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January 14, 2019

The Honorable Lindsey Graham
Chairman, US Senate Judiciary Committee
Russell Senate Office Building
290 Constitution Ave NE
Washington, DC 20510

The Honorable Dianne Feinstein
Vice Chairman, US Senate Judiciary Committee
331 Hart Building
Washington, DC 20510

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Re: Nomination of William Barr to be Attorney General

Dear Chairman Graham and Vice Chairman Feinstein:

I write on behalf of Human Rights Watch to express our serious concerns about the nomination of William Barr to be the next Attorney General of the United States. The Attorney General plays an essential role in enforcing the laws of the United States, protecting civil rights and other human rights, and working to ensure fairness in the justice system. Though Barr was US Attorney General from 1991 to 1993, the policies that he supported led to mass incarceration due to unnecessary criminalization; laws requiring grossly disproportionate sentencing; and enormous racial disparities that persist in the criminal system. His public writings and comments since provide no indication he has reversed support for any of these positions, or that he would work to ameliorate the harmful impact of those policies. Further, he has indicated support for policies that would weaken protections against rights abuses for many Americans in other contexts.

When Barr was Attorney General, he wrote the introduction for a Justice Department white paper, “The Case for More Incarceration,” which argued that the US was not incarcerating too many people but “too few,” and claims of racial bias in the criminal system were wrong.¹ He also argued in an interview that the US criminal system was overall “fair and does not treat people differently.”²

According to the latest figures available, the US has the highest rate of incarceration in the world at 655 per 100,000, with a total of 2.2 million people behind bars.³ As of 2016, black people were about 13 percent of the population but close to 40 percent of those in state prisons, where the vast majority of prisoners are held, and were incarcerated in those prisons at more than five

¹ “The Case for More Incarceration,” US Department of Justice, 1992, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf> (accessed January 13, 2019).

² Ronald J. Ostrow, “William Barr : A 'Caretaker' Attorney General Proves Agenda-Setting Conservative,” *Los Angeles Times*, June 21, 1992, http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2 (accessed January 13, 2019).

³ Drew Kann, “5 facts behind America's high incarceration rate,” *CNN*, July 10, 2018, <https://www.cnn.com/2018/06/28/us/mass-incarceration-five-key-facts/index.html> (accessed January 13, 2019); see also, “Highest to Lowest - Prison Population Rate,” *World Prison Brief*, http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All (accessed January 13, 2019), citing a variety of statistics, see World Prison Brief Data United States of America, *World Prison Brief*, <http://www.prisonstudies.org/country/united-states-america> (accessed January 13, 2019).

times the rate of white people.⁴ Today there is widespread recognition that the US criminal system contains deeply entrenched bias and that it disproportionately impacts the poor and people of color. There is bipartisan support for criminal legal system reform. But in 2015 Barr urged senators to vote against one of these bipartisan proposals, the Sentencing Reform and Corrections Act,⁵ which would have required people already sentenced under old, unfair laws to have a chance to benefit from new sentence reductions.⁶

After then-Attorney General Jeff Sessions was forced to resign last year, Barr co-authored a *Washington Post* opinion piece commending Sessions for having done an “outstanding” job that is hard to read as anything other than a ringing endorsement of Sessions’ regressive policies.⁷ Sessions implemented numerous criminal policies that undermine police accountability⁸ and increased harsh sentencing,⁹ and make it much easier for police to seize property people under unjust asset forfeiture rules.¹⁰

As Attorney General, Barr strongly promoted¹¹ the cruel and abusive policy of detaining thousands of Haitians who had fled their country by boat, roughly 300 of whom were HIV positive, at Guantanamo Bay in Cuba and denying them access to lawyers—a policy that a US District Court ultimately ended.¹² His recent opinion piece praising Sessions called his record 38 percent increase in illegal re-entry prosecutions “impressive.” As Human Rights Watch research has shown, these skyrocketing prosecutions result in people with no or minor criminal records spending time in federal prisons when those who do not require a court to consider their asylum claims or strong ties to the United States should be simply deported.¹³ Barr also defended¹⁴ the constitutionality of President Donald Trump’s first ban on people travelling to the US from several Muslim-majority countries.

Barr also has shown a history of hostility towards the rights of lesbian, gay, bisexual and transgender (LGBT) people, signaling he might support the continuance of Sessions’ anti-LGBT policy stances. In his *Washington Post* piece, he praised Sessions’ move to rescind guidance¹⁵

⁴ The Sentencing Project, “The Color of Justice, Racial and Ethnic Disparities in State Prisons,” June 2016, <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (accessed January 13, 2019), pp. 3-4.

⁵ Letter from 40 former senior law enforcement officials opposing the Sentencing Reform and Corrections Act of 2015, December 16, 2015, <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf> (accessed January 14, 2019).

⁶ Jasmine L. Tyler, “A Glimmer of Hope for US Criminal Justice Reform,” Human Rights Watch, October 5, 2017, <https://www.hrw.org/news/2017/10/05/glimmer-hope-us-criminal-justice-reform>.

⁷ William P. Barr, Edwin Meese III and Michael B. Mukasey, “We are former attorneys general. We salute Jeff Sessions,” *Washington Post*, November 7, 2018, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.b5ee40ceb626 (accessed January 10, 2019).

