we are all at our breaking point."[249] According to McCall, even if an outward transfer of a patient to another facility was possible, despite the transfer limitations imposed on hospitals providing intensive care in Mississippi, "the receiving hospital may not always have another bed ready." As a result, staff of the Neshoba County General Hospital struggled to transfer patients with the most severe COVID-19 symptoms to facilities able to provide a "higher level of care just because of sheer numbers of COVID-19 across our state and the hospitalizations."[250]

9. Smith County

Smith County, Mississippi has a total population of 15,916 people, of whom 75% are white, 23% are Black, 0.2% are Native American, 0.1% are Asian, and 1.8% are Hispanic or Latino.[251] The county is ranked in the lower 25-50% quartile of Mississippi's healthiest counties, with 16% of residents uninsured (as of 2018) and approximately 41% of adult residents obese (as

[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] Vance, *supra* note 243.
[251] *Quick Facts: Smith County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/smithcountymississippi/PST045219 (last visited Feb. 11, 2022).

of 2017).[252] Additionally, approximately 57% of Smith County residents lacked access to broadband internet to access COVID-19-related information in November 2021.[253]

Smith County has had 3,011 recorded COVID-19 cases and 54 deaths to date.[254] As of January 12, cases of COVID-19 in Smith County were very high, with evidence that cases were being significantly undercounted.[255] As of January 11, 2022, only 5,974 people, or 34% of the population of Smith County, had received one dose of the COVID-19 vaccine, and only 5,178 people, or 32% of population, were fully vaccinated.[256]

Since the pandemic began, there have been only two state vaccination sites in Smith County: The Smith County Health Department and the Smith County pop-up at the National Guard Armory, a temporary vaccination site held for only two days in August 2021. Approximately 17% of the population of Smith County resides over 10 miles from a vaccination facility, and 28% of population over 65 years of age resides over 10 miles from a vaccination facility.[257] There are no major private vaccination providers, such as Walmart, CVS, or Walgreens, located in Smith County.

The risk to residents of Smith County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure in Smith County and its surrounding counties. Smith County's only hospital, Patients Choice Medical Center of Smith

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[252] *Mississippi (Smith)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/smith/county/outcomes/overall/snapshot (last visited Feb. 11, 2022).
[253] *Mississippi Internet Coverage*, *supra* note 177.
[254] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[255] *Tracking Coronavirus in Smith County, Mississippi*, New York Times, https://www.nytimes.com/interactive/2021/us/smith-mississippi-covid-cases.html (last visited Feb. 11, 2022).
[256] *Id.*; *Smith County, MS COVID-19 Vaccine Tracker*, Tennessean, https://data.tennessean.com/covid-19-vaccine-tracker/mississippi/smith-county/28129/ (last visited Feb. 11, 2022).
[257] *VaxMap 2.0*, *supra* note 154.

County, is an acute care, short-term facility that has been rated at a Level I risk of failure.[258] The facility is privately managed and has no onsite emergency department or intensive care unit.[259] Additionally, although the facility is licensed to have 19 acute care beds, it has no acute care beds set up.[260] Family members of patients committed to Patients Choice Medical Center with COVID-19 have commented that it is difficult to communicate with loved ones because the facility has no website or receptionist, and staff did not answer phone calls.[261] Additionally, the rate of potentially preventable hospitalizations among Black residents in this hospital's service area is moderately less equitable than that of non-Black residents in the same community and is substantially less equitable for Black residents compared to the national average.[262] The capacity of hospitals in surrounding counties to serve Smith County residents and to accommodate the state's soaring COVID-19 case counts is doubtful. Nearby Covington County Hospital—the county's only hospital—was one of three hospitals in Mississippi rated at a Level III risk of failure.[263] Nearby Jasper General Hospital (Jasper County) has only 16 acute care beds; S.E. Lackey Memorial Hospital and Scott Regional Hospital (Scott County) each have only 25 acute care beds; and Magee General Hospital and Simpson General Hospital (Simpson County) have only 61 and 25 acute care bed set up, respectively.[264]

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[258] *Patients Choice Medical Center of Smith County (Raleigh, MS)*, Reno Gazette Journal, https://data.rgj.com/covid-19-hospital-capacity/facility/patients-choice-medical-center-of-smith-county/250163/; McDoom et al., *supra* note 83, at 48. A hospital is considered on the Level I Risk of failure if its "average total revenue margin is negative AND it has one additional vulnerable condition." *Id.* at 29.

