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Anti-Defamation League Foundation
President
Glen S. Lewy



January 14, 2019

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

ADL (the Anti-Defamation League) was founded in 1913 with a simple but timeless mission: to stop the defamation of the Jewish people and to secure justice and fair treatment to all. To strive towards these goals, ADL has maintained a core set of principles for more than 100 years— fighting anti-Semitism and all forms of bias and hate, as well as eliminating discriminatory barriers that deny equal opportunities to individuals based on their race, religion, gender, national origin, sexual orientation or other immutable characteristics. We have also worked to ensure the preservation of individual rights, including the constitutional guarantees of freedom of religion and expression and other rights that must be protected to maintain a pluralistic and democratic nation.

We write to you with respect to the confirmation hearings on the nomination of former Attorney General William P. Barr to the position of Attorney General of the United States. ADL has commented on presidential nominees for key cabinet and Department of Justice positions across many years and administrations, whether by submitting letters to the Committee ahead of pending hearings or otherwise issuing statements setting forth ADL's concerns and questions.¹ This letter follows our established practice when engaging in such communications: we focus on areas of particular concerns that we may have with a given nominee's positions and plans.

We have long worked closely with the DOJ on areas of importance to ADL, and look forward to continuing that relationship, particularly in this time of rising instances of anti-Semitism and other hate crimes and incidents. These confirmation hearings take place less than three months after the murder of 11 congregants in a synagogue in Pittsburgh, the deadliest attack on the Jewish community in the history of the United States. As we detail below, the recent alarming increase in hate crimes and hate

¹ For example, in 1976, the ADL issued a statement expressing grave concern about President Jimmy Carter's then-Attorney General-designee Griffin Bell's membership in private clubs that discriminated against African-Americans and Jews. On several occasions the ADL has also spoken out about its concerns regarding Assistant Attorney General nominations made by presidents of both parties.

incidents, including the significant increase in anti-Semitic incidents, makes it even more important for the American people to gain clear insight into the views and priorities of the nominee for the nation's top law enforcement position.

We know Mr. Barr to be an able attorney, respected and admired across many communities. He is known to many as a man of faith, and has been described to us as a “straight shooter” and a person of high integrity. Mr. Barr has demonstrated his qualifications as well as his laudable commitment to government service, including appointments as the 77th Attorney General, Deputy Attorney General and Assistant Attorney General overseeing the Office of Legal Counsel under President George H.W. Bush. He worked in the White House under President Reagan and, prior to that, worked at the CIA while studying law. In 1991 then AG-nominee Mr. Barr stated in his confirmation testimony that “[D]iscrimination is abhorrent, and strikes at the very nature and fiber of what this country stands for...[E]nforcing the civil rights laws would be a high priority of mine. I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.”² ADL could not agree more with regard to the high priority that should be given to enforcement against discrimination against vulnerable groups, and a number of the questions we hope the Committee will raise at the upcoming hearing focus on civil rights and the Attorney General-Designee's views on enforcement.

For many years Mr. Barr has made clear his views on many subjects of great concern to the American people and of specific interest to ADL. ADL differs sharply with Mr. Barr's positions on a number of key issues, but would expect him to fulfill his enormous responsibilities with integrity and a commitment to the Constitution and rule of law. A confirmation hearing is an opportunity to inquire and examine these obligations and Mr. Barr's views, and to determine where his have remained constant, and where he may have modified them. Accordingly, we urge you and your colleagues on the Judiciary Committee to closely examine Mr. Barr's views on the role of the Attorney General and the Justice Department in interpreting and enforcing provisions in the United States Constitution and federal law that guarantee and protect fundamental civil rights and individual liberties.

Specifically, we believe there are six main areas which deserve the Committee's special attention. These include Mr. Barr's position on: (1) the enforcement of federal civil rights and hate crime laws; (2) the First Amendment's religious liberty clauses; (3) the protection of voting rights; (4) criminal justice reform and law enforcement training; (5) LGBTQ rights; and (6) immigration enforcement.

