



March 26, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
United States Department of Justice
Robert F. Kennedy Main Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Garland:

The Department of Justice Association of Black Attorneys (DOJABA) welcomes you back to the Department as the 86th United States Attorney General. We look forward to working with you and your leadership team.

Throughout our 31-year history, DOJABA has maintained excellent rapport with Department leadership and has advised the Department on matters concerning its Black employees and the greater Black community. Today we write to discuss several topics that we believe are ripe for Department enforcement. To ensure racial equity in our justice system and society, we implore the Department to address police reform, discriminatory lending, and voter suppression. We also call on the Department to increase its recruiting and hiring of Black attorneys and Black interns, as the number of Black attorney new hires and interns has declined sharply in recent years. Additionally, we request reactivating the Department's Diversity Management Advisory Council and creating a Department-wide Racial Justice Working Group (RJWG).

At this critical time in our nation, DOJABA appreciates and supports your commitment to “ensuring racial equity in our justice system”¹ as a priority. On your selection as attorney general, you observed one of the Department's founding ideals—“equal justice under law is that all citizens are protected in the exercise of their civil rights.”² On this basis, the Department is uniquely positioned to confront the challenges mentioned above and restore long overdue legal protections for Black Americans. During this pivotal moment, we hope that the Department commits considerable resources to advancing racial equity and “making the promise of equal justice under law real.”³

¹ *Merrick Garland Remarks on Selection as Attorney General*, C-SPAN, (Jan. 27, 2021), <https://www.c-span.org/video/?c4935258/merrick-garland-remarks-selection-attorney-general>.

² *Id.*

³ *Id.*

In the paragraphs below, we outline our concerns and suggest ways the Department can address these challenges:

Policing Reform

During 2020, our nation was reminded of its policing challenges. Protests demanding an end to the deaths of Black Americans at the hands of law enforcement erupted throughout our country.⁴ To combat unconstitutional policing and to rebuild community trust, we propose the following actions:

1. Investigate vigorously pattern-or-practice cases against law enforcement agencies for constitutional policing violations.
 - Before January 2017, the Department opened nearly 70 formal investigations of police departments for unconstitutional policing practices.⁵ Since then, the Department has opened only one investigation.⁶
2. Ease restrictions designed to limit the Civil Rights Division’s Special Litigation Section’s ability to pursue reform agreements and consent decrees that have historically been a valuable tool in addressing systemic police misconduct, unlawful use of force, and discriminatory policing based on race and/or national origin.
 - Research shows that Department pattern-or-practice investigations reduce police-related killings by 27% and 29%—when combined with a consent decree and court-appointed monitor.⁷
3. Encourage law enforcement agencies, including state and local partners, to implement evidence-based community policing reforms, like those recommended in the “Final Report of the President’s Task Force on 21st Century Policing.”⁸
4. Expand the Department’s Office of Community Oriented Policing Services’ Collaborative Reform Initiative to support local efforts to develop and institute constitutional policing practices.

⁴ See Katie Warren & Joey Hadden, *How All 50 States are Responding to the George Floyd Protests, from Imposing Curfews to Calling in the National Guard*, BUSINESS INSIDER (June 4, 2020, 7:22 PM), <https://www.businessinsider.com/us-states-response-george-floyd-protests-curfews-national-guard-2020-6>.

⁵ U.S. DEPARTMENT OF JUSTICE, THE CIVIL RIGHTS DIVISION’S PATTERN AND PRACTICE POLICE REFORM WORK: 1994-PRESENT 2017, <https://www.justice.gov/crt/file/922421/download>.

⁶ Casey Tolan & Ashley Fantz, *As Rage Over Killings of Black Americans Sweeps Nation, DOJ Has All But Abandoned Broad Police Investigations*, CNN (June 1, 2020, 2:35 PM), <https://www.cnn.com/2020/06/01/politics/george-floyd-police-doj-investigations-ivs/index.html>.

⁷ Li Sian Goh, *Going Local: Do Consent Decrees and Other Forms of Federal Intervention in Municipal Police Departments Reduce Police Killings?*, 37 JUSTICE QUARTERLY 900, 921 (2020), <https://www.tandfonline.com/doi/full/10.1080/07418825.2020.1733637>.

