



**NATIONAL LATINA
INSTITUTE FOR
REPRODUCTIVE HEALTH**
Salud | Dignidad | Justicia



January 14, 2019

The Honorable Lindsey Graham, Chairman
Senate Committee on the Judiciary
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking Member
Senate Committee on the Judiciary
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Reproductive Justice Groups Oppose Confirmation of William Barr

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary:

We, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum, and the National Latina Institute for Reproductive Health, write to express our strong opposition to the confirmation of William Barr to serve as Attorney General at the U.S. Department of Justice ("DOJ").

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination.

Given our commitment to Reproductive Justice, we are deeply troubled by William Barr's nomination. His record demonstrates hostility towards communities of color, women, LGBTQ people, and immigrants, as well as a disregard for fundamental constitutional and civil rights. The United States Attorney General's job is to fairly and impartially enforce civil rights, but, in light of his record, we believe this nominee lacks the qualifications to provide the respected and principled leadership required of the office.

Reproductive Rights

Mr. Barr has established a clear record of hostility towards reproductive rights during both his tenure as Attorney General under the George H.W. Bush administration and in his personal capacity since holding that office. On the broader health care front, he has consistently opposed the Affordable Care Act (ACA), and specifically targeted provisions providing contraceptive



coverage for the insured. Mr. Barr was responsible for authoring two amicus briefs in cases that would strip vulnerable populations of critical health care services. In *Commonwealth of Virginia v. Sebelius*, he argued against the constitutionality of the ACA, incorrectly asserting that it was simply a mechanism by which Congress sought to force healthy patients into the insurance market.¹ In *Zubik v. Burwell*, his brief advocated against the ACA birth control benefit.² Mr. Barr's position in these two cases indicates that he would not support access to health insurance coverage or services, or the ability for individuals to access the full range of health care they need with dignity.

Mr. Barr also has odious views on the right to abortion care. Of note, during his 1991 nomination hearing, Mr. Barr stated that he does not believe that the right to privacy extends to abortion and that *Roe v. Wade* should be overturned.³ He confirmed that view when he expressed his disappointment in the Supreme Court's ruling to uphold abortion rights in *Planned Parenthood v. Casey*.⁴ Mr. Barr further demonstrated his hostility towards the constitutional right to abortion care when, as Attorney General, he sent a letter to the Senate expressly opposing the Freedom of Choice Act, landmark legislation that would codify *Roe v. Wade*.⁵ Mr. Barr also played a pivotal role in the DOJ's intervention in several cases in support of anti-abortion protesters who were blocking access to abortion clinics, actions contrary to the DOJ's responsibility to enforce the Freedom of Access to Clinic Entrances Act.⁶ Not only has Mr. Barr stated that he believes *Roe v. Wade* was wrongly decided, but he has also blamed the ruling for a "breakdown in traditional morality."⁷ Moreover, he has long term associations with groups with known hostility towards abortion rights. The Attorney General's job is to enforce civil rights, yet, Mr. Barr has indicated time and time again that he would not meet his responsibility to enforce people's right to access reproductive healthcare services.

Immigration

Mr. Barr also has a disturbing history with regards to immigration policies. During his tenure at the DOJ, he led a concentrated effort to target undocumented individuals. Mr. Barr sanctioned the hiring of hundreds of Border Patrol agents and INS investigators, as well as the fortification of the border and expansion of detention spaces.⁸ He also created the National Criminal Alien

¹ Commonwealth of Virginia, ex rel. Kenneth T. Cuccinelli, II, in his official capacity as Attorney General of Virginia, Plaintiff-Appellee/Cross-Appellant, v. Kathleen Sebelius, Secretary of the Department of Health and Human Services, in her official capacity, Defendant-Appellant/Cross-Appellee., 2011 WL 1251261 (C.A.4).

² *Zubik v. Burwell*, 2016 WL 155631 (U.S.), 5 (U.S.,2016).

