INNOCENCE PROJECT

March 24, 2022

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

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge Ketanji Brown Jackson to the Supreme Court of the United States.

Dear Chair Durbin and Ranking Member Grassley:

As Executive Director of the Innocence Project, I am writing to support the nomination of Judge Ketanji Brown Jackson as Associate Justice of the Supreme Court of the United States.

The Innocence Project works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. Our work is guided by science and grounded in anti-racism. To date, we have freed or exonerated 237 people who were wrongfully convicted and imprisoned for crimes they did not commit. Relying on nearly three decades of data compiled on exonerations, the Innocence Project has identified the chief risk factors for wrongful convictions and advocates to remediate them. To that end, in addition to providing *pro bono* post-conviction representation, we have passed more than 200 legislative reforms to improve policies and practices to help prevent wrongful convictions. We also participate, on a consulting or co-counsel basis and/or as *amicus curiae*, in cases where the outcome of an issue in dispute may create precedent that significantly aggravates or mitigates one or more risks of wrongful conviction.

Given this mission, the Innocence Project has a significant interest in the composition of the United States Supreme Court. Its decisions – whether addressing the right to challenge the Sixth Amendment effectiveness of counsel that fails to present available evidence of innocence (*Shinn v. Ramirez)*, or evaluating the viability of a request for a new trial based on a free-standing claim of innocence under the Fourteenth Amendment (*Herrera v. Collins)* – expand and limit opportunities to expose wrongful convictions. Thus, when Judge Jackson's nomination was announced, we had a responsibility to conduct an independent review of her record to assess whether and to what extent it revealed a willingness to fairly evaluate issues relevant to

innocence cases.

At the outset, it is clear that Judge Jackson's career as a federal trial and appeals court judge, a commissioner and vice chair of the U.S. sentencing commission, an assistant federal public defender, and a legal scholar has given her a broad perspective and deep understanding of the criminal legal system. Judge Jackson's experience as a trial judge also offers a critical perspective that is currently only shared by Justice Sotomayor. Her work as a public defender, in particular, provides her with a unique and important perspective on and understanding of the fallibility of the criminal legal system, an experience that no justice – other than Thurgood Marshall, who was not a public defender but had extensive criminal defense experience – has had.

That said, in order to determine whether Judge Jackson would fairly evaluate innocence issues, we reviewed her judicial writings on the subjects of criminal justice, constitutional law, and writs of habeas corpus. In all, we examined 53 criminal cases, 12 constitutional law cases, and 10 cases resolving habeas writs. The relevant topics addressed in these cases included 28 U.S.C. §§ 2254 and 2255 petitions, motions to suppress evidence and inculpatory statements, compassionate release requests, and emergency release motions related to the COVID-19 pandemic.

Judge Jackson's extensive record of public service demonstrates that she is an even-handed, thoughtful, and detail-oriented jurist who treats all litigants — including people charged with and convicted of crimes — fairly and with respect. She brings an empathetic but practical approach to justice, particularly in criminal cases. She has demonstrated a commitment to fairly and critically evaluating the criminal matters that come before her, and she does not demonstrate a reflexive bias in favor of the prosecution or the defense.

First, as a federal district court judge, Judge Jackson issued multiple decisions in response to requests for compassionate release filed by incarcerated people who were concerned about contracting COVID-19 in jails, prisons, and other detention facilities. Her decisions relied heavily on the individual facts of each case, and she granted some requests[1] and denied others, particularly when she found that release would pose real risks to public health and welfare.[2]

Second, Judge Jackson's criminal procedure and habeas corpus opinions demonstrate that she adheres to a traditional application of the law that does not not tend to expand existing statutes or laws to rule in favor of people charged with and convicted of crimes.[3]

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[1] See, e.g., *U.S. v. Dabney*, 2020 WL 1867750 (D.D.C. Apr. 13, 2020) (granting motion for release from pretrial detention in favor of high-intensity supervision due to the COVID pandemic where applicant had intermittent asthma, and the factors favoring detention are outweighed by the lack of proof that he would not appear for trial or of his dangerousness to the community); *U.S. v. Green*, 516 F. Supp. 3d 1 (D.C. 2021) (granting motion for compassionate release based on applicant's age (72), length of incarceration (49 years), health conditions (severe urinary incontinence, primary hypertension, congestive heart failure, latent tuberculosis, etc.)); *U.S. v. Johnson*, 464 F. Supp. 3d 22 (2020) (granting motion for compassionate release under the First Step Act for a a veteran who, suffered from PTSD, hypertension, obesity where these medical needs coupled with his mental needs, puts him at heightened risk of COVID in the facility in which he wais incarcerated and where there was no evidence that he would present a threat of future crimes or posed an actual threat to the community.).