² *Confirmation Hearings on Federal Appointments – William P. Barr*, S. Hrg. 102-505, Pt. 2, page 25 at <http://civilrightsdocs.info/pdf/ag-vacancy/1991-AG-Nomination-Hearing-Transcript.pdf>

Hate Crimes Prevention and Prosecution

For more than three decades, ADL has spearheaded the drafting, enactment, and implementation of hate crime laws, working in partnership with other civil rights and religious organizations, law enforcement groups, civic agencies, industry and business leaders. Hate crimes merit a priority response because of their special impact on the victim and the victim's community. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Because hate crimes often render members of minority communities fearful, angry, and/or suspicious of other groups—and of the power structure that is supposed to protect them—these incidents can damage the fabric of our society and fragment communities.

Criminal activity motivated by bias is distinct and different from other criminal conduct. These crimes occur because of the perpetrator's bias or animus against the victim on the basis of actual or perceived status – the victim's race, color, religion, national origin, sexual orientation, gender, gender identity, or disability. In the vast majority of these incidents, no crime would have occurred at all were it not for the victim's personal characteristic.

Statistics recently released by the FBI³ show that in 2017 the nation's law enforcement agencies reported that there were 7,175 hate crimes in the United States, which reflects a 17% increase from 2016. Race has been the most frequent basis of hate crimes over the past 25 years, with 4,131 incidents (more than 58% of the total) in 2017. Crimes against African-Americans made up the vast majority of that category with 2,013 incidents (28%). Crimes directed against individuals and institutions on the basis of religion were the second most frequent (1,564, over 21%) hate crimes category. Crimes against Jews and Jewish institutions increased 37%, accounting for almost 60% of the religion category. Although there was actually a small decrease in anti-Muslim hate crimes—from 307 in 2016 to 273 in 2017—the number documented by the FBI was still the third highest number of such crimes since the FBI began collecting the data. In addition, 1,130 (16%) of the hate crimes victims were targeted because of their sexual orientation and 119 (almost 2%) were targeted because of their gender identity.

The FBI has been collecting this hate crime data from law enforcement authorities across the country since 1991, under the Hate Crime Statistics Act ("HCSA").⁴

³ 2017 *Hate Crimes Statistics*, FBI: Uniform Crime Reporting (2018), <https://ucr.fbi.gov/hate-crime/2017>

⁴ 28 U.S.C. § 534.

In 2017, the most recent year for which data is available, 92 cities over 100,000 in population either did not report any data to the FBI or affirmatively reported zero (0) hate crimes. Though 16,149 law enforcement agencies participated in the FBI 2017 HCSA data collection effort, only 2,040 of these agencies (less than 13%) reported one or more hate crimes. Astonishingly, 87% of all participating agencies affirmatively reported zero (0) hate crimes to the FBI. And more than 1,000 law enforcement agencies did not report any data to the FBI (including nine cities with populations over 100,000). It is hard to believe the agencies that affirmatively reported zero hate crimes to the FBI, or the agencies that did not report any data to the FBI, are accurately tracking the crimes in their jurisdictions.

The state of Alabama reported nine hate crimes and Mississippi reported one. By contrast, in 2017, the city of Phoenix reported 219 hate crimes, the city of Seattle reported 234 hate crimes, and the city of Boston reported 140 hate crimes, reflecting the faith that victims of hate crime in these cities have that they can rely on their police and civic leaders to effectively respond to hate violence.

We respectfully request that the Committee question the nominee with respect to the following:

➤ **What steps would you take as Attorney General to ensure that police departments and other law enforcement groups are well trained to identify, report, and respond to hate crimes that occur in their jurisdictions?**

➤ **What steps would you take to make hate crime data collection efforts more inclusive and comprehensive?**

The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), signed into law on October 28, 2009, is the most important, comprehensive, and inclusive hate crime enforcement law enacted in the past 40 years.⁵ Among other things, the HCPA extended federal hate crimes protections to victims targeted because of their sexual orientation, gender, gender identity, or disability. It also closed gaps in federal enforcement authority, encouraged partnerships between state and federal law enforcement officials to address hate violence more effectively, and provided limited expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act.

