



**Statement of Vanita Gupta, President & CEO, The Leadership Conference on Civil and Human Rights
U.S. Commission on Civil Rights**

**Public Briefing – “Are Rights a Reality? Evaluating Federal Civil Rights Enforcement”
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My name is Vanita Gupta and I am the president and CEO of The Leadership Conference on Civil and Human Rights, 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. Before I took the helm of The Leadership Conference, I had the honor of leading the Justice Department’s Civil Rights Division during the last two and a half years of the Obama administration.

Importance of Federal Civil Rights Laws

The federal government plays a critical role in enforcing our nation’s civil rights laws. Nearly every federal agency has an office charged with enforcing our many federal civil rights statutes, regulations, and policies. This enforcement covers activities that impact the lives of everyone in this country — such as voting rights, employment and housing discrimination, and equal access to education and health care.

When passing federal civil rights laws, Congress gave federal agencies the mandate to enforce these laws regardless of politics or political administration. The Civil Rights Division of the Department of Justice was established in 1957 by the passage of the Civil Rights Act of 1957, which laid the foundation for federal enforcement of our civil rights laws. While different political administrations have different policy priorities, the duty to enforce the law is not discretionary.

Last year, on the 60th anniversary of the Civil Rights Division, I served on a panel at the National Press Club with three other former heads of that office. Two of us were Democratic appointees, and two were Republican appointees. One of the key themes of the panel was that civil rights enforcement has always been, and should always be, a bipartisan tradition.

Sadly, that tradition has eroded. At a time when the United States has a president who emboldens and enables forces of hate and division in the country; at a time when the Justice Department and the entire administration have embraced an anti-civil rights policy agenda; and when vulnerable communities across this nation are deeply terrified — of profiling, deportation, or even murder — people in America deserve better. They deserve the commitment to civil rights the federal government made 60 years ago.

Not only has this administration abdicated its responsibility to enforce federal civil rights laws, in many instances, President Trump has appointed individuals to lead federal civil rights offices who have devoted their careers to restricting civil rights or defending those who promote discrimination. He put the fox in charge of guarding the henhouse in agency after agency.

President Trump's Assault on Civil Rights Enforcement

At the Justice Department, Attorney General Jeff Sessions has confirmed our worst fears about his nomination. He has abandoned civil rights enforcement in critical areas, harming vulnerable communities across the country. I will discuss just a few examples: voting rights, policing and criminal justice, LGBTQ equality, and disability rights.

Voting Rights

It has been heartbreaking to witness the Justice Department embrace a voter suppression agenda and retreat from the agency's longstanding commitment to aggressive voting rights enforcement. Within weeks of President Trump taking office, the Sessions Justice Department reversed DOJ's litigation position that the Texas photo ID law was intentionally racially discriminatory — even though no new factual evidence had arisen to undermine the DOJ's position over the five previous years.

A few months later, the Sessions Justice Department filed an amicus brief with the Supreme Court in the case of *Husted v. A. Philip Randolph Institute*, arguing that it should be easier for states to purge registered voters from their rolls under the National Voter Registration Act (NVRA) for simply failing to vote. This position reversed not only DOJ's consistent legal interpretation of the NVRA since it was enacted in 1993, but also the DOJ's position in the lower courts in that same case. Sadly, the Supreme Court upheld the Ohio voter purging law in a controversial 5-4 decision.

In June 2017, the Civil Rights Division sent a letter to all 44 states covered by the NVRA, forcing them to provide extensive information on how they maintain their voter rolls. Previously, the Department's normal practice was to send letters of this kind only where there was particularized evidence of possible noncompliance by a given state. Sending an investigative demand letter to every NVRA-covered state in the country was a highly unusual move that appeared to be a prelude to a voter purge. One year later, in June 2018, DOJ filed a voter purge lawsuit against the state of Kentucky. And in September 2018, just two months before the midterm election, DOJ sent sweeping subpoenas to the North Carolina state elections board and 44 county elections boards requesting that millions of voter records be turned over by September 25. This appears to be yet another effort to suppress and intimidate voters.

We also saw voter suppression efforts directly out of the White House when the administration created a voter suppression commission led by Vice President Mike Pence and Kansas Secretary of State Kris Kobach. It was telling that even while announcing the commission's demise earlier

this year, President Trump continued his false narrative of voter fraud. In fact, there is no proof whatsoever of widespread illegal voting or voter fraud in the 2016 election. The sham commission was a political ploy to provide cover for the president's wild and unfounded claims of mass voter fraud and to lay the foundation to purge eligible voters from the rolls. Fortunately, after much public outrage led by bipartisan secretaries of state and advocates, as well as litigation, President Trump disbanded the commission.