[259] *Patients Choice Medical Center of Smith County*, U.S. News & World Report, https://health.usnews.com/best-hospitals/area/ms/patients-choice-medical-center-of-smith-county-6549242

[260] *Id.*

[261] *Id.*

[262] *Id.*

[263] McDoom et al., *supra* note 83, at 30. A hospital is considered on the Level III Risk of failure if its average total revenue margin is negative AND has all three of the additional conditions listed in the assessment. *Id.* at 29.

[264] *Id.* at 49-50, 52, 54.

Smith County's inadequate medical infrastructure has resulted in at least one recorded COVID-19 tragedy to date. In August 2021, thirteen-year-old Mkayla Robinson died of COVID-19 complications one day after her diagnosis. At the time of her death, she was being airlifted to a hospital in Jackson, Mississippi for treatment fifty miles away.[265] Mkayla was a celebrated member of the Raleigh Middle School band, whose former band director and his wife also died of COVID-19.[266]

10. Sunflower County

Of the 25,110 people that live in Sunflower County, Mississippi, 24.7% are white, 73.8% are Black, 0.4% are Native American, 0.4% are Asian, and 2.0% are Hispanic or Latino.[267] The county is ranked among the least healthy counties in Mississippi with 15% of residents uninsured (as of 2018) and approximately 54% of the adult population obese (as of 2017).[268] Sunflower County has had 5,118 COVID cases, and 111 deaths as of January 18, 2022.[269] As of January 11, 2022, 57% of the total population received at least one dose of a COVID-19 vaccine, and 51% of the population was fully vaccinated.[270] Approximately 2.32% of the population lives more than 10 miles from a vaccination facility.[271] There is only one state vaccination site in Sunflower County, and it is located at the Sunflower County Health Department. There is one Walmart in

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[265] Gregory Lemos & Steve Almasy, *Mississippi eighth grader dies a day after positive coronavirus test*, CNN (Aug. 17, 2021), https://www.cnn.com/2021/08/17/us/mississippi-teenager-dies-covid/index.html.
[266] *8th grader at Raleigh Junior High, described as a 'perfect student,' dies of COVID complications*, WLBT (Aug. 14, 2021), https://www.wlbt.com/2021/08/15/8th-grader-raleigh-junior-high-described-perfect-student-passes-away/.
[267] *Quick Facts: Sunflower County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/sunflowercountymississippi/PST045219.
[268] *Mississippi (Sunflower)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/sunflower/county/outcomes/overall/snapshot.
[269] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[270] *Vaccination Reporting*, *supra* note 196.
[271] V*axMap 2.0*, *supra* note 154.

Indianola, Mississippi that offers vaccinations, but there are no CVS or Walgreens locations in Sunflower County to provide additional vaccination sites.

The risk to residents of Sunflower County from the high COVID-19 case count and low vaccination rate is compounded by the inadequate medical infrastructure. There are two public hospitals in Sunflower County. North Sunflower County Hospital has 25 acute care beds, and South Sunflower County Hospital has 49 acute care beds.[272] Neither hospital has an intensive care unit.[273] Both hospitals are at high financial risk of closing and are deemed "moderately" essential.[274]

11. Tallahatchie County

Of the 13,809 people that live in Tallahatchie County, Mississippi, 40% are white, 57% are Black, 0.4% are Native American, 1% are Asian, and 6.9% are Hispanic or Latino.[275] The county is ranked among the least healthy counties in Mississippi with 15% of residents uninsured (as of 2018) and approximately 42% of adult residents obese (as of 2017).[276] As of January 11, 2022, 45% of the population had received one dose of a COVID-19 vaccine, and 40% of the population was fully vaccinated against COVID-19.[277] Tallahatchie County has had 2,693 COVID-19 cases and 53 deaths as of January 18, 2022.[278]