⁵ Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (2009).

Under the HCPA, the Attorney General or a designee must sign off on all criminal prosecutions brought under the Act. Federal hate crimes cases have significant national import. Hate crimes charges filed by the Department of Justice in recent years include cases involving organized hate groups, cases with special community or national impact, and cases in which local authorities lacked the resources, or the will, to vindicate justice.

In addition, since passage of the HCPA, lawyers at the Department of Justice have worked with FBI officials, U.S. Attorneys, and professionals from the Community Relations Service to organize dozens of training programs on the tools the Act provides, enforcement strategies, and community engagement—including training programs in each of the five states with no hate crime laws.⁶ Several thousand state and local law enforcement officials have been trained at these sessions. The Justice Department, in coordination with several lead U.S. Attorneys, has also vigorously defended the HCPA against both facial and as-applied constitutional challenges.

Hate crimes occur both online and in physical spaces. Unfortunately, current state and federal hate crimes laws do not adequately provide legal redress for victims of cyber hate crimes, including but not limited to bias-motivated cyberstalking, doxxing, and swatting. Addressing cyber hate crimes comes with the additional challenge of considering harassment and the First Amendment; however, victims of these crimes deserve protection and such legal complexities should not be an excuse for complacency. In order to protect victims of cyberhate, it is imperative to prosecute cyber hate crimes in a constitutionally-sound and proactive manner. Additionally, law enforcement officials should receive more training on how to respond to these dangerous practices, which use online activity to harm victims in the physical world.

In a 1992 speech to Agudath Israel of America, Mr. Barr highlighted work the Justice Department, under his leadership, had done to prosecute hate crimes perpetrators, neo-Nazi skinheads, and the notorious murderers of Denver radio talk show host Alan Berg.⁷

As Attorney General, Mr. Barr would be required to sign off on all federal hate crimes prosecutions. Mr. Barr's tenure as Attorney General preceded the enactment of the HCPA, which provided federal jurisdiction to investigate and prosecute certain hate crime directed against individuals because of their sexual orientation, gender, or gender identity. Additionally, the prevalence and impact of cybercrimes has significantly

⁶ The five states without hate crimes laws are Arkansas, Georgia, Indiana, South Carolina, and Wyoming.

⁷ May 1992 key note speech at the Agudath Israel of America 1992 Humanitarian Award Dinner <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/05-31-1992b.pdf>

increased since Mr. Barr last served as Attorney General. We believe it is imperative to ask the nominee about his positions on the full range of hate crime prosecutions and hate crimes laws. We respectfully request that the Committee question the nominee with respect to the following:

- **Will you sign off on charges brought pursuant to the HCPA, including for gender-based crimes and crimes targeting members of the LGBTQ community? What would be your approach to making determinations on these charges?**
- **Will you continue the Department of Justice’s training programs, including and especially in the five states that have no hate crimes laws, and ensure that U.S. Attorneys, FBI agents, and local law enforcement agents have the tools they need to prevent bias-motivated crimes and to prosecute them diligently and effectively?**
- **What steps would you take to ensure that federal hate crime laws are drafted and enforced to take into consideration cyber hate crimes?**
- **In light of the U.S. Supreme Court’s unanimous 1993 *Wisconsin v. Mitchell* decision, upholding a state hate crime law against a First Amendment challenge, will you defend the constitutionality of the HCPA in court should it be challenged, as the current Justice Department has done on several occasions⁸?**
- **According to a recent ADL report, “the number of white supremacist murders in the United States more than doubled in 2017 compared to the previous year, far surpassing murders committed by domestic Islamic extremists and making 2017 the fifth deadliest year on record for extremist violence since 1970.”⁹ Would you prioritize Department of Justice resources to address the threat from white supremacist violence? If so, how? If not, why not?**

Separation of Church and State

ADL believes deeply in the importance of preserving and safeguarding freedom of religion for all Americans in our increasingly pluralistic nation. We strongly believe that government should neither promote nor be hostile to religion. This position reflects a profound respect for religious freedom and recognition of the extraordinary diversity of religions represented in the United States. Our nation’s religious freedom safeguards are

⁸ Department of Justice, *Hate Crimes*, <https://www.justice.gov/crt/hate-crimes-0>.