Another effort to suppress participation in our democracy is the Trump administration's deeply disturbing decision to add a citizenship question to the 2020 Census. Commerce Secretary Wilbur Ross has claimed — including in testimony under oath before Congress — that including this question is necessary to effectively enforce the Voting Rights Act. But as one of the people responsible for voting rights enforcement at DOJ during the Obama administration, I know that is not true. And thanks to litigation brought by New York and 16 other states, we now know that the Trump administration's Voting Rights Act rationalization was a lie. Emails turned over in recent months during litigation revealed that the citizenship question was the brainchild of immigration hard-liners Steve Bannon and Kris Kobach. Secretary Ross asked DOJ to formally request that the citizenship question be added, so that he could claim the plan originated with DOJ. Unfortunately, the Supreme Court last week rejected efforts by the plaintiffs to depose Ross and force him to answer for his deceptions. The Bannon-Kobach-Ross scheme threatens to turn the census from an essential, nonpartisan activity into a dangerous political weapon.

In addition to lying about the Voting Rights Act, the Trump administration is failing to vigorously enforce it. Although the Supreme Court in the 2013 *Shelby County v. Holder* case gutted the heart of the VRA, there are other provisions of the VRA that must be aggressively enforced. I applaud the U.S. Commission on Civil Rights for its recent report on minority voting rights access in the United States. One of the report's conclusions reads: "The totality of this report shows that despite the DOJ's diminishing enforcement actions, there is ongoing discrimination in voting that would merit increased VRA enforcement on the part of the DOJ."

Policing and Criminal Justice

We have also seen troubling rollbacks in the areas of policing and criminal justice. After several years of bipartisan federal criminal justice reform efforts, Attorney General Sessions has advanced policies that would return the United States to discredited 1980s criminal justice policies and mass incarceration.

Following the 1991 Rodney King incident and the riots that followed, Congress recognized that the federal government had limited capability to address civil rights violations by police agencies. In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which included 42 U.S.C. § 14141 authorizing the federal government to investigate and bring suit against a police entity in certain cases of police misconduct. However, the current DOJ has largely halted any new investigations, abandoning its responsibility to enforce civil rights violations.

In February 2017, Sessions withdrew an earlier Justice Department memo that sought to reduce and finally end the department's use of private prisons.

In March 2017, Sessions ordered a sweeping review of consent decrees with law enforcement agencies relating to police conduct — a crucial tool in the Justice Department's efforts to ensure constitutional and accountable policing. The department also tried, unsuccessfully, to block a federal court in Baltimore from approving a consent decree that the Department of Justice had negotiated over a multi-year period with the City of Baltimore and the Baltimore Police Department to rein in discriminatory policing practices.

Just last month, the Department of Justice filed a statement of interest opposing a consent decree negotiated by the City of Chicago and Illinois Attorney General Lisa Madigan to overhaul the Chicago Police Department. That filing speaks volumes about Attorney General Sessions' hostility to policing reform and his rejection of the impact of unconstitutional policing on affected communities, which are primarily communities of color. Not only did Attorney General Sessions abdicate the DOJ's responsibility to remedy longstanding systemic misconduct — which is documented in DOJ's January 2017 report — but went so far as to intervene in a consent decree that the DOJ is not a party to. It was negotiated and agreed to by local officials, and still Attorney General Sessions seeks to kill it. The Chicago Police Department has a history of not holding officers accountable for discriminatory and biased policing, and it is long past time for an overhaul of the department's policies and practices.

In May 2017, Attorney General Sessions announced that DOJ was abandoning its Smart on Crime initiative that had been hailed as a positive step forward in rehabilitating people who use or are addicted to drugs and reducing the enormous costs of warehousing people in prison. Later, he lifted the Obama administration's ban on the transfer of some military surplus items to domestic law enforcement — rescinding guidelines that were created in the wake of Ferguson to protect the public from law enforcement misuse of military-grade weapons. In September 2017, DOJ abruptly restructured the Community Oriented Policing Services' Collaborative Reform Initiative, a Justice Department program that helped build trust between police officers and the communities they serve.

In December 2017, Sessions rescinded 25 guidance documents, including a letter sent to chief judges and court administrators to help state and local efforts to reform harmful practices related to the assessment and enforcement of fines and fees. When I was at DOJ, we sought to end the creation of discriminatory and unconstitutional debtors' prisons, but under Sessions' direction, DOJ has demonstrated a willingness to jail people who simply cannot afford to pay a fine.

