



**STATEMENT OF
WADE HENDERSON, INTERIM PRESIDENT & CEO,
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**HEARING ON
THE NOMINATION OF JUDGE MERRICK GARLAND TO BE ATTORNEY
GENERAL**

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
FEBRUARY 23, 2021**

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Chairman Durbin, Ranking Member Grassley, and members of the committee: I am Wade Henderson, interim president and CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to speak on behalf of The Leadership Conference in support of the confirmation of Judge Merrick Garland to be the next United States Attorney General.

The Leadership Conference on Civil and Human Rights is the nation's oldest, largest, and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 220 national organizations and provides a powerful unified voice for the many constituencies of the coalition: people of color, women, children, people with disabilities, LGBTQ people, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. I am privileged to bring the voices of this community to today's hearing.

The Recent Erosion of the Department of Justice's Sacred Duty

The Leadership Conference has been profoundly troubled by the leadership, the overall change in mission, and many of the policy decisions that emanated from the Department of Justice (DOJ) under Attorneys General Sessions and Barr. In our democracy, the attorney general is supposed to be the people's lawyer, not the president's lawyer, and has a sacred duty to enforce our nation's laws without prejudice and with an eye toward justice. Indeed, as he introduced Judge Garland to the public, President Biden rightly instructed him: "You won't work for me. You are not the president's or the vice president's lawyer. Your loyalty is not to me. It is to the law. To the Constitution. The people of this nation." The attorney general must be seen by the public – every member of the public, from every community – as a fair arbiter of our legal system, whose sole duty is to serve them.

Unfortunately, the attorneys general who served under President Trump failed to live up to this high standard. They deeply tarnished the reputation of the Department of Justice, which has been aptly called the “crown jewel” of the federal government because of its historic commitment to integrity, independence, and civil rights enforcement. From their unconscionable validation of President Trump’s subversion of voting rights and our democracy, to their inhumane separation of immigrant families at the border, to their abuses of our criminal justice system, Attorneys General Sessions and Barr all too often served as Trump loyalists rather than independent law enforcement officials.

Nowhere has this damage been more apparent than in the Trump Justice Department’s efforts to undermine civil and human rights in America. The number of its harmful, anti-civil rights actions are far too numerous to list in their entirety, but some of the most egregious examples include:¹

- Defending the spread of misinformation about the safety of mail-in voting, and defending the use of discriminatory absentee ballot witness requirements that would have been particularly harmful to people of color and voters with disabilities in the middle of a global pandemic.
- Supporting discriminatory photo ID laws, voter purges, and other right-wing efforts to restrict the fundamental right to vote.
- Defending the discriminatory efforts to add a citizenship question to the 2020 Census and to rush the count in order to subvert the rights and power of immigrants.
- Working to undermine the rights of LGBTQ employees, customers, students, athletes, and soldiers, among others, by repeatedly advancing anti-equality policies and litigation positions.
- Investigating and suing universities to try and prevent them from using race-conscious equal opportunity admissions policies.
- Implementing a “zero tolerance” program at the border, which resulted in the inhumane separation of thousands of immigrant children from their families.
- Defending the president’s discriminatory anti-Muslim travel ban.
- Defending the rescission of the Deferred Action for Childhood Arrivals (DACA) program, which provides a safe haven for 800,000 immigrants brought to the United States as children.
- Arguing in federal courts that the Affordable Care Act and its protections for more than 100 million people with pre-existing conditions are unconstitutional.
- Barring settlements that gave corporate defendants credit for supporting nonprofit organizations, chosen by defendants, to more efficiently help entire communities harmed by widespread misconduct.
- Urging the U.S. Supreme Court to allow a restrictive Louisiana abortion law to go into effect – part of an ongoing, coordinated effort across the country to eliminate access to abortion, particularly for those living on low incomes, people of color, and those in rural communities.
- Suspending all diversity and inclusion training for DOJ employees and managers.

The Trump Justice Department also turned back the clock in the critical areas of criminal justice and police reform. During the past four years, for example, the Trump DOJ:²

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

² *Id.*

- Failed to enforce the law and refused to engage in any systemic efforts to hold police departments accountable, rejected the use of consent decrees, and sabotaged previous DOJ efforts to reform police departments in Baltimore, Chicago, and other cities with discriminatory police practices. This failure of leadership coincided with a national reckoning with racial injustice in the wake of some of the most shocking instances of police brutality this nation has seen in decades.
- Abandoned the Obama administration's Smart on Crime initiative that had sought to ensure fair punishments for low-level, nonviolent offenders.
- Reversed the nearly two-decade moratorium on the federal death penalty.
- Rescinded policies that reduced the inherently inhumane use of private prisons.
- Closed the Office for Access to Justice, an office designed to improve civil and criminal justice in America by, for example, eliminating excessive court fees and fines.
- Sought draconian prison sentences for criminal offenders, except those who were friends and cronies of President Trump.