⁹ Anti-Defamation League *Murder and Extremism in the United States 2017*

<https://www.adl.org/resources/reports/murder-and-extremism-in-the-united-states-in-2017>

shield for faith and not a sword to harm or discriminate against others with different beliefs or practices. Both as a matter of law and as a matter of good public policy, the First Amendment should be read to protect religious groups, particularly minorities, from being subject to the coercion and pressure of state-instituted religion.

Of particular concern to ADL is the proper role of religion in our nation’s public schools. On this issue, the U.S. Supreme Court has been clear: “[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.”¹⁰ Thus, it is well-settled that government-sponsored prayer in the public-school setting, whether in the classroom or at a school event, violates the First Amendment to the United States Constitution.¹¹ Indeed, the only type of prayer that is constitutionally permissible is private and voluntary student prayer. Government-sponsored or organized prayers at athletic events, graduation ceremonies, and even school board meetings send an exclusionary message to students and community members of favoring one religion over others.

Mr. Barr’s views on religious freedom and the separation of church and state raise some concerns—particularly in light of a 1995 article in which he wrote, “[W]e live in an increasingly militant secular age.”¹²

The article laments that “secularists continually seek to eliminate laws that reflect traditional moral norms.” Two examples he cites are the elimination of barriers to divorce and “laws against abortion.”¹³ Mr. Barr further asserts that “... secularists use law as a weapon is to pass laws that affirmatively promote the moral relativist viewpoint ... to ratify, or put on an equal plane, conduct that previously was considered immoral.” As examples he cites a law that would prevent a landlord from discriminating in favor of a married couple over a “cohabitating couple,” and a law that would “compel Georgetown University to treat homosexual activist groups like any other student group.” Referring to the U.S. Supreme Court’s 1992 *Lee v. Weisman* decision prohibiting school-sponsored prayer at public school graduation ceremonies, Mr. Barr also criticizes “efforts to use the Establishment Clause to exclude religiously motivated citizens from participation in public benefits and from the public square generally.”¹⁴

¹⁰ See *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

¹¹ See, e.g., *Engel v. Vitale*, 370 U.S. 421 (1962); *School District of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963), *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290 (2000).

¹² Barr, William P. “Legal Issues in a New Political Order.” *The Catholic Lawyer*. 36: 1-12, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tcl> (1995).

¹³ *Id.* at 8.

¹⁴ *Id.* at 9.

Based on Mr. Barr's positions regarding religious liberty and the separation of church and state, we urge Committee members to ask the nominee questions on these issues:

➤ **What is your position on the constitutional breadth and parameters of the separation between church and state?**

➤ **Do you believe that a non-theist or person who does not observe a faith tradition can be equally as moral as a religiously observant person?**

➤ **Do you support organized prayer at official public school events, including graduation and athletic events? If so, on what basis do you do so, given the U.S. Supreme Court's clear guidance in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000)?**

➤ **Do you believe that faith-based organizations that provide federally-funded social services have the right to discriminate on the basis of religion in hiring for taxpayer-funded jobs?**

➤ **Do you believe that faith-based organizations that provide federally-funded social services have the right to discriminate against beneficiaries who refuse to participate in an organization's privately funded religious activities as a condition of receiving publicly funded services?**

Voting Rights

Voting rights are the keystone of our democracy and ADL believes that the necessity of securing and safeguarding the right to vote for all eligible Americans cannot be underscored enough. Recognizing the Voting Rights Act of 1965 (VRA) as one of the most important and most effective pieces of civil rights legislation ever enacted, ADL has strongly supported the VRA and its extensions since its passage almost 50 years ago. ADL has consistently filed briefs before the U.S. Supreme Court supporting the constitutionality of the VRA, including in *Shelby County v. Holder*.¹⁵

In the role of Attorney General, Mr. Barr would be tasked with protecting the right to vote for all Americans. Because it is not known where Mr. Barr stands on current voting rights issues, we would urge the Committee to ask the nominee the following questions in this area:

