



February 1, 2019

The Honorable Lindsey Graham  
Chairman  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Ranking Member  
U.S. Senate Committee on the Judiciary  
152 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: *The Nomination of William Barr to United States Attorney General*

Dear Chairman Graham and Ranking Member Feinstein:

We write to strongly oppose the nomination of William Barr to serve as Attorney General of the United States. Our opposition is based on Mr. Barr's long record of advancing positions that restrict civil and human rights in America and his testimony at the January 15<sup>th</sup> nomination hearing. The answers Mr. Barr provided at his confirmation hearing did nothing to allay the concerns raised by his troubling record on civil rights issues, and in several instances deepened our very serious concerns.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. From that era to the present, LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has always been a pioneering force in our nation's quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. For almost 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color.

The Attorney General is the chief law enforcement officer of the United States. Since the passage of the Civil Rights Act of 1957, which created the Civil Rights Division of the Department of Justice (DOJ or the Department), the Attorney General has also had principal responsibility for enforcing the nation's civil rights

laws. The responsibility of the Attorney General in this regard may include challenging practices that violate the constitutional requirement of “equal protection under the laws,” and violations of federal statutes such as the Voting Rights Act of 1965, Title VI of the Civil Rights Act of 1964, The Fair Housing Act of 1968, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, or the Violence Against Women Act, among others.

The nomination of Mr. Barr must be viewed in the context of this unique moment in our nation’s history. The current President operates under the cloud of multiple federal investigations into potential felonious activity involving collusion with a foreign power in the very election process that brought him to office and positioned him to make this nomination. The investigation is ongoing and has resulted in multiple indictments and guilty pleas.<sup>1</sup> These investigations taint this President and undermine his credibility and legitimacy to even make nominations, they taint this confirmation process and the nominee. Furthermore, from February 2017 until November 2018, the DOJ was led by Mr. Sessions, who established policies, programs, and practices that undermined and attacked the civil rights of communities of color, including the dismantling of racial diversity efforts and withdrawal of guidance addressing racial disparities in school discipline, promoting voter suppression, and abdicating its obligation to protect the civil rights of persons who encounter the criminal justice system

At this critical moment when civil rights laws and policies are under attack, it is essential that the Justice Department is led by someone who will respect the independence of the special counsel, uphold the rule of law, protect the right to vote, and enforce our nation’s civil rights statutes. The public should have confidence that the Attorney General is unequivocally committed to principles of racial, ethnic, gender, religious, and sexual orientation equality, will protect the rights of disabled people, and will unreservedly and vigorously litigate cases in accordance with the equality provisions of the United States Constitution and our civil rights laws.

Having previously served as attorney general under President George H.W. Bush, a review of his record demonstrates that Mr. Barr is hostile to sensible criminal justice reform, marginalized communities and legislative checks on executive power.

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<sup>1</sup> See, e.g., Editorial Bd., The Case for Robert Mueller’s Probe of Russian Meddling, *NEWSDAY*, Aug. 25, 2018, <https://www.newsday.com/opinion/editorial/robert-mueller-russian-election-meddling-1.20655665>; Sharon LaFraniere, Paul Manafort, Trump’s Former Campaign Chairman, Guilty of 8 Counts, *N.Y. TIMES*, Aug. 21, 2018, <https://www.nytimes.com/2018/08/21/us/politics/paul-manafort-trial-verdict.html>.

## Criminal Justice:

Mr. Barr's tenure in the George H.W. Bush administration was marked by the advancement of the types of policies that would undermine the incremental progress that has been made in the criminal legal system and his rhetoric regarding policing demonstrates a complete lack of understanding, or a disingenuous denial, of the role of race in police interactions. He was a central architect of the outdated, draconian "tough on crime" approach that fostered the "war on drugs" and so-called "law and order" policies which have caused incarceration rates in the United States to more than triple since the 1980s.<sup>2</sup> This rapid increase is largely attributable to the increased incarceration of non-violent drug offenders over the last three decades. Criminal justice policies like the ones developed by Mr. Barr led to this incarceration rate surge and continue to drive racial inequality and poverty, creating barriers to opportunity and devastating communities of color.