[2] See, e.g., *U.S. v. Wiggins*, 2020 WL 1868891 (D.D.C. April 10, 2020) (denying emergency motion for release to home confinement pending sentencing and finding "Wiggins has not shown, by clear and convincing evidence or otherwise, that, if he is released, he would not engage in the same kinds of inherently dangerous and illegal activities that gave rise to his conviction in this case. . . . Furthermore, it is significant that Wiggins's established offense conduct spanned many months and was only revealed after extensive investigation by law enforcement. Thus, it is also clear to this Court that the potential danger posed by Wiggins's release . . . includes the heightened safety concerns that might exist for the probation officer who would be tasked with monitoring his behavior while he is out of jail."); *U.S. v. Sears*, 2020 WL 3250717 (D.D.C. June 16, 2020) (denying compassionate release application where applicant had health conditions which increases his risk of complications from COVID because the need to protect the public from the defendant who was convicted of child pornography would not be served if his sentence of 71 months were to be reduced to 23 months); .

[3] See, e.g., *Evans v. U.S.*, 2020 WL 3250730 (D.D.C. June 15, 2020) (denying merits of claim of ineffective assistance of counsel in petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 even though petitioner failed to exhaust state law remedies); *U.S. v. Leake*, 2020 WL 3489523 (D.D.C. June 26, 2020) (denying a suppression motion after finding that the accused had no standing to

Third, Judge Jackson, fairly evaluated the *pro se* claims that came before her, almost always noting the "less stringent" standard with which judges are instructed to review such pleadings and, in some instances, exercising her discretion to consider the merits of claims brought by *pro se* plaintiffs that failed to comply with service rules.[4] Ultimately, Judge Jackson, like most federal judges, dismissed many of the claims she reviewed for procedural defects.

Last, during her time with the U.S. Sentencing Commission, Judge Jackson made public statements accompanying her votes on three proposed changes to the Federal Sentencing Guidelines. In two of the proposed changes, Judge Jackson voted in favor of guideline amendments that would have the effect of reducing sentences for federal drug offenses. In the third proposed change, Judge Jackson voted against an amendment that would provide an additional downward departure retroactively for defendants who provided substantial assistance to the government and who already received a downward departure for that assistance.

Overall, we conclude that Judge Jackson's record reveals a fair and balanced approach to the criminal cases and matters that she has considered. Given that more than 3,000 people have been wrongfully convicted and exonerated in this country, the justices that sit on our nation's highest court must demonstrate a meaningful appreciation for the problems facing the criminal legal system and a familiarity with the issues underlying its greatest challenges, including due process, access to the courts, and federal habeas corpus. Judge Jackson easily meets that standard.

In summary, the Innocence Project is proud to support the nomination of Ketanji Brown Jackson to the Supreme Court of the United States.

Sincerely,

Christina Swarns
Executive Director
Innocence Project

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assert Fourth Amendment rights in a common area of an apartment building where he was neither a resident nor a guest); *U.S. v. Richardson*, 36 F. Supp. 3d 120 (D.D.C. 2014) (denying a suppression motion after finding that statements made to the police by a person in custody were admissible even though no *Miranda* warnings had not been administered because questioning was designed to exculpate).

[4] See, e.g., *Neuman v. U.S.*, 70 F. Supp. 3d 416, 422 (D.D.C. 2014) (granting in part and denying in part defendants' motion for summary judgment in FOIA case regarding criminal records); *Sheridan v. U.S. Off. of Pers. Mgmt.*, 278 F. Supp. 3d 11, 15 (D.D.C. 2017) (granting defendant's motion to dismiss and dismissing FOIA action but observing, "Sheridan's written and oral presentation in regard to this matter was exceptional for a non lawyer advocate."); *James v. U.S.*, 48 F. Supp. 3d 58, 65 (D.D.C. 2014) (dismissing false accusation and improper detention case for want of jurisdiction and noting that "because James is proceeding pro se, this Court has reviewed all of his filings in this matter in an attempt to discern the possible factual bases for James's decision to sue these specific individuals—an inquiry that would permit the Court to ascertain whether there is any cause to grant James leave to file a second amended complaint. This Court concludes that even the most generous reading of James's myriad filings provides no cause to grant leave to amend the complaint for various reasons.").