³ Barr Confirmation Hearing Day 2, C-Span, Nov. 13, 1991, <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2&start=1717>

⁴ Grayer, "AG nominee William Barr in 1992 CNN interview: *Roe v. Wade* 'will fall'," CNN, Jan. 11, 2019, <https://www.cnn.com/2019/01/09/politics/william-barr-roe-v-wade-abortion/index.html>

⁵ LaFraniere, "Barr Attacks Abortion-Rights Bill," March 4, 1992, https://www.washingtonpost.com/archive/politics/1992/03/04/barr-attacks-abortion-rights-bill/2d29aae7-ad69-43c5-b1cf-4c5018139cef/?utm_term=.9224543eb021

⁶ Pieklo, "William Barr Once Said '*Roe v. Wade*' Should Be Overturned", Dec. 7, 2018, <https://rewire.news/article/2018/12/07/william-barr-once-said-roe-v-wade-should-be-overturned/>

⁷ *Supra*, note 4

⁸ Compoy, "Trump's pick for attorney general once fought to keep refugees in Guantanamo Bay," Quartz, Dec. 10, 2018, <https://qz.com/1488368/trumps-attorney-general-pick-william-barr-fought-to-keep-refugees-in-guantanamo/>



Tracking Center, a predecessor to more recent efforts to get local law enforcement departments to assist the federal government in identifying and detaining undocumented immigrants.⁹

Mr. Barr also sought to keep Haitian refugees out of the United States. Specifically, he oversaw the detention of Haitian refugees in Guantanamo Bay while their asylum requests were being processed.¹⁰ He further targeted Haitian refugees living with HIV, essentially holding them at Guantanamo Bay indefinitely while forcing them to meet a “higher standard” to prove their asylum claims.¹¹

Moreover, if confirmed, Mr. Barr would likely continue to promulgate the current administration’s problematic immigration policies. Similarly to the current administration’s controversial proposal to erect a border wall between the United States and Mexico, during his tenure in the DOJ, Mr. Barr had proposed a plan to build a steel fence on the border of San Diego and Tijuana.¹² He also wrote an op-ed in 2017 justifying and supporting the current administration’s discriminatory Travel Ban despite the fact that several federal courts rejected that position and struck down this version of the ban as unconstitutional.¹³ In addition, while at the DOJ, Mr. Barr’s policies perpetuated inaccurate and dangerous views of immigrants as “criminal aliens involved in street gangs,” rhetoric that is currently prominent in the national discourse and must be countered.¹⁴ As the head of the DOJ, Mr. Barr will have the responsibility to ensure immigrants are treated with dignity and respect as they navigate the immigration process. However, Mr. Barr’s record shows that he would instead utilize inhumane methods to inform and enforce immigration policies.

LGBTQ Rights

Mr. Barr has also repeatedly asserted that he does not believe LGBTQ individuals deserve fundamental civil rights, including the right to live free from discrimination. While serving as Attorney General, Mr. Barr criticized a nondiscrimination statute in the District of Columbia that required Georgetown University to treat an LGBTQ student group (whom Barr described as “homosexual activist[s]”) as it did other student groups, arguing that, “this kind of law dissolve[s] any kind of moral consensus in society.”¹⁵ Moreover, he recently praised the DOJ’s move to withdraw “policies that expanded statutory protections based on gender identity that Congress had not provided in law,” and the DOJ’s participation in cases seeking to create a legal

⁹ *Id.*

¹⁰ *Id.*

¹¹ Smith, “‘A stain on U.S. history’: Trump’s attorney general pick used Guantanamo Bay to hold thousands of Haitian refugees,” CBS News, Dec. 10, 2018, <https://www.cbsnews.com/news/william-barr-attorney-general-nominee-asylum-seekers-haiti-hiv-positive-patients-guamtamano-bay-2018-12-10/>

¹² Lind, “Attorney general nominee William Barr will fit right in with Trump’s immigration agenda,” Vox, Dec. 7, 2018, <https://www.vox.com/2018/12/7/18128926/william-barr-trump-nomination-attorney-general-jeff-sessions>

¹³ Barr, “Former Attorney General: Trump was right to fire Sally Yates,” Washington Post, Feb. 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?noredirect=on&utm_term=.9b9e2386159e