In 1992, Mr. Barr released a report titled "The Case for More Incarceration." The report argues against the concept of over-incarceration and urges the building of more prisons while decreasing the use of alternatives to incarceration for felonies in the criminal justice system. He also warns about insufficient sentences and early release. For example, Mr. Barr writes, "One proposition is abundantly clear: Failure to incarcerate convicted criminals will lead to additional crimes. There are two sources of direct evidence of this proposition. First, offenders placed on probation commit new crimes while on probation. Second, offenders who are released early commit new crimes during the period when they would otherwise have been confined in prison."<sup>3</sup>

The policies promoting harsh sentencing with longer prison sentences exacerbates challenges to recidivism by reducing the formerly incarcerated individual's opportunities to employment, and stable, safe and affordable housing all of which are foundational to successful re-entry and reduced recidivism. Moreover, studies show that the risk of recidivism reduces significantly over time for those with non-violent convictions, the types of individuals most impacted by "War on Drugs" and Mr. Barr's policies.<sup>4</sup>

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<sup>2</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States 1998* (2002); Paige M. Harrison & Allen J. Beck, U.S. Dep't of Justice, Bureau of Justice Statistics, *Prisoners in 2003* (2004); <https://www.vox.com/policy-and-politics/2018/12/7/18129487/william-barr-trump-attorney-general-criminal-justice-reform>.

<sup>3</sup> William P. Barr, *The Case for More Incarceration* 5 (1992), <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

<sup>4</sup> Rebecca Vallas & Sharon Dietrich, *One Strike and You're Out*, CENTER FOR AMERICAN PROGRESS 1 (Dec. 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

Another example of Mr. Barr’s harmful policy record is Project Triggerlock which uses federal firearms laws to prosecute “the most dangerous violent criminals in each community” in federal court “to take advantage of stiff mandatory sentences without the possibility of parole.” In a 2001 interview, Mr. Barr said the following about Project Triggerlock: “That thing was great because you just give people a directive, and all of a sudden this machine starts. We were putting away over a thousand people, actually incarcerating a thousand people. By the end of the administration, we had done over 18,000 people in a very short period of time. . .”<sup>5</sup>

The policies noted above, and those of similar focus, caused the number of Americans who have some sort of criminal record to increase significantly. Incarceration rates in the United States have more than tripled since the 1980s<sup>6</sup>. From 1975 to 2005 the United States’ incarceration rate increased by 342 percent.<sup>7</sup> Criminal justice policies that led to this dramatic surge in incarceration rates continue to drive racial inequality and poverty. If not for mass incarceration, one study reports that the overall poverty rate would have dropped by 20 percent between 1980 and 2004<sup>8</sup>.

The impact of the criminal justice system is particularly devastating in communities of color. People of color are disproportionately represented in our prison system as they represent more than 60 percent of the prison population<sup>9</sup>, but makeup 37.9 percent of the U.S. population<sup>10</sup>. African Americans and Latinos in particular are overrepresented in the prison system. African Americans make up less than 13 percent of the U.S. population<sup>11</sup> but are 40 percent of the prison population<sup>12</sup>. The prevalence of arrest rates and criminal convictions are far higher among African Americans and Latinos than for whites: African Americans are 2.5 times more likely to be arrested than whites.<sup>13</sup> These racial disparities are

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<sup>5</sup> George H.W. Bush Oral History Project April 5, 2001. <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

<sup>6</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States 1998* (2002); Paige M. Harrison & Allen J. Beck, U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2003* (2004).

<sup>7</sup> Robert DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, SAGE JOURNALS Vol. 59, Issue 4 (2013) <http://journals.sagepub.com/doi/abs/10.1177/0011128708328864>.

<sup>8</sup> *Id.* at 20.

<sup>9</sup> Trends in U.S. Corrections, The Sentencing Project, <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

<sup>10</sup> See U.S. Census, Quick Facts <https://www.census.gov/quickfacts/table/PST045216/00>.