As of February 4, 2021, no public coronavirus vaccination sites were operating in Tallahatchie County.[279] Although Tallahatchie County General Hospital expected to have

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[272]McDoom et al., *supra* note 83, at 52.
[273] *South Sunflower County Hospital*, U.S. News & World Report, https://health.usnews.com/best-hospitals/area/ms/south-sunflower-county-hospital-6540355 (last visited Feb. 11, 2022).
[274] Navigant, *supra* note 159.
[275] Quick Facts: Tallahatchie County, Mississippi, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/tallahatchiecountymississippi/PST045219
[276]*Mississippi (Tallahatchie)*, County Health Rankings and Roadmaps (2021), https://www.countyhealthrankings.org/app/mississippi/2021/rankings/tallahatchie/county/outcomes/overall/snapshot
[277] *Vaccination Reporting*, *supra* note 196.
[278] *Tracking Coronavirus in Mississippi*, *supra* note 147.
[279]Harris, *supra* note 113. .

vaccines by mid-February, the nearest state-run, drive-through vaccination clinic at that time was in LeFlore County, 30 miles away.[280] Now, the county has state vaccination sites at health department offices in Charleston (216 Pleasant St., Charleston, MS 38921) and Sumner (208 Wilson St., Sumner MS 38957). Vaccines are also available at Tallahatchie General Hospital.[281] Approximately 68.12% of the population lives more than 10 miles from a vaccination facility, and 71.43% of the population older than 65 lives more than 10 miles from a facility.[282] There are no Walmart, CVS, or Walgreens locations in the county to provide additional vaccine sites.

The residents of Tallahatchie County have limited access to hospital services. Tallahatchie County General Hospital is the only hospital in Tallahatchie County, and it is one of the nine most at-risk hospitals in Mississippi.[283] It has an emergency department, but no intensive care unit.[284] It is an 18-bed critical access hospital.[285] The critical access designation indicates that it is located at least 35 miles from the nearest hospital.[286] A Navigant report identified the hospital as moderately essential, with high financial risk.[287] The hospital is owned by Tallahatchie County.[288]

D. Discrimination based on national origin & language access in Mississippi

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[280] *Id.*
[281] *COVID-19 vaccine locations near 38957*, Vaccines.gov (last visited Feb. 11, 2022), https://www.vaccines.gov/results/?zipcode=38957&medications=25f1389c-5597-47cc-9a9d-3925d60d9c21,a84fb9ed-deb4-461c-b785-e17c782ef88b,779bfe52-0dd8-4023-a183-457eb100fccc,784db609-dc1f-45a5-bad6-8db02e79d44f&radius=25&appointments=true.
[282] V*axMap 2.0*, *supra* note 154.
[283] McDoom et al., *supra* note 83, at 30.
[284] Tallahatchie General Hospital, U.S. News & World Report (last visited Feb. 11, 2022), https://health.usnews.com/best-hospitals/area/ms/tallahatchie-general-hospital-6540135.
[285] *Spotlight on Tallahatchie General Hospital*, National Rural Health Resource Center (Apr. 2015), https://www.ruralcenter.org/resource-library/hospital-spotlights/spotlight-on-tallahatchie-general-hospital.
[286] McDoom et al., *supra* note 83, at 18.
[287] Navigant, *supra* note 159.
[288] *Tallahatchie General Hospital ECF*, U.S. News & World Report (last visited Feb. 11, 2022), https://health.usnews.com/best-nursing-homes/area/ms/tallahatchie-general-hospital-ecf-25A190.

As of February 2021, Mississippi did not collect information on national origin or language use for people who received a COVID-19 vaccine.[289] According to census data from 2019, approximately 112,000, or 4%, of Mississippi residents reported speaking a language other than English, and more than 41,000 residents, or 1.5% of the population, reported speaking English less than "very well."[290] Over 65,000 people, or 2.3% of Mississippians, speak Spanish and, of those individuals, almost 27,000, or 1% of Mississippians, speak English less than "very well."[291] Over 18,000 people, or 0.7% of Mississippians, speak other Indo-European languages and, of those individuals, almost 6,000, or 0.2% of Mississippians, speak English less than "very well."[292] Over 16,000 people, or 0.6% of Mississippians, speak Asian and Pacific Islander languages and, of those individuals, over 6,000, or 0.2% of Mississippians, speak English less than "very well."[293] Almost 12,000 people, or 0.4% of Mississippians, speak "Other languages" and, of those individuals, almost 2,000, or 0.1% of Mississippians, speak English less than "very well."[294]

