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June 4, 2019

Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

RE: The Department of Justice's consent decree and criminal justice policies

Dear Attorney General Barr:

On behalf of The Leadership Conference on Civil and Human Rights (The Leadership Conference), a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and the undersigned organizations, we write to express our grave concerns with the U.S. Department of Justice's (DOJ or the Department) policies regarding civil rights consent decrees and settlement agreements – an issue that impacts the communities we represent.

Today, DOJ will host a listening session with civil rights organizations presumably about its November 7, 2018 memorandum – “Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities”¹ (Litigation Guidelines for Civil Consent Decrees and Settlements) – relating to Department lawsuits involving law enforcement agencies that have allegedly violated the civil rights of the communities they serve. We note at the outset that while we have serious concerns about the impact the memorandum may have on federal agreements with law enforcement, as detailed below, the memorandum itself is written in broad terms and will impact all DOJ agreements with state and local governments to resolve lawsuits filed by Department attorneys involving claims of discrimination and/or violations of constitutional or federal law in several areas, including education, voting, housing and employment. These agreements are vital to bringing state and local government officials in compliance with the U.S. Constitution and civil rights laws the Department is authorized to enforce. Accordingly, our critique of the Department's guidelines as it relates to law enforcement civil agreements may also apply to agreements with other state and local entities.

We write now to present several issues: 1) the process the Department used to engage with civil rights organizations and determine invitees for its upcoming listening session on consent decree policies; 2) the Department's failure to respond adequately to several inquiries and opposing views made by some of the undersigned organizations regarding the Department's policies and practices concerning oversight of state and local law enforcement; and 3) outstanding concerns with the directive outlined in the Department's November 7, 2018 memo, “Litigation Guidelines for Civil Consent Decrees and Settlement Agreements.”

The Department's Listening Session on Policing Consent Decrees and Settlement Agreements Excludes Key Civil Rights Organizations and Stakeholders.

Hearing from and incorporating the views of the organizations that specialize in protecting rights established by the Constitution and laws of the United States ensures the soundness and efficacy of the Department's consent decree policies. Given the critical role that consent decrees play in addressing systemic constitutional and statutory violations in the justice system, we trust that you will appreciate the importance of including all organizations that have expertise and experience collaborating with law enforcement and communities to address patterns or practices of unconstitutional policing. As we have done in the past, under various administrations, we stand ready to offer our collective experience in policing and justice reform with the goal of aiding the Department in effectively enforcing the law and ensuring the fair and impartial administration of justice.

On March 14, 2019, The Leadership Conference wrote to you on behalf of several of the undersigned organizations to request a meeting on policing and justice reform. We made this request based on the promise you made to Senator Kamala Harris at your Senate confirmation hearing on January 15, 2019 to meet with civil rights organizations on these issues. Our purpose was to open the lines of communication between the Department and our organizations to address the issues about consent decrees raised by members of the Senate Judiciary Committee during your confirmation hearings. Unfortunately, after completing an initial meeting request form, your office denied/ignored our request without further explanation.²

Several weeks after our initial request was ignored/denied, we learned that the Department was hosting a "listening session" on the Litigation Guidelines for Civil Consent Decrees and Settlement Agreements in policing. Yet most of the organizations who submitted information for the original meeting request did not receive an invitation; rather, DOJ excluded many of the undersigned organizations that have successfully addressed unconstitutional policing practices in communities across the country. In our view, the decision not to include certain organizations severely limits the Department's ability to learn about and consider the critical civil rights and public safety issues at stake. We urge the Department to include the undersigned organizations in future meetings on these and other important civil rights issues.

The Department Failed to Respond to Prior Inquiries Regarding its Policies and Practices – Specifically Related to Oversight of State and Local Police.