¹⁵*Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

- **Do you support the *Shelby County v. Holder* decision? How broad do you believe the Justice Department’s authority is now to enforce the Voting Rights Act?**
- **Overwhelming evidence documents that in-person voter impersonation is almost non-existent; however, clear evidence exists that Voter ID restrictions limit access for minority, poor, old, disabled, and young voters. Do you support voter ID requirements?**

Criminal Justice Reform and Law Enforcement Training

It is well known that the criminal justice system disproportionately impacts minority individuals through systemic biases. In recent years, there have been multiple proposals at both federal and state levels to reform criminal justice and police policies. Some key proposals include: reforming pretrial detention; adopting alternatives to arrest and incarceration for minor, non-violent offenses; appointing special prosecutors in cases of police involvement in fatalities of unarmed civilians and allegations of serious police misconduct; requiring law enforcement officers to wear body cameras; expanding FBI and Justice Department data collection on police use of lethal force; providing treatment, rather than incarceration, for substance abuse and mental health; limiting mandatory minimum sentences to the most serious offenses; ensuring fairness in the selection of jurors and grand jurors; focusing prisons on rehabilitation efforts; and promoting best practices to ease reentry and reduce recidivism.

ADL supported the Sentencing Reform and Corrections Act of 2015, as well as other reform efforts designed to reduce mass incarceration, oppose racism, reform practices that disproportionately impact communities of color, create safe environments for all communities, and build trust between law enforcement and the communities they serve and protect.

ADL is the largest non-governmental provider in the United States for law enforcement training on hate crimes, extremism and terrorism. In recent years, we have welcomed a number of well-crafted police reform initiatives, including the President’s Task Force on 21st Century Policing.¹⁶ ADL has strongly supported the work of the Task Force. In fact, an ADL representative presented testimony before the Task Force focused on our flagship Law Enforcement and Society (LEAS) core values program and a range of other policing practices designed to promote effective crime reduction while building

¹⁶ President’s Task Force on 21st Century Policing 2015, *Final Report of the Task Force on 21st Century Policing*, Office of Community Oriented Policing Services (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

public trust and collaborative relationships between law enforcement officials and the communities they serve and protect.¹⁷

In the past, the Department of Justice has also engaged in leadership work to accomplish police reform and promote improved police-community relations and trust through the Civil Rights Division’s active enforcement of its civil “pattern or practice” authority to address policing that violates the Constitution or other federal laws.

These critically important cases focus on systemic police misconduct and involve very substantial investigations. If the Department does find a pattern or practice of police misconduct, it works with local government and police authorities to address and remedy the situation, usually through a consent decree overseen by a federal court and an independent monitoring team. Immediately before he resigned as Attorney General, Jeff Sessions issued a memorandum outlining new, severely limiting standards and procedures for Justice Department attorneys involving in civil action against a state or local governmental entity that is resolved by consent decree or settlement agreement.¹⁸

In June 2016, the Justice Department announced that every federal law enforcement official and every federal prosecutor would participate in implicit bias training in the coming months. ADL applauded this announcement¹⁹ and had recommended such core-values training initiatives in its submissions to the President’s Task Force on 21st Century Policing.

Mr. Barr’s positions regarding criminal justice reform and law enforcement training raise concerns. As Attorney General, Mr. Barr released a 1992 Justice

¹⁷ Press Release, Anti-Defamation League, President Obama’s Task Force on 21st Century Policing Consults with ADL on Law Enforcement Training (Feb. 14, 2015), <http://www.adl.org/press-center/press-releases/miscellaneous/presidents-task-force-21st-century-policing-consults-adl.html?referrer=https://www.google.com/#.WG-EvCMrKM4>.

¹⁸ *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities*, <https://www.justice.gov/opa/press-release/file/1109621/download>, November 7, 2018.