MSDH currently provides some resources in Spanish, Vietnamese, and American Sign Language on its website,[295] but significant language barriers to providing COVID-19 services to LEP communities in Mississippi remain. For example, many people from the Guatemalan Highlands work in Mississippi's chicken processing plants, and some of them are fluent only in Mam or K'iche', indigenous languages that are not currently reflected in the government's

[289] Taft, *supra* note 120.
[290] American Community Survey: Mississippi, U.S. Census Bureau (2019), https://data.census.gov/cedsci/table?q=foreign%20born&g=0400000US28&y=2019&tid=ACSDP1Y2019.DP02.
[291] *Id.*
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *COVID-19 Resources in Other Languages*, Mississippi State Department of Health (last visited Feb. 11, 2022),https://msdh.ms.gov/msdhsite/index.cfm/14,21863,420,868,html.

COVID-19 information and services.[296] Mississippi's Vietnamese population has also faced language barriers to accessing COVID-19 information, including a lack of Vietnamese interpretation services for making vaccine appointments online.[297] Access to COVID-19 resources and information has also been difficult for Spanish speakers in Mississippi, due to a shortage of Spanish-speaking healthcare workers, a lack of Spanish materials and information, and vaccine skepticism. Selma Alford, Language Access Director/Coordinator for MSDH, has acknowledged that people are impacted "tremendously" when "[t]hey're not able to directly hear the information in their own native language."[298]As illustrated by their replies to Complainants' counsel open records request, MSDH and MEMA appear to have no formal plan for how to ensure access for these communities.

The failure of state and local government officials to adequately break down language barriers in response to the COVID-19 pandemic has been intensified by a lack of cultural competency with respect to Mississippi's immigrant and LEP communities. According to Immigrant Alliance for Justice and Equity founder and director Lorena Quiroz-Lewis, "[f]ear of ICE and the government's immigration policies, compounded with fear of the coronavirus pandemic, has increased the need for advocacy organizations . . . to go directly into Hispanic and immigrant communities to provide access to vaccines, healthcare and reliable information about the pandemic."[299] As a result, advocacy groups have been administering COVID-19

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[296] Elisha Brown, *Grassroots groups in the South's least-vaccinated states take on hesitancy, Facing South* (Dec. 17, 2021), https://www.facingsouth.org/2021/12/grassroots-groups-souths-least-vaccinated-states-take-hesitancy; *In Mississippi, 2 years after ICE raids, Latin American immigrants are there to stay*, NPR (Oct. 20, 2021), https://www.npr.org/2021/10/20/1047735177/in-mississippi-2-years-after-ice-raids-latin-american-immigrants-are-there-to-st.
[297] Taft, *supra* note 120.
[298] Andrés Fuentes, *MSDH face challenges reaching out to Hispanics during COVID-19*, WLOX (Jan.27, 2021), https://www.wlox.com/2021/01/27/msdh-face-challenges-reaching-out-hispanics-during-covid-/.
[299] Brittany Brown, *Advocacy organizations host COVID-19 vaccine drives, provide education in immigrant communities*, Mississippi Today (Aug. 18, 2021), https://mississippitoday.org/2021/08/18/mississippi-covid-19-vaccine-immigrant-communities/.

vaccinations, combatting misinformation, and building trust in LEP and immigrant communities since April 2021.[300] In November 2021 alone, the Mississippi Immigrants Rights Alliance (MIRA) distributed 1,600 COVID-19 vaccines to immigrant communities throughout the state.[301] Many individuals in these communities—particularly the undocumented—do not trust vaccine clinics facilitated by the government, and especially by the National Guard,[302] and some individuals report having been asked for Social Security and/or medical insurance cards when they tried to get vaccinated at a pharmacy—neither of which are required for vaccination.[303]

Fear and distrust of government entities and services were heightened among Mississippi's immigrant communities in August 2019—shortly before the pandemic began—when Immigration and Customs Enforcement agents arrested 680 people working at chicken processing plants in central Mississippi, in one of the largest immigration raids in U.S. history. The poultry plants targeted in the 2019 raids are located near Holmes County, Neshoba County, and Smith County.