During the confirmation hearings of former Attorney General Jeff Sessions, he expressed a disregard for the use of consent decrees as a tool to address unconstitutional policing. Consistent with his personal beliefs, in March 2017, then-Attorney General Sessions ordered the Deputy Attorney General and Associate Attorney General to "immediately review all Department activities – including collaborative investigations and prosecutions, grant making, technical assistance and training, compliance reviews, existing or contemplated consent decrees, and taskforce participation – to ensure they fully comply with the principles outlined above."³

The consent decree process promotes public safety and the rule of law by insisting that law enforcement agencies correct unconstitutional patterns and practices exacerbating law enforcement officers' lack of legitimacy in the eyes of the public, and incapacitating officers' ability to perform their essential mission. The principles in former Attorney General Sessions' directive, purportedly to use Department resources to promote a peaceful and lawful society where the civil rights of all persons are protected, actually abdicate DOJ's obligation to enforce civil rights laws by underscoring that "it is not the responsibility of federal government to manage non-federal law enforcement agencies."⁴ In fact, however, the Department has the authority to investigate and sue state and local law enforcement agencies that engage in a pattern or practice of violating the constitutional and statutory rights of the communities they serve.⁵ Then, contradicting its own principles, in October 2018, the Department filed a Statement of Interest Opposing the Proposed Consent Decree in the case of *State of Illinois v. City of Chicago*, a lawsuit filed by the Illinois Attorney General, a non-federal law enforcement agency, against the Chicago Police Department.⁶ Leadership Conference members, such as the NAACP Legal Defense and Educational Fund, supported policing reform efforts of Chicago officials and residents and identified the inconsistencies of the Department's position in its letter supporting the state-initiated consent decree.⁷

In September 2017, the Department notified local law enforcement executives and the communities they serve that DOJ would no longer provide nonlitigation, collaborative reform assessments of police practices and policies stating that it was "a course correction to ensure that resources go to agencies that require assistance rather than expensive wide-ranging investigative assessments that go beyond the scope of technical assistance and support."⁸ This course correction ignored the fact that police executives requested the assistance because they believed it was required to build trust with communities, usually following a police-involved shooting.⁹

Anticipating that the Department would also limit its authority to sue law enforcement agencies and enter into federal agreements, The Leadership Conference, along with the ACLU and the NAACP Legal Defense and Educational Fund, issued FOIA requests and a letter to the Department detailing our concerns with Department policing reform efforts, including through consent decrees and settlement agreements. We have included those materials as attachments to this letter for your reference, as we are still awaiting adequate responses.¹⁰

Finally, in November 2018, on his last day in office, then-Attorney General Jeff Sessions issued a memorandum outlining the Department's new policy on Consent Decrees and Settlement Agreements. The press release announcing the new policy stated that the Department is "committed to ensuring that its practices [related to consent decrees] are transparent, impartial, and consistent with fundamental constitutional principles, including democratic control and accountability."¹¹ The Leadership Conference expressed the coalition's concerns with DOJ's new policies in a statement, calling the Sessions November memo "another attack on the core mission of the Department of Justice" and "a slap in the face to the dedicated career staff of the Department who work tirelessly to enforce our nation's civil rights laws."¹²

Outstanding Concerns with the Department’s November 7, 2018 memo, “Litigation Guidelines for Civil Consent Decrees and Settlement Agreements.”

The Department’s guidelines inappropriately focus on potential impositions placed on state and local governments found to have violated civil rights laws instead of DOJ’s obligation to protect the civil rights of aggrieved individuals and communities. Further, they severely curtail the use of consent decrees to address systemic constitutional violations by police departments. For example, the litigation guidelines place significant obstacles to seeking and entering into consent decrees and set an unreasonable presumption that consent decrees should not last longer than three years to address violations that in many cases occurred over decades.¹³ Also, the litigation guidelines oddly require agreements to create incentives for independent monitors to “encourage early compliance with and conclusion of the settlement agreement or consent decree.” It is not the monitor’s job to encourage “early” compliance. It is the job of an independent monitor to provide an objective assessment of the department’s progress and encourage full and effective compliance with the agreement’s requirements.

