

160 Henry Street
Brooklyn, NY 11201
February 17, 2021

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Schumer, McConnell, Durbin, and Grassley:

I write to express my enthusiastic support for the appointment of Kristen Clarke as Assistant Attorney General for the Civil Rights Division in the Department of Justice. I have been the Solicitor General of the State of New York since 2007, with the exception of the period during 2018 when I served as the State Attorney General. And from 1998 to 2001 I was the Principal Deputy and Acting Solicitor General of the United States, and from that experience I know something about the qualities needed for successful leadership within the Department of Justice. Today I write for myself alone, on the basis of my experience working with Ms. Clarke in the New York Attorney General's Office from 2011 to 2015.

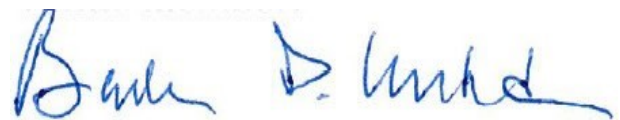
During that time Ms. Clarke was the Chief of the Civil Rights Bureau in the Attorney General's Office and I was, as I am now, the state Solicitor General, also in

the Attorney General's Office. We worked together on many projects, and throughout that time she displayed precisely the qualities that are needed in the leadership position for which she has been nominated. She is a splendid and experienced civil rights lawyer, with the ability to identify targets of opportunity for litigation, and to determine when a problem might be better solved by methods other than litigation. And she brought to her leadership position in New York a superb and effective mix of collegiality, on the one hand, and persistence, on the other, in pursuing the goals and the cases that she viewed as important.

On several occasions, the Office was considering participating as amicus curiae in a case where an important civil rights principle was somewhat obscured by factual or procedural or other complications. Kristen frequently, and successfully, urged us to take a stand on the civil rights issue, and helped to find a way around the complications. One such case was *Arizona v. United States*, 567 U.S. 387 (2012), involving an effort by the United States to prohibit Arizona from enforcing federal immigration law more aggressively than the federal government itself. Another example was *EEOC v. Abercrombie & Fitch Stores*, 575 U.S. 768, 135 S.Ct. 2028 (2015), involving an effort to hold an employer liable under Title VII for refusing to hire an applicant because she wore a headscarf, as required by her religion. And a third example was *In the Matter of Cesar Vargas*, 131 A.D.3d 4, 10 N.Y.S.3d 579 (2d Dept 2015), involving the question whether the State of New York was forbidden by federal law to admit an undocumented immigrant to the bar of the State, and if so whether the asserted prohibition would violate the Tenth Amendment to the U.S. Constitution. In each of these cases, there were substantial arguments both for and against amicus participation, and Kristen, while showing deep respect for the arguments on both sides, strenuously and successfully urged us to participate, and helped to find a way to do so.

In these cases, and in all my many interactions with her, she was both a strong and creative leader, and a diplomatic and collaborative partner. I am confident that she would bring those strengths to the leadership of the Civil Rights Division, to the great benefit of the Division, the Department of Justice, and the people of the United States.

Sincerely,



Barbara D. Underwood