Additionally, Adams County is home to a federal detention center where asylum seekers are routinely transferred from the border, often without first an opportunity to get a COVID-19 test, to receive COVID-19 test results, or to receive the vaccine.[304] According to a researcher at Human Rights Watch, "There isn't always a large effort to make sure asylum seekers understand their options and language can be a barrier," leading to vaccine skepticism among those detained

[300] *Id.*
[301] E. Brown, *supra* note 296.
[302] B. Brown, *supra* note 299; Jacob Geanous, Rajaa Elidrissi & Derek Kravitz, *Detention Centers Pose New Health Risk Among Delta Outbreak*, WWNO 89.9 (Aug. 2, 2021), https://www.wwno.org/immigration/2021-08-02/untested-asylum-seekers-in-ice-detention-centers-pose-new-health-risk-among-delta-outbreak.
[303] Brown, *supra* note 299.
[304] Geanous et al., *supra* note 302.

by immigration authorities.[305] Due to vaccine hesitancy among asylum seekers and poor COVID-19 protocols within the Adams County facility, COVID-19 rates have soared throughout the pandemic.[306] These high rates, in turn, contribute to increasing rates of infection among all residents of Adams County—and throughout the state—when asylum seekers are released from detention without adequate medical care. As of August 2021, Adams County was experiencing an uptick in coronavirus cases, with a test positivity rate of 18.1% and a low vaccination rate of 36%.[307]

E. The State government lacks justification.

The state government lacks a substantial justification[308] for its failure to ensure vaccine equity in its administration of COVID-19 federal funding relief. The state has provided no reasonable explanation for its current vaccine policies and its failure to develop a plan to equitably distribute vaccines, particularly in light of its knowledge of the particular vulnerabilities to the COVID-19 pandemic. Indeed, in the first two months of February 2022, the death rate from COVID-19 doubled in Mississippi, reaching 388 deaths per 100,000 persons.[309]

F. The State government has less discriminatory alternatives available to it.

The State of Mississippi has less discriminatory alternatives available to it because it has received federal relief and ample guidance on how to ensure equity in distribution of those

[305] *Id.*
[306] Office of Inspector General, OIG-21-46, *Department of Homeland Security: Violations of Ice Detention Standards at Adams County Correctional Center* (Jul. 14, 2021), https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-46-Jul21.pdf.
[307] Geanous et al., *supra* note 302.
[308] *See Georgia State Conf. v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985) (where there is a prima facie case of adverse disparate impact, the recipient must articulate a "substantial legitimate justification" for the challenged practice or policy).
[309] Joe Murphy, *Map: Covid-19 deaths have more than doubled in five states*, NBC News (Feb. 14, 2022), https://www.nbcnews.com/data-graphics/covid-death-hot-spot-map-n1288947.

federal funds to ensure vaccine equity. Title VI requires recipients of federal aid to implement less discriminatory alternatives if they are feasible and meet legitimate objectives.[310]

Both MEMA and MSDH have failed to create even the most general formal plan to ensure compliance with federal civil rights laws. Based on their responses to public records requests, neither agency has any written plans that detail access for under-served communities, individuals with disabilities or who are unable to travel, individuals with limited or no internet access, or individuals with limited English proficiency. Neither agency has argued such a plan or strategy would not be feasible. Consequently, the Complainants and other community-based organizations have filled the gap at great cost and remain willing partners to address vaccine equity, which the state has largely ignored.

VII. Conclusion

The Complainants NAACP and MS NAACP request that the federal government immediately investigate and remedy the unlawful and ongoing discrimination in Mississippi's COVID-19 vaccine program. The state of Mississippi's inequitable distribution of federal relief and unlawful discrimination based on race, color, or national origin are causing inequitable access to vaccines, disparately impacting the state's communities of color with high rates of serious illness, hospitalizations, and death.

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Respectfully submitted,

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[310] *Id.*

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