⁸ https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

5. Redeploy the Department's Community Relations Service to build community trust in policing and reduce excessive and/or unauthorized uses of force, in coordination with police departments.

DOJABA urges the Department to address the nation's policing challenges.

Lending Discrimination

We urge the Department to reprioritize the Civil Rights Division's Fair Lending Unit's enforcement of laws targeting discriminatory lending practices. A review of the Department's annual reports submitted to Congress reveals a steep decline in enforcement of unlawful discrimination in lending.⁹ For example, from 2016 to 2018 (most recent data), the number of fair lending investigations opened by the Department dropped sharply by 72%— from 18 to 5.

Fair lending investigations often uncover discriminatory practices of the nation's largest lenders. Redlining continues to be a pervasive illegal practice in which lenders intentionally avoid providing services to individuals living in predominantly Black neighborhoods because of the race of the residents in those neighborhoods, which limits their access to credit and wealth-building through homeownership. Lenders also have disproportionately charged higher rates for Black and other minority borrowers than for non-Hispanic white borrowers. In many cases, the fair lending investigations reveal that higher rates charged to Black and other minority borrowers are because of their race and/or national origin, rather than the borrowers' creditworthiness or other objective criteria related to borrower risk. The sharp decline in fair lending investigations leaves many Black and minority citizens vulnerable to discriminatory practices. As research shows, "[p]eople of color have faced decades of higher hurdles than whites when it comes to getting a home loan, with even creditworthy borrowers getting rejected at a higher rate or unfairly being charged higher interest rates."¹⁰ The Department's enforcement of fair lending laws will protect Black and minority citizens from unlawful discriminatory conduct.

DOJABA urges the Department to resume enforcement of fair lending laws.

⁹ See THE ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS PURSUANT TO THE EQUAL CREDIT OPPORTUNITY ACT: [2018 report](#), [2017 report](#), and [2016 report](#).

¹⁰ Khristopher J. Brooks, *Disparity in Home Lending Costs Minorities Millions, Researchers Find*, CBS NEWS (Nov. 15, 2019, 10:59 AM), <https://www.cbsnews.com/news/mortgage-discrimination-black-and-latino-paying-millions-more-in-interest-study-shows/>; see also Susie Steimle, *History of Redlining, Predatory Lending, Systemic Racism Impacts Black Home Ownership in Bay Area*, S.F. CBS LOCAL (June 29, 2020, 11:30 PM), <https://sanfrancisco.cbslocal.com/2020/06/29/history-of-redlining-predatory-lending-systemic-racism-impacts-black-home-ownership-in-bay-area/>; Aly J. Yale, *Black Home Buyers Denied Mortgages More Than Twice as Often as Whites, Report Finds*, FORBES (May 7, 2018, 7:00 AM), <https://www.forbes.com/sites/alyyale/2018/05/07/mortgage-loan-denials-more-common-with-minorities-new-report-shows/#20a9d886509a>; Aaron Glantz & Emmanuel Martinez, *Kept Out: How Banks Block People of Color from Home Ownership*, MORNING CALL (Feb. 15, 2018, 12:05 AM), <http://www.mcall.com/news/pennsylvania/mc-nws-racial-discrimination-home-loans-redlining-20180214-story.html>.

Voter Suppression

We urge the Department to reprioritize enforcement of voting rights laws to ensure voter access and end voter suppression. Historically, the Department has been at the forefront of efforts to protect the right to vote. But during recent years, it appears the Department has filed just one lawsuit under the Voting Rights Act.¹¹ This is troubling given the tremendous level of credibility and resources the Department can bring to bear when litigating these cases. Moreover, the strength of the Department in this area simply cannot be matched by private plaintiffs. To be clear, DOJABA understands the Department may not comment publicly on ongoing investigations. But the 2020 election cycle shows why the Department's role in protecting the constitutional right to vote is so vital. The recently publicized long voter lines, extended hours of waiting at the polls, and closed polling locations are compelling. It is imperative that Americans know the Department remains committed to ensuring the voting rights of minority and other disadvantaged communities are protected.

DOJABA urges the Department to reprioritize enforcement of voting rights laws.