Vanita Gupta, former Acting Assistant Attorney for Civil Rights, called this memo “another attack on the core mission” of the Department of Justice, which amounted to “a slap in the face to the dedicated career staff” in DOJ’s Civil Rights Division. *Jeff Sessions Dealt Police Reform One Final Blow On His Way Out The Door* <https://www.huffingtonpost.com/entry/jeff-sessions-doj-police-reform-consent-decrees-us-5be5ae51e4b0e84388973547>

¹⁹ Press Release, Anti-Defamation League, ADL Applauds Department of Justice Commitment to Implicit Bias Training (Jun. 27, 2016), <http://www.adl.org/press-center/press-releases/civil-rights/justice-dept-applauded-commitment-to-implicit-bias-training.html?referrer=https://www.google.com/#.WG-JbiMrKM4>.

Department 37-page report entitled “The Case for More Incarceration.”²⁰ In this report, Mr. Barr argued that “there is no better way to reduce crime than to identify, target, and incapacitate those hardened criminals who commit staggering numbers of violent crimes whenever they are on the streets.” Mr. Barr continued, saying that “of course, we cannot incapacitate these criminals unless we build sufficient prison and jail space to house them. Revolving door justice resulting from inadequate prison and jail space breeds disrespect for the law and places our citizens at risk, unnecessarily, of becoming victims of violent crime.”

More recently, Mr. Barr has written extensively on his support for “mandatory minimums.”²¹ Mr. Barr was one of forty signatories to a December 16, 2015 letter to the House leadership entitled “Opposition to S.2123, the ‘Sentencing Reform and Corrections Act of 2015.’” The letter states that “we, the undersigned, are former government officials who were responsible for the preservation of public safety and the pursuit of justice. We know firsthand the value of tough, mandatory minimum sentences.”

Furthermore, Mr. Barr utilized the inconclusive and extensively challenged “Ferguson Effect.” In a November 7, 2018 *Washington Post* opinion piece supporting outgoing Attorney General Jeff Sessions, Mr. Barr, joined by two other former Attorneys General, stated that: “Sessions took office after the previous administration’s policies had undermined police morale, with the spreading ‘Ferguson effect’ causing officers to shy away from proactive policing out of fear of prosecution.”²² Mr. Barr then praised Mr. Sessions’ tactics in combating crime.

Mr. Barr’s views raise concerns that he would maintain and exacerbate the current Justice Department’s restrictions on pattern and practice cases and support policies that lead to discriminatory mass incarceration. Therefore, we would urge the Committee to probe the nominee’s views on criminal justice issues and ask the following questions:

- **Do you believe mass incarceration has a disproportionate impact on communities of color?**
- **What is your view on efforts to address mass incarceration?**

²⁰ US Department of Justice, “The Case for More Incarceration.” 1992, NCJ-I39583, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

²¹ “Opposition to S.2123, the ‘Sentencing Reform and Corrections Act of 2015.’” <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>

²² “We are former attorneys general. We salute Jeff Sessions,” *The 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=.56b43946e122

- **Do you support the use of consent decrees and settlement agreements to address a pattern and practice of police misconduct? Do you support the November 7, 2018 memorandum on settlements and consent decrees issued by former Attorney General Jeff Sessions?**
- **Can you identify specific police misconduct consent decrees entered into by the Obama Justice Department with which you disagree?**
- **Would you commit to reinstating the Justice Department’s important implicit bias training initiative? If not, why not?**
- **Do you still support mandatory minimum sentencing?**
- **What is your view on formerly convicted felons being granted the right to vote?**

LGBTQ Equality

In recent years, the Justice Department had been a powerful voice in support of LGBTQ equality and it was a strong supporter of codifying the constitutionality²³ and importance²⁴ of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), legislation that, among other things, provided authority for FBI investigations and Justice Department prosecutions of certain bias-motivated crimes, including crimes directed at individuals because of their sexual orientation or gender identity. The FBI updated its excellent Hate Crime Training Manual with thoughtful definitions and scenarios to aid police in understanding hate crimes directed against members of LGBTQ communities.²⁵

²³ Robert Raben, *Constitutionality of the Matthew Shepard Hate Crimes Prevention Act: Memorandum Opinion for the Assistant Attorney General Office of Legislative Affairs* (Jun. 16, 2009), https://www.justice.gov/sites/default/files/olc/opinions/2009/06/31/shepard-hate-crimes_0.pdf.