¹⁴ *Supra*, note 12

¹⁵ See William P. Barr, *Legal Issues in A New Political Order*, 36 *Cath. Law.* 1 (1995) (discussing *Gay Rights Coalition v. Georgetown Univ.*, 536 A.2d 1 (D.C. Cir. 1987)).



right for business owners to have a religious license to discriminate against LGBTQ people.¹⁶ The views Mr. Barr has expressed blatantly ignore the overwhelming trend of circuit and district court authority holding that discrimination based on sexual orientation or gender identity is unauthorized discrimination based on sex.¹⁷ Given Mr. Barr's explicit disregard for LGBTQ equality, we are deeply concerned about his ability to enforce critical legal protections for this community.

Criminal Justice Reform

During his tenure as Attorney General during the George H.W. Bush Administration, Mr. Barr advocated for and supported mass incarceration and building more prisons, stating “we cannot incapacitate these criminals unless we build sufficient prison and jail space to house them.”¹⁸ These beliefs have not changed. In 2015, Mr. Barr, in his personal capacity, signed on to a letter in opposition to the Sentencing Reform and Correction Act of 2015.¹⁹ The letter criticized the Act's attempt to reduce mandatory minimums and the retroactivity of the Act's provisions. In fact, the letter praised the justice system as it currently stands, despite broad community consensus that the system is deeply flawed. The letter argued that “our current determinate sentencing structure strikes the right balance between Congressional direction in the establishment of sentencing levels and the preservation of public safety.” These beliefs fail to recognize the inhumane and unjust effects of policies such as mass incarceration and harsh mandatory minimums on communities of color. If confirmed, Mr. Barr would stymie needed criminal justice reform in favor of perpetuating a system that is rooted in the oppression of vulnerable communities.

* * *

For women of color, threats to not only reproductive rights but also LGBTQ equality, immigrant justice, and criminal justice reform are threats to our bodily autonomy and undermine our ability to make decisions for our own lives and families. Undermining laws and policies aimed at protecting individuals from discrimination based on their sexual orientation or gender identity harms the ability of those who are most marginalized, specifically women, queer, and gender non-conforming people of color, to sustainably provide for the families that they have or hope to grow with dignity. Furthermore, the detention and deportation of immigrants denies immigrant women the autonomy and agency to parent or not parent without fear of violence, coercion, or

¹⁶ See William P. Barr, Edwin Meese III and Michael B. Mukasey, *We are former attorneys general. We salute Jeff Sessions*, Washington Post (Nov. 7, 2018), available at 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?noredirect=on&utm_term=.7fe9f643950b.

¹⁷ See *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018); *Zarda v. Altitude Express*, 855 F.3d 76 (Apr. 18, 2017); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017); *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017); *Dodds v. U.S. Dept. of Education*, 945 F.3d 217 (6th Cir. 2016); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000).

¹⁸ “The Case for More Incarceration,” Office of Policy Development, Department of Justice, Report 1992 NCJ-139583, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

¹⁹ Jeff Sessions, et al., Dear Colleague Letter: Sentencing Reform and Corrections Act of 2015, S. 2123 (Dec. 16, 2015), [nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf](https://www.nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf).



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voice
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family separation. Finally, criminal justice reform can have severe consequences for women of color, as women of color are disproportionately criminalized for pregnancy outcomes and experience cruel treatment, like shackling, while pregnant and incarcerated.

It is the duty of the Attorney General to uphold and enforce the civil rights laws of the United States. Having an Attorney General who is committed to safeguarding the civil rights necessary to protect individuals who face discrimination based on their intersecting identities is critical to ensuring that we have a just society in which we can make decisions about our bodies and lives free from discrimination and coercion. However, given Mr. Barr's consistent record of disregard for the most vulnerable populations' fundamental civil rights, we do not believe that he will be able to effectively execute his duty to ensure equal justice under the law. For the foregoing reasons, we urge you to strongly oppose the confirmation of William Barr to serve as the United States Attorney General.

Sincerely,

In Our Own Voice: National Black Women's Reproductive Justice Agenda
National Asian Pacific American Women's Forum
National Latina Institute for Reproductive Health