<sup>11</sup> *Id.*

<sup>12</sup> Peter Wagner and Bernadette Rabuy, *Mass Incarceration*, PRISON POLICY INITIATIVE (Mar. 14, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

<sup>13</sup> Recent statistics from the FBI show that African Americans accounted for more than 3 million arrests in

not explained by disproportionate rates of criminal activity—one study found that in 2005, African Americans represented 14% of current drug users, yet they constituted 33.9% of persons arrested for drug offenses<sup>14</sup>. Rather, they demonstrate the roles that racial profiling and discriminatory criminal justice policies have played and continue to play in our criminal justice system.<sup>15</sup> Despite significant evidence to the contrary, Mr. Barr indicated at this nomination hearing that he believes that overall the system operates fairly, without regard for race.<sup>16</sup>

Mr. Barr's writings and comments during recent years demonstrate no change in his beliefs. In 2015, he signed a letter opposing the bipartisan Sentencing Reform and Corrections Act, which would have modestly reduced mandatory minimum sentences for non-violent drug offenders<sup>17</sup>. The letter expresses strong, ongoing support for mandatory minimums, alleges that mandatory minimums have caused “dramatic reduction in crime over the past 25 years”, and asserted that “the system of justice is not broken.”<sup>18</sup> Mr. Barr's current views on addressing police misconduct are also troubling. For example, at his nomination hearing earlier this month, Barr indicated that he agrees with Jeff Sessions' policy limiting the use of consent decrees to oversee police reform in state and local jurisdictions.<sup>19</sup>

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2009 (28.3% of total arrests), even though they represented just 12.9% of the general population; whites, who formed 75.6% of the general population, accounted for fewer than 7.4 million arrests (69.1% of total arrests). Crime in the United States, 2009 U.S. Department of Justice — Federal Bureau of Investigation (Sept. 2010) tbl. 43, <http://www2.fbi.gov/ucr/cius2009/arrests/index.html>. Among persons arrested on felony charges in 2006, 29% were white, while 45% were black and 24% were Latino. Bureau of Justice Statistics, U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties, 2006*, app. tbl. 2 (2010). Similar disparities are seen in conviction rates as well. One recent estimate found that nearly one-fourth of the black adult male population (23.3%) has at least one felony conviction but is not currently under any form of criminal justice supervision, while that figure is only 9.2% for the adult male population as a whole. Christopher Uggen, Jeff Manza & Melissa Thompson, *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, 605 *Annals Am. Acad. Pol. & Soc. Sci.* 281, 288 & tbl. 2 (2006); see also Marc Mauer and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, 3 (2007), [http://www.sentencingproject.org/doc/publications/rd\\_stateratesofinbyraceandethnicity.pdf](http://www.sentencingproject.org/doc/publications/rd_stateratesofinbyraceandethnicity.pdf) (finding African Americans incarcerated 5.6 times rate of whites, Hispanics incarcerated at 1.8 times rate of whites).

<sup>14</sup> Marc Mauer, *Justice for All? Challenging Racial Disparities in the Criminal Justice System*, Am. Bar Ass'n (2010). A recent report by the American Civil Liberties Union (“ACLU”) found that “Black people are 3.7 times more likely to be arrested for marijuana possession than white people despite comparable usage rates.” Press Release, ACLU, *New ACLU Report Finds Overwhelming Racial Bias in Marijuana Arrests* (June 4, 2013), <https://www.aclu.org/criminal-law-reform/new-aclu-report-finds-overwhelming-racial-bias-marijuana-arrests>.

<sup>15</sup> See, e.g., Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010); Marc Mauer, *Mass Imprisonment and the Disappearing Voters, in Invisible Punishment* 53 (Marc Mauer & Meda Chesney-Lind eds., 2002) (discussing war on drugs).

<sup>16</sup> <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>

<sup>17</sup> Letter from John Ashcroft et al. to Sen. Mitch McConnell and Sen. Harry Reid re Sentencing Reform and Corrections Act of 2015, Dec. 10, 2015, <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>

<sup>18</sup> *Id.*

<sup>19</sup> <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>

## Voting Rights

Mr. Barr will continue the policies and practices of Attorney General Sessions that have harmed communities of color. Efforts to curtail voting rights and make it more difficult for people to vote intensified under the leadership of Mr. Sessions. For example, immediately following Mr. Sessions' appointment, DOJ reversed course to side with Texas in an effort to impose a racially discriminatory voter identification scheme, asking a federal appeals court to allow the state to enforce the law that a lower court found violated the Voting Rights Act and the 14th and 15th Amendments of the U.S. Constitution.<sup>20</sup> DOJ similarly sided with Ohio in an effort to unfairly purge voters from its rolls.<sup>21</sup> This reversed a position which spanned more than two decades and across Republican and Democratic Administrations alike, which interpreted the NVRA as prohibiting the exact type of racially discriminatory voter purges being conducted by Ohio<sup>22</sup>. At his nomination hearing, Mr. Barr was questioned about voter suppression and responded that issues related to voter participation were not due to "low voter turnout" -- i.e. suppression of votes -- but rather that it is attributable to the "lack of an informed citizenry".<sup>23</sup>