²⁴ Eric Holder, *Attorney General Eric Holder Before the Committee on the Judiciary United States Senate at a Hearing Entitled, ‘The Matthew Shepard Hate Crimes Prevention Act of 2009,’* (Jun. 25, 2009), <https://www.justice.gov/ag/justice-news-3>.

²⁵ Law Enforcement Support Section, *Hate Crime Data Collection Guidelines and Training Manual* (Feb. 27, 2016), <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>.

In the same 1995 *Catholic Lawyer* article referenced above, Mr. Barr objected to the “Moral Relativism” that he believes is undermining “objective standards of right and wrong.”²⁶ In the article, Mr. Barr wrote that:

Moral tradition has given way to moral relativism. There are no objective standards of right and wrong. Each individual has his or her own tastes and we simply cannot say whether or not those tastes are good or bad. Everyone writes their own rule book. So, we cannot have a moral consensus or moral culture in society. We have only the autonomous individual.

And, as previously mentioned, Mr. Barr stated in that 1995 article that another example of “moral relativism” was “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student group. This kind of law dissolves any form of moral consensus in society. There can be no consensus based on moral views in the country, only enforced neutrality.”

More recently, in the same *Washington Post* article referenced above commending former Attorney General Sessions for his work, Mr. Barr also applauded Sessions for rolling back the gender identity statutory protections (to “help restore the rule of law”) first established by the Obama administration.²⁷

ADL strongly supports equality for LGBTQ communities. We urge the Committee to probe the nominee’s views on LGBTQ equality issues and ask questions on the following:

- **Do you believe same-sex marriage equality is the settled law of the land?**
- **Do you believe that individuals should be able to violate federal, state, or local civil rights laws if their non-compliance is grounded in religious or moral objections?**
- **Will you enforce existing protections against LGBTQ discrimination?**

²⁶ Barr, William P. “Legal Issues in a New Political Order.” *The Catholic Lawyer*. 36: 1-12, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tcl> (1995).

²⁷ “We are former attorneys general. We salute Jeff Sessions,” *The 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=.56b43946e122

- **Do you support the President’s ban on transgender service in the military? If so, in light of the testimony from all four service chiefs that there is no impact on morale or readiness as a result of open transgender service and statements by medical and mental health professionals that the Department of Defense’s implementation report on the transgender ban misrepresents established scientific consensus, how do you justify such a ban that targets a specific group because of a personal characteristic?**

Immigration

ADL has advocated for fair and humane immigration policies since its founding in 1913. Most recently, ADL has helped expose anti-immigrant hate that has been a fixture of today’s immigration debate, and has called for a responsible public discourse that will honor America’s history as a nation of immigrants.

The Attorney General and the Department of Justice have tremendous power over immigration law. The Department of Justice has the power to prosecute immigration violations and the responsibility to administer immigration courts. As head of the Department of Justice, the Attorney General oversees the Executive Office for Immigration Review and the Board of Immigration Appeals, giving him or her broad authority over the enforcement of immigration laws and the fate of asylum seekers, which are often life-and-death decisions.

Former Attorney General Jeff Sessions and others have supported changes to the Fourteenth Amendment to deny citizenship to American-born children of undocumented immigrants. The Fourteenth Amendment to the U.S. Constitution states that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state in which they reside.”²⁸ Section 301(a) of the Immigration and Nationality Act similarly codifies that “a person born in the United States, and subject to the jurisdiction thereof,” is a national and citizen of the United States at birth.²⁹ It is long-settled law that “the Fourteenth Amendment affirms the fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens.”³⁰ The right, commonly referred to as “birthright citizenship,” extends equally to all persons born in the United States, regardless of their parents’ citizenship or immigration status.

²⁸ U.S. Const. amend. XIV, § 1.

²⁹ 8 U.S.C. §1401(a).

