

Congress of the United States
House of Representatives
Washington, DC 20515

January 25, 2021

The Honorable Judge Merrick B. Garland
Attorney General-Designate
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General-Designate Garland:

We would like to congratulate you on your nomination by President Biden to serve as our nation's next attorney general. There is much work to be done to bring integrity to the Justice Department, and we look forward to working with the Biden Administration to address systemic racism within our criminal legal system. We strongly believe among the first actions of the new administration on this front ought to be fulfilling President Biden's commitment of working with Congress to end the federal death penalty and incentivizing states to end capital punishment across the country.¹

The flaws in the death penalty are most evident in its disproportionate imposition on Black and brown Americans. During the modern death penalty era, beginning with the Supreme Court's 1976 decision in *Gregg v. Georgia*, roughly 34 percent of people executed in the United States have been Black,² despite Black Americans making up only 13.4 percent of the national population.³ Similarly, as of October 2020, the U.S. death row population was more than 41 percent Black.⁴ Furthermore, a recent Harvard study found that defendants convicted of killing white victims were executed at a rate 17 times greater than those convicted of killing Black victims.⁵ These appalling statistics demonstrate the consistent racial bias and animus that Black Americans experience within this cruel facet of the criminal legal system.

Beyond race alone, we find numerous reasons to oppose the death penalty. The rate of innocence has proven to be particularly alarming, as a 2014 study published in the Proceedings of the National Academy of Sciences shows that at least 1 in 25 individuals sentenced to death are innocent, a conservative estimate according to the study's authors.⁶ In 2020 alone, six individuals on death row were exonerated, and an individual has already been exonerated in 2021, raising

¹ <https://joebiden.com/justice/>

² <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>

³ <https://www.census.gov/quickfacts/fact/table/US/PST045219>

⁴ <https://deathpenaltyinfo.org/death-row/overview/demographics>

⁵ <https://harvardcrcl.org/wp-content/uploads/sites/10/2020/07/07.30.2020-Phillips-Marceau-For-Website.pdf>

⁶ <https://www.pnas.org/content/pnas/111/20/7230.full.pdf>

the total number of death row exonerations to 174.⁷ Furthermore, 22 states and Washington, DC have abolished the death penalty, most recently with Colorado's abolition coming this past year.⁸ Beyond abolition, 12 states have not carried out an execution in over a decade, including three states with gubernatorial moratoria on executions.⁹ This continuing march to rid the United States of the death penalty has been a bipartisan undertaking, and we believe it is time for the federal government to follow in the path of a growing number of states.

The death penalty is a stain on the United States' commitment to advancing justice and human rights. After the past year of Americans taking to the streets to protest police brutality and racial injustice, we believe abolishing the death penalty would be an important marker as we work to address systemic racism in America, particularly within our criminal justice system. We ask that upon confirmation you partner with Congress to enact legislation to end the federal death penalty and resentence those currently on federal death row. Furthermore, we urge you to use your authority as Attorney General to do the following:

- Rescind the July 25, 2019, addendum to the Federal Execution Protocol and withdraw any pending death warrants;
- Withdraw authorization for all pending death penalty trial cases and cease to seek any death sentence;
- Direct the Bureau of Prisons to dismantle the federal death chamber at FCC Terre Haute prison;
- Rescind DOJ Rule 85 FR 75846 "Manner of Federal Executions" that took effect December 24, 2020. The rule would give the Attorney General unfettered ability to deviate from the regulations at will without subjecting any such changes to further review, and grant unlimited power to redelegate authority and reassign duties among various DOJ components in direct contravention of 18 USC 3596(a). The rule would also eliminate the requirement that any execution be preceded by a valid judgment and order from the federal sentencing court, thereby eliminating a federal court's authority to control its own judgments and violating the separation of powers between the judicial and executive branches.

As the Trump Administration has undertaken an appalling rush to execute a historic number of Americans this year, it is incumbent upon the Biden Administration to reverse course and work to make America a more just society.

Sincerely,



Adriano Espaillat
Member of Congress



Ayanna Pressley
Member of Congress

⁷ <https://deathpenaltyinfo.org/policy-issues/innocence-database>

⁸ <https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions>

⁹ Ibid.

/s/ Jerrold Nadler Member of Congress Chairman, House Judiciary Committee	/s/ Rashida Tlaib Member of Congress	/s/ Barbara Lee Member of Congress
/s/ Nydia M. Velázquez Member of Congress	/s/ Bobby L. Rush Member of Congress	/s/ David Trone Member of Congress
/s/ Gwen Moore Member of Congress	/s/ Ro Khanna Member of Congress	/s/ Peter Welch Member of Congress
/s/ Bonnie Watson Coleman Member of Congress	/s/ Jan Schakowsky Member of Congress	/s/ Henry C. “Hank” Johnson, Jr. Member of Congress
/s/ Nikema Williams Member of Congress	/s/ Eleanor Holmes Norton Member of Congress	/s/ Brenda L. Lawrence Member of Congress
/s/ James P. McGovern Member of Congress	/s/ Tom Malinowski Member of Congress	/s/ Yvette D. Clarke Member of Congress
/s/ Earl Blumenauer Member of Congress	/s/ Suzanne Bonamici Member of Congress	/s/ Jesús G. “Chuy” García Member of Congress
/s/ Mark Takano Member of Congress	/s/ Grace Meng Member of Congress	/s/ Alexandria Ocasio-Cortez Member of Congress
/s/ Lori Trahan Member of Congress	/s/ Cori Bush Member of Congress	/s/ Mondaire Jones Member of Congress
/s/ Katherine M. Clark Member of Congress	/s/ Ritchie Torres Member of Congress	/s/ Mark Pocan Member of Congress
/s/ Mary Gay Scanlon Member of Congress	/s/ Madeleine Dean Member of Congress	/s/ Chellie Pingree Member of Congress
/s/ Susan Wild Member of Congress	/s/ Judy Chu Member of Congress	/s/ Paul D. Tonko Member of Congress
/s/ Raúl M. Grijalva Member of Congress	/s/ Thomas R. Suozzi Member of Congress	/s/ Alcee L. Hastings Member of Congress
/s/ Donald S. Beyer Jr. Member of Congress	/s/ David N. Cicilline Member of Congress	/s/ Zoe Lofgren Member of Congress
/s/ Pramila Jayapal Member of Congress		

CC:

President Joseph R. Biden, Jr., United States of America
Monty M. Wilkinson, Acting Attorney General, U.S. Department of Justice