LGBTQ Equality

The Trump administration has also undermined LGBTQ civil rights enforcement. In addition to attempting to ban transgender people from serving in the military, it rescinded Title IX guidance clarifying protections under the law for transgender students. The guidance — which I helped

develop during the Obama administration — presented best practices and advised schools on complying with the law. It was a much-needed clarification that, under federal law, schools must treat students equally and with dignity, consistent with their gender identity. In addition to rescinding this important guidance, it has been reported that the Education Department no longer investigates complaints filed by transgender students who have been banned from using the restrooms that correspond with their gender identity. And the FBI has made changes to its Transgender Offender Manual that rolled back protections against allowing transgender people in prison to use restrooms and cell blocks that correspond to their gender identity.

In October 2017, Attorney General Sessions reversed a Justice Department policy clarifying that transgender workers are protected from discrimination under Title VII. And just last week, DOJ filed a brief with the Supreme Court arguing that federal civil rights law does not protect transgender workers from discrimination on the basis of their gender identity.

The latest chapter in the Trump administration’s shameful war on the rights and humanity of transgender people was a report that the Department of Health and Human Services is considering an interpretation of Title IX that “would define sex as either male or female, unchangeable, and determined by the genitals that a person is born with” — effectively erasing civil rights protections for transgender people.

The Sessions Justice Department has also sought to make it easier to discriminate based on sexual orientation. DOJ filed a brief in a Second Circuit case *Zarda v. Altitude Express, Inc.*, arguing that Title VII does not prohibit discrimination based on sexual orientation — a decision that contravened recent court decisions and Equal Employment Opportunity Commission guidance. The Sessions DOJ also filed a brief in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* arguing that businesses have a right to discriminate against LGBTQ customers.

In January 2018, the Department of Health and Human Services announced a proposed rule to allow health care providers to discriminate against patients on the basis of sex, sexual orientation, and gender identity. It also created within the department’s Office for Civil Rights a new division — the Conscience and Religious Freedom Division — to address related claims. The civil rights community viewed these moves as continuing to create a license to discriminate against women and the LGBTQ community.

And at the State Department, a policy change recently took effect in which the Trump administration will no longer issue family visas to same-sex domestic partners of foreign diplomats or employees of international organizations who work in the United States.

Disability Rights

The Trump administration has also failed to seek full enforcement of the Americans with Disabilities Act. One of the 25 guidance documents that DOJ rescinded last year was an important protection for people with disabilities. It was critical in describing the obligations of states to administer their employment services for people with disabilities in the most integrated

setting appropriate, in order to comply with the Supreme Court's 1999 decision in *Olmstead v. L.C.* The guidance document — which was issued in 2016 when I served in the Civil Rights Division — helped to achieve an important goal of the ADA: creating independent living and economic self-sufficiency. The rescinding of this guidance reflected a diminished concern by the Sessions Justice Department for ensuring states provide employment services that allow people with disabilities to work in integrated jobs.

Moving Forward

How can we get the Trump administration to change course and start aggressively enforcing our federal civil rights laws? Congress can help, if they commit to conducting oversight and investigations. We have seen very little congressional oversight of the Trump administration during the first two years, and regardless of what happens during the midterm elections, it is imperative for the new Congress to step up its constitutional duty to serve as a check and balance on an out-of-control executive branch.

The U.S. Commission on Civil Rights is doing its part. Last year you voted to undertake a two-year investigation of the Trump administration's federal civil rights enforcement. This ongoing investigation will be crucial both to understanding the Trump administration's across-the-board assault on civil rights and to holding officials accountable. I hope that today's briefing is a helpful part of that process.

As the investigation continues, The Leadership Conference encourages the commission, as well as Congress, to seek critical data on civil rights enforcement. Across agencies, metrics for evaluating the decrease in enforcement requires gathering the number of: new investigations opened per statute; cases closed without a finding; consent decrees DOJ entered; out-of-court settlements DOJ signed instead; statements of interest entered by DOJ; and guidance rescinded that sought to enforce civil rights and clarify the law. This data should then be compared with the final two years of the Obama administration. It may be difficult to come by, but it is necessary to understanding the landscape of civil rights enforcement today.

The civil and human rights community will continue to fight back against the civil rights failures of this administration. Millions of people across the nation have become engaged in the political process — many for the first time — to challenge this administration's dangerous policy initiatives and extreme judicial nominees, like Brett Kavanaugh.

An attack on the civil and human rights of one community is an attack on the civil and human rights of all communities. The Leadership Conference on Civil and Human Rights coalition will continue to stand united against the administration's assaults on our values of justice, inclusion, and fairness. Our coalition will continue to organize, educate, and advocate for an America as good as its ideals.

Thank you for the opportunity to testify today.