DOJ Black Attorney Employment

We urge the Department to increase its recruitment and retention of Black attorneys. As the nation's premier legal institution, the Department must lead by example in fostering a more diverse and inclusive workplace for its employees and interns. While the Department employs more than 11,400 attorneys,¹² Black attorneys only represent a tiny fraction of its workforce. Based on data compiled from the Department's Electronic Employment Fact Book, Black attorneys make up only 6.58% of all Department attorneys.¹³ The data also shows the number of Black attorneys at the Department is the lowest in years.¹⁴ As it relates to new hires, the picture becomes even bleaker. According to Fact Book data, the Department's hiring of Black attorneys has declined sharply by 40%.¹⁵

These issues are not merely isolated to Black attorneys. The Department has reduced its recruitment efforts to attract qualified Black legal interns. A recent survey of our members revealed that qualified Black law students are seldom selected for

¹¹ Sam Levine, 'An Embarrassment': Trump's Justice Department Goes Quiet on Voting Rights, THE GUARDIAN (June 23, 2020, 10:00 AM), <https://www.theguardian.com/us-news/2020/jun/23/us-justice-department-voting-rights-2020-election>.

¹² ATTORNEY EMPLOYMENT BY ORGANIZATION, DOJ ELECTRONIC EMPLOYMENT FACT BOOK FISCAL YEAR 2018, https://dojnet.doi.gov/jmd/fs/fspay/factbook/FY2018/Reports/FY2018_Table37.pdf. Note, Fact Book curtailed the available employment data for Fiscal Year 2019. As a result, we cannot provide data for FY 2019.

¹³ BLACK ATTORNEY EMPLOYMENT BY GRADE, DOJ ELECTRONIC EMPLOYMENT FACT BOOK FISCAL YEAR 2018, https://dojnet.doi.gov/jmd/fs/fspay/factbook/FY2018/Reports/FY2018_Table63A.pdf; see also enclosed chart.

¹⁴ See enclosed chart.

¹⁵ *Id.*

internships within their respective offices. Sadly, this is a missed opportunity for the Department to mentor and train the next generation of public servants.

DOJABA remains committed to helping the Department attract and retain talented, highly qualified Black attorneys and legal interns. An increase in the number of Black attorneys in the career, Senior Executive Service, and political appointee categories is a specific goal for which DOJABA and the Department should strive toward in partnership. To this end, some suggestions for recruiting and retaining Black attorneys and legal interns include:

1. Directing Human Resources personnel in all components to provide resources to hiring committees and hiring officials on increasing diversity in hiring;
2. Encouraging components to advertise opportunities to join hiring committees;
3. Encouraging components to staff hiring committees with employees who represent the racial, ethnic, and cultural diversity of the nation the Department serves;
4. Discouraging components from staffing hiring committees with the same personnel for multiple hires;
5. Encouraging the Executive Office of the U.S. Attorneys to offer paid Special Assistant U.S. Attorney positions;
6. Encouraging components to recruit from a wide range of law schools, including law schools at Historically Black Colleges and Universities (“HBCUs”);
7. Encouraging components to attend legal job fairs at HBCUs and develop relationships with career services offices at HBCUs;
8. Encouraging components to advertise vacancy announcements with Black bar associations, including the National Bar Association, and its various chapters such as the Greater Washington Area Chapter–Women Lawyers Division, the Washington Bar Association, and the National Black Prosecutors Association;¹⁶
9. Encouraging components to advertise legal internship opportunities with the National Black Law Students Association and chapters of the association at various law schools;

¹⁶ For more information on these organizations, please visit their websites: <https://www.nationalbar.org/>; <https://gwacbar.org/>; <https://www.nbawld.org/about-us/>; <https://www.wsba.org/>; and <http://blackprosecutors.org/>.

10. Directing Human Resources personnel to evaluate Demographic Trends in the Performance Evaluations of Department personnel, including attorneys, to inform retention initiatives and career development processes; and
11. Directing the Office of Attorney Recruitment & Management (“OARM”) to establish a paid internship program for undergraduate students majoring in political science, criminal justice, and other pre-law majors at HBCUs as an early recruiting tool designed to increase the pool of Black candidates for Department attorney and non-attorney positions.

DOJABA urges the Department to increase its recruitment and retention of Black attorneys.