## Democracy/Independence of Attorney General

Mr. Barr believes there are limits on when DOJ should defend the constitutionality of congressional enactments. In 2001, he said that the rule DOJ followed under his leadership was that "[t]here's a presumption that you will defend the constitutionality of congressional enactments, with an exception, which is that any statute that impinges on executive prerogative we will not defend."<sup>24</sup> This is consistent with his views of executive power, in a 1989 memo, Mr. Barr urged federal officials to "consistently and forcefully" resist "congressional incursions" into "executive branch prerogatives" such as what executive branch officials the President can appoint and remove.<sup>25</sup>

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<sup>20</sup> Jim Malewitz, *Trump's Justice Department Wants Texas to Keep Invalidated Voter ID Law*, TEX. TRIBUNE, Sep. 1, 2017, <https://www.texastribune.org/2017/09/01/trumps-doj-wants-texas-be-able-use-id-law-struck-discriminatory/>; *Veasey v. Abbott*, 265 F. Supp. 3d 684 (Aug. 23, 2017).

<sup>21</sup> *Husted v. Philip Randolph Institute*, 584 U.S. \_\_ (2018); Charlie Savage, Justice Dept. Backs Ohio's Effort to Purge Infrequent Voters from Rolls, N.Y. TIMES, Aug. 8, 2017

<sup>22</sup> <https://www.naacpldf.org/files/about-us/16-980bsacNAACPLegalDefenseFundetal.pdf>.

<sup>23</sup> <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>

<sup>24</sup> George H.W. Bush Oral History Project April 5, 2001, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

<sup>25</sup> Common Legislative Encroachments on Executive Branch Authority (July 27, 1989), <https://www.justice.gov/file/24286/download>.

Additionally, at his nomination hearing, Mr. Barr was asked if he is confirmed, would the Justice Department jail reporters for doing their jobs. He responded by saying that he “could conceive of situations where as a last resort...there could be a situation where someone would be held in contempt”.<sup>26</sup> This answer is troubling as it calls into question, Mr. Barr’s views of the first amendment. It is also troubling given the current Administration’s clear disdain for the media and the President’s repeated references to the media as the “enemy of the people”<sup>27</sup>. If confirmed, William Barr will inherit the odious legacy of Jeff Sessions, who established policies that undermined and attacked the civil rights of communities of color. The Trump Justice Department has dismantled racial diversity efforts and rescinded guidance on racial disparities in school discipline and special education, promoted voter suppression, and abdicated its obligation to protect the civil rights of persons who encounter the criminal justice system. Mr. Barr’s previous record, recent writings and his testimony at his nomination hearing make clear that he will continue along the same path of his predecessor to weaponize the Justice Department and eviscerate civil rights protections. A vote for Barr is a vote against repairing and restoring integrity and fairness to the Justice Department. The stakes are too high to take a risk that Barr has changed his views when we see a long history of interviews, policies, actions, etc. to the contrary. The American people deserve an Attorney General who will ensure that all persons are treated equally under the law. For all these reasons, we urge you to oppose the nomination of William Barr. If you have any questions, please contact Director of Policy Todd A. Cox or Senior Policy Counsel Lisa Cylar Barrett at 202-682-1300.

Sincerely,



Sherrilyn A. Ifill  
Associate Director-Counsel

CC: Members of the Senate Judiciary Committee

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<sup>26</sup> <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>

<sup>27</sup> [https://www.washingtonpost.com/politics/about-80-percent-of-the-media-are-the-enemy-of-the-people-trump-says/2018/08/22/d7d5710c-a635-11e8-a656-943eefab5daf\\_story.html?utm\\_term=.672584995e31](https://www.washingtonpost.com/politics/about-80-percent-of-the-media-are-the-enemy-of-the-people-trump-says/2018/08/22/d7d5710c-a635-11e8-a656-943eefab5daf_story.html?utm_term=.672584995e31)