

# United States Senate

WASHINGTON, DC 20510

March 23, 2021

The Honorable Richard Durbin  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Durbin:

On March 9, the Senate Judiciary Committee held a hearing to consider the nominations of Lisa Monaco, nominee to be Deputy Attorney General of the United States, and Vanita Gupta, nominee to be Associate Attorney General of the United States. While under oath, Vanita Gupta misled the Committee on at least four issues: (1) Her support for eliminating qualified immunity; (2) her support for decriminalizing all drugs; (3) her support for defunding the police; and (4) her death penalty record. Unfortunately, in her responses a week later to our written questions, Ms. Gupta was no more forthcoming. In some cases, she doubled down on her misleading statements from the hearing, and in others she refused to answer altogether. In “response” to scores of our questions, she merely copied-and-pasted the same inapplicable, general statements for one question after another.

We urge you to immediately schedule a second hearing with Ms. Gupta so that she can answer for her misleading statements, and for her refusal to respond to our written questions. Indeed, Ms. Gupta herself asked for similar measures in the context of past nominees. On November 20, 2017, Ms. Gupta issued an open letter in which she wrote that, as a result of what she described as “credible evidence” that two nominees were not forthcoming with the Committee, “Chairman Grassley must put politics aside and bring back both nominees before the committee so that they can be asked about their truthfulness under oath. Failure to do so would abdicate the independent role of the Senate . . . If the Senate Judiciary Committee is going to be taken seriously by this and future administrations, it must demand that nominees accurately respond to questions[.]”<sup>1</sup>

Ms. Gupta’s misleading statements to this Committee include, at minimum:

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<sup>1</sup> Vanita Gupta, “*Civil and Human Rights Coalition Calls on Chairman Grassley To Hold Additional Hearings for Talley and Farr*,” The Leadership Conference on Civil and Human Rights (Nov. 20, 2017), <https://civilrights.org/2017/11/20/civil-human-rights-coalition-calls-chairman-grassley-hold-additional-hearings-talley-farr/>.

## 1. Her support for eliminating qualified immunity.

- During the hearing, Ms. Gupta was asked whether she supported eliminating the doctrine of qualified immunity. She responded that she doesn't "support[] elimination one way or another."
- In June 2020, Ms. Gupta testified before this Committee that "Congress should end qualified immunity in Section 1983 claims."<sup>2</sup>
- When pressed about her June 2020 testimony before this Committee, Ms. Gupta claimed those were not her own opinions, but that she had been merely "representing the consensus views of the Civil Rights Coalition at the Leadership Conference." But in June 2020, she said, "I am pleased" (not that the Leadership Conference was "pleased") that reforms she had recommended, including the elimination of qualified immunity, were "included in the newly introduced *Justice in Policing Act of 2020*."<sup>3</sup>
- Additionally, during the June 2020 hearing, when one of the other witnesses said that he believed qualified immunity should be eliminated, Ms. Gupta added, "I agree."<sup>4</sup>

## 2. Her support for decriminalizing all drugs.

- When asked whether she advocates for "decriminalization of all drugs," Ms. Gupta answered, unequivocally, "No, Senator, I do not."
- Ms. Gupta doubled down on this misleading statement in response to written questions, writing that she had "never advocated for the decriminalization of all drugs."<sup>5</sup>

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<sup>2</sup> *Police Use of Force and Community Relations*: Hearing Before the Senate Committee on the Judiciary, 116 Congress (June 16, 2020) (Written Statement of Vanita Gupta), <https://www.judiciary.senate.gov/imo/media/doc/Gupta%20Testimony1.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Police Use of Force and Community Relations*: Hearing Before the Senate Committee on the Judiciary, 116 Congress (June 16, 2020) (Response of Vanita Gupta to Senator Whitehouse).

<sup>5</sup> *See, e.g.*, Vanita Gupta Responses to Questions Submitted by Senator John Cornyn (received March 17, 2021).