Diversity Management Advisory Council

In 2010, former Attorney General Eric Holder created a Diversity Management Advisory Council (Council) to coordinate Department-wide diversity management efforts, monitor implementations of each component’s diversity management plan, and meet twice each year with the Attorney General to report on the status of the Department’s efforts. Unfortunately, the Council has since been disbanded. Given the current state of race relations in our nation, reviving the Council is imperative. The Council’s primary purpose would be to evaluate the Department’s efforts and practices related to diversity and inclusion, explore ways to increase the Department’s diversity and inclusion efforts, and improve the effectiveness of those efforts through information-sharing and strategic collaborations. This purpose is directly in line with President Biden’s recent charge in his January 20, 2021 Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.¹⁷

The Council’s mission would be to strengthen and enhance the work environment by ensuring the Department’s workforce, at all levels, is as diverse and inclusive as the people we serve in the United States. The Council would consist of representatives from the diversity committees or councils of each component and the Department’s employee affinity groups.

The goals of the Council would include: (1) developing and sharing effective diversity management practices and policies, such as hiring and management best practices and training programs, for the consideration and adoption of components across the Department; (2) increasing diversity among the Department’s managers, supervisors, and the Senior Executive Service; (3) identifying and evaluating methods and relevant data to measure diversity management efforts, particularly for recruitment and retention at every level; (4) recommending enhanced diversity training for all Department supervisors and hiring officials as well as all employees; and (5) coordinating these efforts with the Department’s leadership to obtain support and resources.

¹⁷ Exec. Order No. 13985 of Jan. 20, 2021, 86 Fed. Reg. 7009 (Jan. 25, 2021).

DOJABA urges the Department to reactivate the Council with the full support of the Department's leadership.

Racial Equity Working Group

Consistent with President Biden's Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government issued on January 20, 2021,¹⁸ DOJABA encourages the Department to establish a Racial Equity Working Group that would be responsible for reviewing existing Department policies and programs with a lens toward identifying and recommending changes to reduce barriers to equal opportunity and support the Department's mission of "ensur[ing] fair and impartial administration of justice for all Americans."¹⁹ This working group should also have the opportunity to review and provide formal comments on proposed legislation, executive orders, administrative regulations, and Department policies, including those that come to the Department for clearance review through the Office of Legislative Affairs, Office of Legal Policy, or Office of Legal Counsel that explicitly or implicitly raise racial equity or racial justice concerns.

DOJABA would like to participate in discussions with Department leadership to determine how the Racial Equity Working Group should be managed and where it should be located on the Department's organizational chart. However, it is critical that participants in the working group include career attorneys from across the Department, along with political appointees. This composition will aid in developing institutional memory, which can help guide the Department's work in this arena across subsequent presidential administrations. With membership in nearly all Department components, DOJABA is perfectly poised to help identify qualified attorneys who could serve as members of this working group.

Conclusion

At your confirmation hearing, you stated the Department's mission to defend the "civil and constitutional rights of all Americans"... remains urgent because we do not yet have equal justice. Communities of color and other minorities still face discrimination in housing, education, employment, and the criminal justice system; and bear the brunt of the harm caused by pandemic, pollution, and climate change."²⁰ Your acknowledgment that unequal and unjust treatment toward people of color persists in society lines squarely with the concerns expressed in this letter. DOJABA thus welcomes the opportunity to meet with you and/or your staff to further discuss the role the Department can undertake to confront these critical challenges and secure the promise

¹⁸ *Id.*

¹⁹ Department of Justice Mission Statement, <https://www.justice.gov/about#:~:text=To%20enforce%20the%20law%20and,to%20ensure%20fair%20and%20impartial.>

²⁰ Merrick B. Garland, *Hearing before the U.S. Senate Committee on the Judiciary*, N.Y. TIMES (Feb. 22, 2021), <https://int.nyt.com/data/documenttools/judge-garland-s-senate-confirmation-opening-statement/59ba2071a49f7a6a/full.pdf>.

of equal justice for all Americans. Please contact DOJABA Chair, Oneshia Herring, at oneshia.herring@usdoj.gov or (202) 353-4132. Thank you for your time, consideration, and prompt attention to this matter.

Respectfully,

DOJ Association of Black Attorneys
Executive Council