The shift in approach to addressing systemic constitutional violations by police departments has caused alarm within the civil and human rights community, especially given the continued prevalence of high-profile incidents involving the fatal use of force by law enforcement against unarmed people in cities such as Falcon Heights (Minnesota), Tulsa (Oklahoma), Pittsburgh, and Dallas. Nationally, nearly 1,000 people die each year following use of force by police, including: 986 deaths in 2017; 992 in 2018; and 372 to date in 2019.¹⁴

Our organizations, on behalf of the communities we represent, oppose the Department’s new policy because it undermines the federal government’s most effective tool for ensuring constitutional policing practices by police departments. In our view, law enforcement is charged with protecting and serving our communities and defending the rights guaranteed by the U.S. Constitution – a mission police officers across the country carry out with dignity and honor. Yet, law enforcement, along with policing policies and practices, regularly fail to adequately protect communities of color and at times have been the source of constitutional violations. The Department of Justice, specifically the Civil Rights Division’s Special Litigation Section, has employed the authority granted to the Attorney General by Congress to effectively address unconstitutional conduct by law enforcement agencies and implement reforms where evidence has demonstrated a pattern or practice of misconduct and discrimination in policing. Without exercising its authority, the Department cannot fulfill its obligation to ensure that the constitutional rights of every person in the United States are upheld and respected. For these reasons, we urge you to rescind the November 2018 memo and ensure the Department has the resources necessary to investigate and enforce existing consent decrees and settlement agreements.¹⁵

Finally, against this backdrop, it is important to note we are equally concerned with this Department’s record on criminal justice reform under the Trump administration. Former Attorney General Jeff Sessions revoked the “Smart on Crime” guidance and urged prosecutors to pursue the maximum penalties for drug offenses.¹⁶ This guidance helped to substantially reduce the federal prison population by focusing scarce Department resources on more significant drug cases and fewer mandatory minimums.¹⁷ guidance remains in place. Additionally, this Department has used public concern over the overdose crisis to

escalate the war on drugs, even asking prosecutors to consider the death penalty in certain drug cases, especially fentanyl.¹⁸ These actions by the Department contradict the Trump administration's stated public support for "second chances" and the bipartisan commitment to reforming our justice system. We urge you to rescind the Sessions memo and reinstate the "Smart on Crime" guidance.

We look forward to hearing from you regarding the steps the Department will take to engage the civil and human rights community to ensure that the Department's policies on consent decrees (including its evaluation processes) are fully informed and to exercise its authority to promote and protect civil and human rights. If you require additional information, you may contact Sakira Cook, Director, Justice Reform Program, at cook@civilrights.org or 202-466-3311. Thank you for your time and we look forward to speaking with you soon.

Sincerely,

The American Civil Liberties Union
The Drug Policy Alliance
Human Rights Campaign
Human Rights Watch
The Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
NAACP
NAACP Legal Defense and Educational Fund
The National Fair Housing Alliance
National Urban League
UnidosUS

¹ Sessions, Jefferson Beauregard. "Supporting Federal, State, Local, and Tribal Law Enforcement." *Office of the Attorney General*, 31 March 2017, <https://www.justice.gov/opa/press-release/file/95496/download>.

² Lucius, Kristine. "RE: Scheduling Request: Attorney General Barr / The Leadership Conference on Civil and Human Rights." Received by AG85.Schedule@usdoj.gov, 15 April 2019. Correspondence referenced here is [attached](#).

³ Sessions, Jefferson Beauregard. "Supporting Federal, State, Local, and Tribal Law Enforcement." *Office of the Attorney General*, 31 March 2017, <https://www.justice.gov/opa/press-release/file/954916/download>.

⁴ Sessions, Jefferson Beauregard. "Supporting Federal, State, Local, and Tribal Law Enforcement." *Office of the Attorney General*, 31 March 2017, <https://www.justice.gov/opa/press-release/file/954916/download>.

⁵ 34 U.S.C. § 12601 (previously codified at 42 U.S.C. 14141).