⁸ Sari Horwitz, “In one of his final actions as attorney general, Sessions moves to restrict police reform agreements,” *Washington Post*, November 9, 2018, https://www.washingtonpost.com/world/national-security/in-one-of-his-final-actions-as-attorney-general-sessions-moves-to-restrict-police-reform-agreements/2018/11/09/76a64e5c-e437-11e8-8f5f-a55347f48762_story.html?utm_term=.039b115ab825 (accessed January 13, 2019).

⁹ Sari Horwitz and Matt Zapotosky, “Sessions issues sweeping new criminal charging policy,” *Washington Post*, May 12, 2017, https://www.washingtonpost.com/world/national-security/sessions-issues-sweeping-new-criminal-charging-policy/2017/05/11/4752bd42-3697-11e7-b373-418f6849a004_story.html?utm_term=.fd5545e8b4bf (accessed January 13, 2019).

¹⁰ “Criminal Justice Coalition Submits Comments on Policing,” Human Rights Watch, December 20, 2018, https://www.hrw.org/news/2018/12/20/criminal-justice-coalition-submits-comments-policing#_ftnref299.

¹¹ “William P. Barr Oral History, Assistant Attorney General; Deputy Attorney General; Attorney General, Miller Center Transcript, April 5, 2001, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

¹² Michael Garcia Bochenek, “Guantanamo’s Other Sordid Legacy,” *The Hill*, January 18, 2016 <https://www.cbsnews.com/news/william-barr-attorney-general-nominee-asylum-seekers-haiti-hiv-positive-patients-guantanamo-bay-2018-12-10/> (accessed January 13, 2019).

¹³ “US: Prosecuting Migrants is Hurting Families,” Human Rights Watch news release, May 22, 2013, <https://www.hrw.org/news/2013/05/22/us-prosecuting-migrants-hurting-families>.

¹⁴ William Barr, “Former attorney general: Trump was right to fire Sally Yates,” *Washington Post*, February 1, 2017, https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.912d68da9121 (accessed January 14, 2019).

¹⁵ “US Justice Department Reverses Position on Transgender Discrimination,” Human Rights Watch news release, October 5, 2017, <https://www.hrw.org/news/2017/10/05/us-justice-department-reverses-position-transgender-discrimination>.

protecting transgender Americans,¹⁶ and has lamented the emergence of legal norms that prevent the government from taking steps to “restrain sexual immorality” and “reflect traditional moral norms.”¹⁷

On women’s rights, Barr has repeatedly called for *Roe v. Wade* to be overturned, including in his 1991 confirmation hearing,¹⁸ during which he told the Senate Judiciary Committee: “I do not believe the right to privacy extends to abortion. ...I believe *Roe v. Wade* should be overturned,” and later noted the Justice Department would “call for the overturning of *Roe v. Wade* in future litigation.” Further, Barr joined an *amicus* brief in the *Zubik v. Burwell* case, which advocated against the birth control coverage benefit in the Affordable Care Act, a benefit the Justice Department is currently not defending in court despite some employers’ refusing to comply.¹⁹

Barr has expressed views highly critical of Special Counsel Robert Mueller’s investigation into Russian interference in the 2016 US election and possible collusion with the Trump presidential campaign. Last year Barr wrote a memo and sent it to the Justice Department strongly criticizing one of the Special Counsel’s main lines of inquiry, whether Trump had committed obstruction of justice.²⁰ Trump’s repeated attempts to undermine this investigation and the independence of the Special Prosecutor threatens the rule of law. His selection of Barr for Attorney General raises concern that he will be expected to block or rein in the Special Prosecutor’s work.

During Barr’s confirmation hearing, US Senators should scrutinize his record and question him to determine whether his views on key issues have changed in a meaningful way. They should also demand commitments from him on how he would protect and enforce important civil and other human rights protections, and guarantee the independence of the Mueller investigation.

Sincerely,



Nicole Austin-Hillery
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¹⁶ William P. Barr, Edwin Meese III and Michael B. Mukasey, “We are former attorneys general. We salute Jeff Sessions,” *Washington Post*, November 7, 2018, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.b5ee40ceb626 (accessed January 13, 2019).

¹⁷ William P. Barr, “Legal Issues in a New Political Order,” *The Catholic Lawyer*, Vol. 36: No. 1, 1995, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tcl> (accessed January 13, 2019).

¹⁸ “Barr Confirmation Hearing: Day 2,” *C-SPAN*, November 13, 1991, <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2&start=1717> (accessed January 13, 2019).

¹⁹ Brief of Amicus Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, & 15- 191), 2016 U.S. S. Ct. Briefs LEXIS 147 <https://www.scotusblog.com/wp-content/uploads/2016/01/Former-Justice-Department-Officials-LSP-Amicus.pdf> (accessed January 14, 2019).

²⁰ Devlin Barrett, “Attorney general nominee wrote memo criticizing Mueller obstruction probe,” *Washington Post*, December 20, 2019, https://www.washingtonpost.com/world/national-security/attorney-general-nominee-wrote-memo-criticizing-mueller-obstruction-probe/2018/12/20/72a01304-044b-11e9-b5df-5d3874f1ac36_story.html?utm_term=.f5cf9594e4e (accessed January 14, 2019).