³⁰ *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898)

In 1991, as the then-Deputy Attorney General, Mr. Barr advocated for the Department of Health and Human Services to stop allowing immigrants with HIV/AIDS to enter the United States.³¹ In a *New York Times* article detailing the debate over whether the immigrants with HIV/AIDS would be allowed to enter, Mr. Barr was among those Justice Department officials who “argued that it was completely impractical for an immigration examiner to make a sophisticated analysis of an alien's infection and health insurance coverage to determine whether that person might become a public charge in 5 or 10 years.” Mr. Barr was ultimately successful in preventing these otherwise-eligible immigrants from entering the country.

In a 2001 oral history project interview, Mr. Barr said that “[o]ne of the biggest problems we have with immigration—or had, I think it’s still a problem—is the abuse of the asylum laws.” He described a system he put in place with the State Department to funnel asylum seekers into six main airports so that U.S. officials could screen people before letting them into the United States.³²

More recently, in a 2017 opinion to the *Washington Post*, Mr. Barr wrote of his support for President Trump’s impactful and discriminatory “Muslim Ban.”³³ In this article, Mr. Barr stated that, in regard to President Trump’s executive order barring immigrants from majority-Muslim countries, he saw “no plausible grounds for disputing the order’s lawfulness.” Mr. Barr also said the “[executive order] falls squarely within both the president’s constitutional authority and his explicit statutory immigration powers. Nonetheless, over the past several days, the left, aided by an onslaught of tendentious media reporting, has engaged in a campaign of histrionics unjustified by the measured steps taken.”

Given the Attorney General’s power over immigration and Mr. Barr’s past support for preventing certain otherwise-eligible immigrants from entering the country and his support for the Muslim travel ban, ADL believes it would be appropriate to question the nominee in depth about his intentions. In particular, we respectfully request that the Committee question him with regard to the following:

³¹ Pear, Robert, “Health Dept. Loses in AIDS Rule Dispute,” *The New York Times* (May 28, 1991) <https://www.nytimes.com/1991/05/28/us/health-dept-loses-in-aids-rule-dispute.html>

³² “William Barr reflects on law-related issues, from the war on drugs to the Gulf War, as a major figure in the Department of Justice,” UVA Miller Center Presidential Oral Histories, Interview Date, April 5, 2001

³³ Barr, William, “Former attorney general: Trump was right to fire Sally Yates,” *The 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=.71744aa8f130

- **How—and to what extent—do you intend to use Department of Justice resources to prosecute immigration cases?**
- **In a 2001 interview you said that “one of the biggest problems we have with immigration—or had, I think it’s still a problem—is the abuse of the asylum laws.” You then discussed a plan you put in place to limit the number of people who made it into the United States to seek asylum by pre-screening them overseas. Do you believe that the asylum laws are still being abused? What do you think are U.S. obligations toward those seeking asylum under U.S. and international agreements?**
- **Do you believe that immigrants, including undocumented immigrants, have due process rights? Do you believe that people who have overstayed their visas should be prosecuted and sentenced to time in jail or prison? Do you believe that people who re-enter the country unlawfully after a removal should be prosecuted and sentenced to time in jail or prison?**
- **What is your position regarding the status of people who received Deferred Action for Childhood Arrivals?**
- **If the federal government were to pass a law withholding federal funding from so-called “sanctuary cities,” how would you prioritize Department of Justice resources to file charges against cities that did not comply?**
- **Would you defend the civil rights of people with undocumented parents who had received citizenship by virtue of being born in the United States? If so, would that include the rights of those children to attend public schools? If not, on what basis do you hold that view, given the Supreme Court’s clear guidance in *Plyler v. Doe*, 457 U.S. 202 (1982)?**

We know you share our view of the importance of the Senate's "advice and consent" role in the nomination process and we very much appreciate your leadership in addressing the important issues raised in this letter. We trust that the nominee's answers to Committee members' questions on these areas of interest and concern will help in the Committee's overall evaluation of Mr. Barr for the important position of United States Attorney General.

Sincerely,



Esta Gordon Epstein
National Chair



Jonathan A. Greenblatt
CEO and National Director