⁶ Sessions, Jefferson Beauregard, et al. "United States' Statement of Interest Opposing Proposed Consent Decree." *United States District Court for the Northern District of Illinois Eastern Division*, 12 Oct 2018, <https://www.justice.gov/opa/press-release/file/1100631/download>

⁷ "NAACP Legal Defense Fund Submits Comments on Proposed Chicago Consent Decree." *Legal Defense and Educational Fund, Inc.*, 12 Oct. 2018, <https://www.naacpldf.org/press-release/naacp-legal-defense-fund-submits-comments-proposed-chicago-consent-decree/>.

⁸ Washington, Russell. Letter to Chief Edward Driggers. *Office of Community Oriented Policing Services*, 19 Sep 2017, https://www.charlestoncitypaper.com/media/pdf/north_charleston_-_collaborative_reform_notification.pdf

⁹ Kacner, Krystle. "Department of Justice starts Collaborative Reform Initiative with Milwaukee Police Department." *Fox 6 Now*, 17 Dec 2015, <https://fox6now.com/2015/12/17/dept-of-justice-starts-collaborative-reform-initiative-with-milwaukee-police-dept/>; Williams, Pete. "Feds to Review North Charleston Cops After Walter Scott Shooting." *NBC News*, 17 May 2017, <https://www.nbcnews.com/news/us-news/feds-review-north-charleston-cops-after-walter-scott-shooting-n575446>.

¹⁰ [Lucius, Kristine, et al. Letter to Nelson D. Hermilla](#), 4 Jan 2018; [Lucius, Kristine, et al. Letter to Chaun E. Eason](#), 4 Jan 2018; [Lucius, Kristine, et al. Letter to Dorothy Lee](#), 4 Jan 2018; Lucius, Kristine and Jesselyn McCurdy. [Letter to Jefferson Beauregard Sessions](#), 17 Oct 2017. All correspondence referenced here are attached.

¹¹ “Justice Department Releases Memorandum on Litigation Guidelines for Civil Consent Decrees and Settlement Agreements.” *U.S. Department of Justice*, 8 Nov 2018, <https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and>.

¹² See, e.g., The Leadership Conference, “*Sessions Gutted Key Tool for Department of Justice to Fix Unconstitutional Conduct*,” 8 Nov. 2018, <https://civilrights.org/2018/11/08/sessions-gutted-key-tool-for-department-of-justice-to-fix-unconstitutional-conduct/>

¹³ See, e.g., U.S. Dep’t of Justice, *et al*, *Investigation of the Cleveland Division of Police*, 5, Dec. 4, 2014 (stating “the current pattern or practice of constitutional violations is even more troubling because we identified many of these structural deficiencies more than ten years ago during our previous investigation of CDP’s use of force.”)

¹⁴ Fatal Force Database 2019. *Washington Post*, (last updated May 23, 2019), https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/?utm_term=.87b5297ef4dd.

¹⁵ “Civil Rights Division Special Litigation Section Attorney.” *U.S. Department of Justice*, updated 31 May 2019, <https://www.justice.gov/legal-careers/job/trial-attorney-338>.

¹⁶ Horwitz, Sari and Matt Zapotosky. “Sessions issues sweeping new criminal charging policy.” *The Washington Post*, 12 May 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=.a135a965cbfd.

¹⁷ “New Smart on Crime Guidance Reveals Federal Prosecutors Are Focused on More Significant Drug Cases and Fewer Mandatory Minimums for Drug Defendants.” *U.S. Department of Justice*, 21 March 2016, <https://www.justice.gov/opa/pr/new-smart-crime-data-reveals-federal-prosecutors-are-focused-more-significant-drug-cases-and>

¹⁸ Lopez, German. “Read: Jeff Sessions’ memo asking federal prosecutors to seek the death penalty for drug traffickers.” *Vox Media*, 21 Mar 2018, <https://www.vox.com/policy-and-politics/2018/3/21/17147580/trump-sessions-death-penalty-opioid-epidemic>.