Confirm Judge Garland to Restore the Integrity of the Department of Justice

America is in dire need of a course correction at the Justice Department. The nation needs an attorney general with a demonstrated commitment to integrity, independence, and the aggressive enforcement of our civil rights laws. The Justice Department must embrace our nation's tremendous diversity while protecting the rights of individuals and communities that have borne the burdens of systemic discrimination and inequity.

Judge Garland, who is widely regarded as one of the top legal minds in the nation, embodies these principles and values. I first became familiar with Judge Garland when President Obama nominated him to the U.S. Supreme Court in 2016. As then president of The Leadership Conference, I had the responsibility of reviewing Judge Garland's record, and I became deeply familiar with his views as a jurist on the D.C. Circuit Court of Appeals. It was my job to present the findings of The Leadership Conference in all public forums, which included an appearance on C-SPAN's Washington Journal. I believe now what I believed then: Judge Garland is a jurist with a first-rate legal mind and great personal integrity.

We found that as a judge on the U.S. Court of Appeals for the D.C. Circuit since 1997, Judge Garland has consistently written and joined opinions that have upheld civil and human rights. Similarly, the Lawyers' Committee for Civil Rights Under Law examined Judge Garland's record on the bench and concluded: "While Judge Garland does not have an extensive body of opinions in civil rights cases, his decisions have been consistent with core civil rights principles."³ And the Alliance for Justice also conducted an analysis of Judge Garland's judicial record and reached a similar conclusion.⁴ Judge Garland's jurisprudence demonstrates a commitment to equality, fairness, and access to justice.⁵ Frankly, he should

³ <https://www.lawyerscommittee.org/lawyers-committee-releases-report-evaluating-supreme-court-nominee-judge-merrick-garlands-full-record-civil-rights-cases-issues-statement-u-s-senate-urging-immediate-hear/>.

⁴ <https://www.afj.org/wp-content/uploads/2019/12/The-Garland-Record.pdf>.

⁵ *Id.*

right now be a justice on the U.S. Supreme Court, and the Senate's abject hypocrisy in refusing to consider his nomination will be an indelible stain on the integrity of this institution.

Five years later, it remains clear to us that Judge Garland understands the vital need for robust enforcement of our nation's civil rights laws. As he stated in his remarks at the January 7, 2021 event in which President Biden announced his DOJ leadership team: "ensuring the rule of law and making the promise of equal justice under law real are the great principles upon which the Department of Justice was founded and for which it must always stand. They echo today in the priorities that lie before us. From ensuring racial equity in our justice system to meeting the evolving threat of violent extremism. If confirmed, those are the principles to which I will be devoted as attorney general."⁶

President Biden's selection of Merrick Garland as the nation's next attorney general is an inspired choice. He, along with the rest of the leadership he selected, including The Leadership Conference's most recent president and CEO Vanita Gupta and our board member Kristen Clarke, are the right team for this trying moment. If the issue is restoring the integrity and independence of the DOJ – and it is – then Merrick Garland is particularly well-chosen. If the issue is restoring the mission of the institution, including its commitment to addressing civil rights enforcement and attacking racial inequality – and it is – then Merrick Garland's own words speak best, when he recounted how the DOJ first forged its identity fighting against the Ku Klux Klan and working to bring meaning to the 13th, 14th, and 15th Amendments. For these reasons, we support Merrick Garland's selection fully and without reservation and urge the Senate to swiftly confirm him.

I should be clear, however, that this support does not come without expectations for meaningful action on the restoration and enhancement of civil and human rights enforcement. Prior to the transition, The Leadership Conference circulated our coalition-wide priorities for the new administration.⁷ These cover all agencies, as well as Congress, but the work of the Department of Justice naturally lies at the center of these priorities. And rest assured, we will continue to press the DOJ, the rest of the Biden administration, and Congress to fulfill them. But I would like to draw Judge Garland's and the committee's attention to several priorities, in particular, that the DOJ could promptly move forward in addressing.

First, regardless of what one thinks of capital punishment in theory, every year it becomes more and more clear that, in practice, its use simply cannot be defended. Its application has long been tainted by our nation's history of racial discrimination, and it can never be undone in the event of mistakes or outright prosecutorial misconduct. Every exoneration secured with the assistance of groups such as the Equal Justice Initiative and the Innocence Project raises new questions about just how many more people have died or will die for crimes they did not commit. We call upon the attorney general to work with President Biden to suspend the use of the federal death penalty, and commute those currently on death row to life imprisonment.