- In a September 2012 op-ed in the *Huffington Post*, Ms. Gupta wrote that “States should decriminalize simple possession of all drugs, particularly marijuana, and for small amounts of other drugs.”<sup>6</sup> This directly contradicts Ms. Gupta’s answers.
- A member of the Committee pressed Ms. Gupta for explanation during the hearing, and referred to the September 2012 op-ed. Ms. Gupta answered, “Senator, I *have advocated*, as I believe President Biden has, for decriminalization of marijuana possession.”
- Later in the hearing, another member of the Committee followed up on the question by reading aloud Ms. Gupta’s statement from the 2012 op-ed, to which Ms. Gupta responded that she had only been “speaking for [her] position today.” But her answer had specifically referred to her past-tense advocacy when she stated she had only advocated for decriminalization of marijuana possession, and her written answers a week later explicitly claimed that she had “never” advocated for decriminalizing possession of all drugs.

### **3. Her support for defunding the police.**

- During the hearing, Ms. Gupta repeatedly stated that she did not “support defunding the police.” She added, “I have, in fact, spent my career advocating where it’s been necessary for greater resources for law enforcement.” She later added that she had advocated for greater law enforcement resources “at every point in [her] career.”
- These statements directly contradict her sworn testimony before this very Committee on June 16, 2020, where she said that leaders must “heed calls . . . to decrease police budgets and the scope, role, and responsibility of police in our lives.”<sup>7</sup>
- When pressed by a member of the Committee that her statement in June 2020 was, by any measure, advocating for defunding the police, Gupta responded that she “disagree[d]” with that characterization. But Ms. Gupta used the same characterization while speaking on a webinar just two days after her June 2020 testimony, saying, “Localities have been overspending on criminal-justice system infrastructure and policing and divesting in housing, education, jobs, and

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<sup>6</sup> Vanita Gupta, Ezekiel Edwards, “*It’s Time to Discuss Criminal Justice Reform*,” *Huffington Post* (Sept. 4, 2012), [https://www.huffpost.com/entry/its-time-to-discuss-criminal-justice\\_b\\_1853080](https://www.huffpost.com/entry/its-time-to-discuss-criminal-justice_b_1853080).

<sup>7</sup> Gupta, *supra* 1.

healthcare. *Some people call [changing this] 'defunding the police,' other people call it 'divest/invest.'*"<sup>8</sup>

- The *Washington Post*—the same outlet that you cited in defense of Ms. Gupta's nomination during a March 10 hearing on another topic—correctly noted that Ms. Gupta's June 2020 statement was "exactly what 'defunding' the police is all about. Now Gupta says she has never supported the idea."<sup>9</sup>
- A contemporaneous article by Reuters on June 8, 2020, also noted that "defund the police" was a term "being used by activists to propose eliminating or cutting spending on police departments, often the largest expense for municipalities, and instead funneling the money to programs for education, social welfare, housing, and other community needs."<sup>10</sup>
- Any claim that Ms. Gupta was not aware that the policies she espouses are what other activists mean by "defund the police," directly contradicts how she described her own policies just months ago.

#### 4. Her death penalty record.

- In response to a question about her prior statements against the death penalty, Ms. Gupta said that, while she had been an opponent of the death penalty, "I also know how to enforce the law. And I did so when I was in the Justice Department before, when Dylann Roof committed the heinous act against nine parishioners at the Charleston [Emanuel African Methodist Episcopal] Church. And *that prosecution and conviction happened under my watch.*"
- Ms. Gupta's statement suggested that she had supported the application of the death penalty in the Dylann Roof case because it met the requirements under the law, despite her personal feelings. That was not the case. Contemporaneous reporting by the *Washington Post* in 2016 noted that Attorney General Loretta Lynch approved prosecutors seeking the death penalty for Dylann Roof "*over the*

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<sup>8</sup> *Policing: The Donor Moment and What Is Possible*: Webinar hosted by Arabella Advisors (June 18, 2020) (Statement of Vanita Gupta), <https://www.arabellaadvisors.com/blog/5-insights-on-how-philanthropy-can-help-support-policing-reform/>.

<sup>9</sup> Salvador Rizzo, "Vanita Gupta's shifting views on defunding police, decriminalizing drugs," *Washington Post* (Mar. 10, 2021), <https://www.washingtonpost.com/politics/2021/03/10/vanita-guptas-shifting-views-defunding-police-decriminalizing-drugs/>.

