



January 10, 2019

The Honorable Lindsay Graham, Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Diane Feinstein, Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Earthjustice Concerns with the Attorney General Nomination of William Barr

Dear Chairman Graham and Ranking Member Feinstein:

Earthjustice writes today to express serious concerns about the nomination of William Barr to serve as Attorney General of the United States.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice ("DOJ"), the Attorney General is responsible for safeguarding our civil and constitutional rights, including our right to live free from toxic air and polluted waters. That is a core and enduring mission of the Justice Department, and the nation needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality.

This matters across every aspect of American society, including for addressing the environmental and human health impacts of pollution, impacts that disproportionately burden low-income communities and communities of color. Moreover, the Attorney General must operate with integrity and independence in service to the people, not the president or certain big money special interests. Based on his record, Earthjustice has grave misgivings about Mr. Barr's commitment to fully upholding and enforcing the law, and exercising the independence that the office of Attorney General demands.

For the past two years, the Justice Department was led by an Attorney General intent on restricting civil and human rights at every turn.¹ From rollbacks in environmental enforcement, voting rights enforcement and LGBTQ rights, to attacks on access to justice and extreme immigration policies, Attorney General Jeff Sessions used his office to carry out the extreme, anti-civil rights and anti-environmental agenda he had advanced for decades in the U.S. Senate. This brand of leadership puts people's lives, health, and wellbeing in peril, exacerbates inequities, and increases burdens for already vulnerable communities.

In a recent op-ed, Mr. Barr called Mr. Sessions "an outstanding attorney general" and offered praise for his policies, many of which undermined civil rights.² This is a telling indication that Mr. Barr would continue the deeply disturbing anti-civil rights policies and priorities of the past two years, policies that disproportionately burden vulnerable communities (including communities affected by environmental degradation and pollution). We will continue to review Mr. Barr's record, but what has been uncovered thus far bears this out.

In addition to his troubling positions on environmental enforcement, his views on issues like criminal justice reform, LGBTQ equality, immigrant rights, and reproductive freedom suggest a philosophical motivation that is hostile to the fierce defense of the rights and wellbeing of historically marginalized communities and people in need.

¹ <https://civilrights.org/trump-rollbacks/>.

² 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=.6996b10fe367.



With regard to environmental enforcement, DOJ under AG Sessions saw a 90% reduction in corporate penalties during the first year of the Trump Administration, from \$51.5 billion to a mere \$4.9 billion.³ This inexcusable lack of enforcement of corporate wrongdoing (much of it causing serious environmental harm) will encourage unlawful behavior and further tip the scales against environmental justice. We are deeply concerned that Mr. Barr's public praise for AG Sessions' policies mean he cannot be relied upon to protect our air, water and climate. Mr. Barr should detail for the Committee whether he agrees with this or whether he would reverse this startling abdication to corporate malfeasance under AG Sessions. America needs and deserves an Attorney General who will take into account the health and safety of all communities.

Mr. Barr should be asked to publicly reject the ill-conceived 2017 "Sessions Memo" implementing a ban on the practice of third party settlements.⁴ All too often, marginalized and disenfranchised communities bear the brunt of environmental harms caused by violations of federal clean air and water laws. Supplemental Environmental Projects (SEPs) included in DOJ settlements with polluters have proved to be valuable mechanisms to accomplish environmental justice in these communities. Mr. Barr must commit to reversing the Sessions' ban on these protections.

With regard to other matters that bear on Mr. Barr's views of equity and justice, and his treatment of vulnerable and historically marginalized communities, in the George H.W. Bush administration, Mr. Barr's draconian approach to law enforcement fostered a system of mass incarceration that disproportionately harmed communities of color across America.⁵ He endorsed a 1992 Justice Department report entitled "The Case for More Incarceration."⁶ More recently, he has been a vocal supporter of harsh mandatory minimum sentences,⁷ and he has alleged, inaccurately, that the Obama administration's pro-reform policies "undermined police morale ...causing officers to shy away from proactive policing out of fear or prosecution."⁸ These views are especially troubling at a time when there is overwhelming support from individuals across the political spectrum to reform the justice system.