⁶ <https://www.rev.com/blog/transcripts/joe-biden-introduces-doj-nominees-merrick-garland-transcript>.

⁷ <https://civilrights.org/2020/12/02/the-leadership-conference-outlines-priorities-for-the-incoming-administration-and-congress/#>.

Second, the DOJ has the authority and obligation to address the human rights catastrophe playing out in our federal prisons as the COVID-19 crisis continues. Already abysmal prison conditions have been exacerbated during this pandemic, with people of color suffering and dying from COVID-19 inside prisons at even higher rates than outside of prisons.⁸ We call upon the attorney general to use all authority available to reduce prison populations wherever possible, and to improve support for institutional responses to COVID-19 where release is not possible.

Third, since the 2020 Presidential election, legislators in 28 states have either introduced, pre-filed, or carried over 106 bills⁹ to restrict voting access. These proposals primarily seek to: (1) limit voting by mail; (2) impose stricter voter ID requirements; (3) limit proven pro-voter registration policies; and (4) enable more aggressive voter roll purges. Many of these actions are aimed squarely at communities of color, which only heightens the imperative for the DOJ to aggressively enforce the Voting Rights Act (VRA), including the general anti-discrimination provisions of Section 2, the bail-in provisions of Section 3(c), and the federal observer and election monitoring provisions of Sections 3(a) and 8, in state and local jurisdictions, and vigorously defend the provisions of the VRA against constitutional challenge.

Fourth, during the last administration, we saw with collective horror the ways in which the attorney general abused his power to target people of color who were protesting for racial justice. We urge Judge Garland to ensure that investigations and prosecutions are reviewed and do not perpetuate the unjust and racist decision-making embodied by the last administration.

Fifth, just as Defense Secretary Lloyd J. Austin III convened the military chiefs and civilian secretaries of the armed forces to order a stand-down to discuss the threat posed by white supremacy, and has committed to take additional steps to address it, it is essential that the next attorney general take steps to address white supremacy in federal law enforcement.

Sixth, the Justice Department must also reverse course to vigorously enforce our laws after four years that saw a 90 percent reduction in corporate penalties and enforcement actions. The burden of that neglect has fallen disproportionately (as it always does) on the most vulnerable among us. DOJ must recognize that our pollution control systems have long sacrificed the health of marginalized communities, that our public lands policies have deprived indigenous communities of sacred lands, and that federal policies place the greatest burdens of the growing climate crisis on those least able to bear them. We urge the attorney general to make a strong commitment to – and follow through on – advancing environmental justice.

Seventh, the Justice Department must use all of the tools at its disposal, including over 50 federal criminal statutes that apply to domestic terrorism and over a dozen other criminal statutes and authorities to prioritize and address white nationalist violence now. Rather than supporting a new domestic terrorism charge that is unnecessary and would not only delay justice, but also harm the very same communities targeted by white nationalists, the Justice Department must ensure accountability now.

⁸ <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19>.

⁹ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-january-2021>.



And finally, we applaud President Biden's commitment to close Guantanamo,¹⁰ and we encourage Judge Garland to work with the White House and his counterparts at the Departments of Defense and State to make this very long-overdue goal a reality.

Conclusion

The need for robust federal civil rights enforcement has never been more important for this country. A well-functioning Justice Department can transform America and improve the lives of our communities. This nation needs a Justice Department that will do everything in its power to provide equal justice and fight for voting rights, police reform, criminal justice, LGBTQ equality, disability rights, environmental justice, reproductive freedom, the rights of working people, and other pressing civil and human rights issues. We need an attorney general at its helm who knows the Justice Department well, and who can pick up from where the Obama administration left off and go bolder. We need an attorney general who will reinstate DOJ's historic commitment to integrity, independence, and vigorous civil rights enforcement. Judge Garland would be such an attorney general, and is a fitting choice to lead the Justice Department at this crucial moment. We urge the Senate to confirm him as soon as possible.

Thank you for giving me the opportunity to present the views of The Leadership Conference. I would be pleased to answer any questions you may have.

Sincerely,

Wade Henderson
Interim President and CEO

¹⁰ <https://www.reuters.com/article/us-usa-biden-guantanamo-exclusive/biden-launches-review-of-guantanamo-prison-aims-to-close-it-before-leaving-office-idUSKBN2AC1Q4>