<sup>10</sup> Trevor Hunnicutt, Joseph Ax, "Biden faces balancing act as activists call to 'defund the police,'" *Reuters* (June 8, 2020), <https://www.reuters.com/article/us-usa-election-biden-police/biden-faces-balancing-act-as-activists-call-to-defund-the-police-idUSKBN23F2GB>.

*objections of some advising her, including . . . Vanita Gupta, the head of the Justice Department’s civil rights division.”*<sup>11</sup>

- What Ms. Gupta said was that the “prosecution and conviction” of Dylann Roof, including the application of the death penalty, “happened under [her] watch.” She misled Senators by neglecting to say that it also happened over her objection.
- When asked about these contradictions in written questions, Ms. Gupta found a new way to avoid answering: She said it “would not be appropriate . . . to discuss” what she did at the Department of Justice, either on the Dylann Roof case “or on any other matter [she] worked on during [her] prior government experience.”<sup>12</sup>

Further, there remain significant questions about Ms. Gupta’s temperament, about which she refuses to answer even simple questions. During her hearing, multiple members of this Committee asked her about her harsh rhetoric and her attacks on the character and integrity of sitting federal judges and members of the Senate. In response, she told the Committee that she “regrets” her rhetoric. Yet, in responses to written questions after the hearing, Ms. Gupta repeatedly and notably refused to renounce her previous attacks, such as her prior assertions that four different jurists on the Supreme Court are liars, extremists, “dangerous,” or “opposed to civil and human rights.” Instead, in response to written questions from multiple members about her attacks on senators or the federal judiciary, Ms. Gupta chose to copy-and-paste more than 40 times a generalized statement that she has either “tremendous respect” or “immense respect” for judges or for members of the United States Senate.

Our call for a second hearing is not due to Ms. Gupta’s substantive views—either her longstanding views or her new ones claimed only since her nomination. It’s about her lack of candor with the Committee. If her answers at the hearing were misleading about her record, and in written questions she shifted her answers again or refused to answer at all, the Senate Judiciary Committee cannot perform its role to consider her nomination.

The position of Associate Attorney General is the third-ranking position in the Department of Justice. The Associate Attorney General oversees, among other things, the civil litigation and enforcement apparatus of the United States. It is critical that the Associate Attorney General be someone who can be trusted to tell the truth. Further, the Senate must be able to trust that the testimony of public officials under oath will be truthful and complete.

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<sup>11</sup> Kevin Sullivan, Matt Zaposky, “‘We are just looking for justice’: Charleston prepares for Dylann Roof’s trial,” Washington Post (Dec. 6, 2016), [https://www.washingtonpost.com/national/we-are-just-looking-for-justice-charleston-prepares-for-dylann-roofs-trial/2016/12/06/4396d6a0-bbba-11e6-ac85-094a21c44abc\\_story.html](https://www.washingtonpost.com/national/we-are-just-looking-for-justice-charleston-prepares-for-dylann-roofs-trial/2016/12/06/4396d6a0-bbba-11e6-ac85-094a21c44abc_story.html).

<sup>12</sup> See, e.g., Vanita Gupta Responses to Questions Submitted by Senator Lindsey Graham (received Mar. 17, 2021).

Unfortunately, this is not the case with Ms. Gupta, and the Committee should immediately schedule a second hearing.

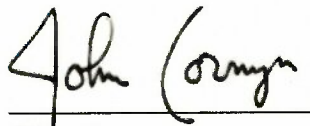
Sincerely,



Chuck Grassley  
Ranking Member  
Committee on the Judiciary



Lindsey O. Graham  
United States Senator



John Cornyn  
United States Senator



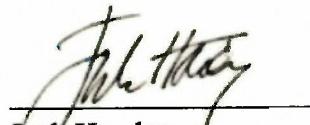
Michael S. Lee  
United States Senator



Ted Cruz  
United States Senator



Ben Sasse  
United States Senator



Josh Hawley  
United States Senator



Tom Cotton  
United States Senator



John Kennedy  
United States Senator



Thom Tillis  
United States Senator



Marsha Blackburn  
United States Senator