

January 25, 2021

President Joseph Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

cc:

Vice President Kamala Harris
The White House
1600 Pennsylvania Avenue, N.W.
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Dear President Biden:

We are a group of current and former elected prosecutors, Attorneys General, and law enforcement leaders, and former United States Attorneys, Department of Justice (DOJ) officials and judges, writing to urge you to begin your administration by making your commitment to justice clear: immediately take all actions within your power to end the federal death penalty once and for all. We applaud your stance against the death penalty and also believe that this is a critical moment in our nation for action. We need definitive and lasting steps that go beyond a moratorium that future administrations can readily undo. As such, we call on you to take action in a multifaceted and expansive way to: commute the sentences of all those on federal death row and withdraw current death penalty warrants, dismantle the death chamber at Terre Haute, encourage DOJ leadership to instruct all federal prosecutors to not seek the death penalty in future cases, support and incentivize state efforts to end capital punishment, and support legislation to end the federal death penalty.

Over the past year, we witnessed thirteen federal executions, all an assault on human dignity and an affront to American values. This killing spree laid bare the unacceptable injustices embedded in our nation's use of the death penalty: we watched as our government killed people with severe intellectual disabilities, people who had worked for decades to take responsibility for their crimes

and rehabilitate, and a woman with an unspeakable history of abuse and trauma. These tragedies demand bold and definitive action. And at a time when racial injustice, trust in law enforcement, and our nation's reputation in the eyes of the world are all in dire need of repair, anything short of these steps would fail to move our nation forward or attend to these pressing crises. We should not leave the lives of all people still on federal death row — and many more who will become entangled with the federal system — in the hands of future administrations. Nor should we continue to part company with other Western democracies in our willingness to implement a failed death penalty system. We ask you to choose justice, mercy, and compassion for our nation.

Many have tried for over forty years to make America's death penalty system just. Yet the reality is that our nation's use of this sanction cannot be repaired, and it should be ended. The death penalty raises serious concerns in tension with the constitutional ban against cruel and unusual punishment and the guarantees of due process and equal protection under the law.¹ It is unequally and arbitrarily applied, ineffective at improving public safety, and a waste of taxpayer resources; and its use presents the perilous risk of executing an innocent person.²

We also now know that we have not executed the worst of the worst, but often instead put to death the unluckiest of the unlucky – the impoverished, the poorly represented, and the most broken. Time and again, we have executed individuals with long histories of debilitating mental illness, childhoods marred by unspeakable physical and mental abuse, and intellectual disabilities that have prevented them from leading independent adult lives. We have executed individuals with trial lawyers so derelict in their duties and obligations that they never bothered to uncover long histories of illness and trauma. We have also likely executed the innocent.³

Race also plays a deeply disturbing and unacceptable role in the application of the death penalty. Studies have documented that defendants of color are disproportionately likely to be sentenced to die – this is particularly and uniquely true when the victim is white.⁴ The pernicious and racially disparate legacy of the death penalty is incontrovertible: people of color have accounted for a disproportionate 43% of executions in the United States since 1976, and 55% of defendants currently awaiting execution are people of color.⁵ Moreover, there are stark disparities in executions relative to the race of the victim: since 1976, a total of 21 white defendants were executed for crimes perpetrated against a Black victim; in contrast, in that same time period, 297 Black defendants were executed for crimes perpetrated against a white victim. Strikingly, while about 76% of all death penalty cases involve white victims, only one-half of all murder victims are white.⁶ This research underscores the systemic racism evident throughout our justice system.

The federal government should not ignore these issues in the best of times, but these concerns are especially acute in the midst of a global pandemic and calls for racial justice that have led to an ever-deepening erosion of trust in government and our criminal legal system. Our nation's use

¹ ACLU, *The Case Against the Death Penalty* (available at <https://www.aclu.org/other/case-against-death-penalty>).

² *Id.*

³ Andrew Cohen, *Yes, America, We Have Executed an Innocent Man*, *The Atlantic*, May 14, 2012 (available at <https://www.theatlantic.com/national/archive/2012/05/yes-america-we-have-executed-an-innocent-man/257106/>).

⁴ ACLU, *Race and the Death Penalty* (available at <https://www.aclu.org/other/race-and-death-penalty>).

⁵ Death Penalty Information Center, *Executions by Race and Race of Victim* (available at <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>).

⁶ *Id.*

of the death penalty separates us from many other democratic nations. Germany abandoned the death penalty after the Holocaust and enshrined protecting human dignity as a core value of its justice system. Italy abolished the death penalty to reckon with the horrors of fascism. Abolition of the death penalty was part of how these nations said “never again” to atrocity and oppression – and it is time for our nation to revisit its place in this history.

For all these reasons, we ask you to not only support federal legislative efforts to end capital punishment, but to take all steps in your power to disassemble the machinery of death and ensure future presidents cannot execute the dozens of people on federal death row at will. Every individual who remains on death row remains in peril. Every federal prosecutor who still seeks death sets in motion the wheels of a failed system and the government-sanctioned taking of the life of a fellow American. And keeping intact the death chamber at Terre Haute leaves the stage still set for unspeakable cruelty that says more about *us* as a society than it does about those we execute.

We call on you to begin your administration with these bold steps towards mercy and justice.

Most respectfully,

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