Mr. Barr has expressed similarly disturbing views with regard to LGBTQ equality. In a 1995 law review article, he argued for a return to "traditional morality" based on "natural law," and he criticized a Washington, D.C. law that prohibited Georgetown University from discriminating against LGBTQ student groups whose conduct he called "immoral."⁹ Mr. Barr has also advocated against interpreting federal laws to include gender identity,¹⁰ a position at odds with the holdings of many federal courts.

Mr. Barr has also expressed a willingness to tolerate or even embrace discriminatory policies with regard to immigration. For example, he expressed support for President Trump's discriminatory Muslim ban, calling it "squarely within both the president's constitutional authority and his explicit statutory immigration powers."¹¹ Multiple federal courts rejected that position and struck down this version of the

³ Public Citizen 2018 report at 13 (see <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>).

⁴ <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

⁵ <https://slate.com/news-and-politics/2018/12/william-barr-jeff-sessions-new-attorney-general.html>.

⁶ <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

⁷ <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.

⁸ 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=.6996b10fe367.

⁹ <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2355&context=tcl>.

¹⁰ 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=.6996b10fe367.

¹¹ 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=.6db0727dd0d0.



ban as unconstitutional. And in 1992, Barr advocated for the inhumane policy of prohibiting HIV-positive immigrants approved for political asylum from entering the United States.¹²

Mr. Barr's willingness to independently and dispassionately uphold the law – to exercise judgment uninfected by politics – is also in doubt. In this regard, Mr. Barr has been a vocal political supporter of President Trump and critic of the Mueller investigation, suggesting that the FBI should be investigating Hillary Clinton, and defending President Trump's disturbing decisions to fire Acting Attorney General Sally Yates and FBI Director James Comey. And the *Washington Post* has noted the hypocrisy of Mr. Barr's criticism of some of Mueller prosecutors who have made a handful of political contributions to Democratic candidates, while Mr. Barr himself has made over \$500,000 to Republican candidates.¹³

The weight of this evidence suggest that Mr. Barr would continue the recent trend within the Department of Justice of abdicating its duties to enforce the laws that protect human health and the environment, and undermining civil rights and other legal protections for the most vulnerable people in America. These are so often the people who already bear the greatest burdens, and people with whom Earthjustice works in partnership to address inequity, pollution impacts, environmental burdens, and to protect and defend the right to access the justice system.

Conclusion

Precisely because of the serious threats to our democracy posed by concerns about Mr. Barr's independence, we must be especially vigilant about the implications for his service as Attorney General on federal civil rights and environmental enforcement. Defending these rights must remain a top priority for members of the Senate Judiciary Committee when Mr. Barr comes before them for his confirmation hearing in coming days. Mr. Barr bears the burden of demonstrating he will not continue the environmental lawlessness and civil rights rollbacks we have seen during this administration. In addition, senators must secure assurances that Mr. Barr will adhere to the highest standards of ethics and independence – for example, by recusing himself from the Russia investigation in light of his past comments.

The Justice Department and the nation need an Attorney General who will make a dramatic course correction and begin to enforce our federal civil and environmental rights laws with vigor and independence. William Barr is unlikely to do so. The American public deserve equal access to justice and equitable treatment under the law, and the Senate Judiciary Committee should demand no less of the next Attorney General.

Sincerely,

Abigail Dillen
President
Earthjustice

¹² http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house.

¹³ https://www.washingtonpost.com/investigations/trump-has-blasted-muellers-team-for-political-donations-but-attorney-general-nominee-william-barr-has-given-more-than-500000/2018/12/11/dce5974a-fcb0-11e8-862a-b6a6f3ce8199_story.html?utm_term=.e3d73531cf84