

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

August 9, 2021

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

Dear Attorney General Garland:

We write to urge you to take the necessary action to end the injustice of the federal death penalty. We commend the recent decision to impose a moratorium on federal executions. This is a crucial first step to ending the death penalty once and for all in the United States, but this action alone is insufficient. In the July 1 memorandum announcing the moratorium, the substantive and procedural defects of the death penalty are plainly stated.¹ Thus, it is incumbent on the Department of Justice to halt all participation in the capital punishment system and we urge the Department of Justice to prohibit attorneys from seeking the death penalty.

Capital punishment is a deeply flawed and inhumane practice that the Department of Justice can and must discontinue. Its known deficiencies, “including arbitrariness in its application, disparate impact on people of color, and the troubling number of exonerations in capital and other serious cases,” are thoroughly documented.² Despite these realities, the death penalty continues to be imposed in an arbitrary and capricious manner. A 2013 geographic study demonstrates that just two percent of counties in the U.S. are responsible for 52 percent of executions since 1976 and 56 percent of the U.S. death row population.³ Though in 2002 the Supreme Court banned executions of individuals with intellectual disabilities, mental health experts estimate that at least 20 percent of people on death row have serious mental illness.⁴ Despite the Supreme Court’s ruling in the 1972 case *Furman v. Georgia*, which resulted in a nationwide moratorium on executions due to concerns of unconstitutionally arbitrary application, “rigorous empirical research on the capital charging-and-sentencing process almost unequivocally reveals that states have failed to purge the process of [...] arbitrariness and bias.”⁵

Additionally, racism is inextricably embedded in the history and application of the death penalty, resulting in the disproportionate killing of Black people. During the modern death penalty era,

¹ *Moratorium on Federal Executions Pending Review of Policies and Procedures*, DEPARTMENT OF JUSTICE (July 1, 2021), <https://www.justice.gov/opa/page/file/1408636/download>.

² *Id.*

³ *The 2% Death Penalty*, DEATH PENALTY INFORMATION CENTER (Oct. 1, 2013), <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/the-2-death-penalty-how-a-minority-of-counties-produce-most-death-cases-at-enormous-costs-to-all>.

⁴ *Position Statement 54*, MENTAL HEALTH AMERICA (June 14, 2016), <https://www.mhanational.org/issues/position-statement-54-death-penalty-and-people-mental-illnesses>.

⁵ *The Moratorium on Federal Executions Highlights Need to Abolish the Death Penalty, Once and For All*, AMNESTY INTERNATIONAL (July 2, 2021), <https://www.amnestyusa.org/press-releases/the-moratorium-on-federal-executions-highlights-need-to-abolish-once-and-for-all/>.

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,⁶ despite Black Americans making up only 13.4 percent of the national population.⁷ Similarly, as of October 2020, the U.S. death row population was more than 41 percent Black.⁸ 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.⁹ These appalling statistics demonstrate the consistent racial bias and animus that Black Americans experience within this cruel facet of the criminal legal system.

Finally, 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 authors.¹⁰ In 2020 alone, six individuals on death row in the U.S. were exonerated, and one individual has been exonerated so far this year, raising the total number of death row exonerations to 185.¹¹

Because the injustices of state-sanctioned murder are unambiguous, resulting in irreparable harm and greater trauma, the Administration must fulfill its campaign promise and take bold action to abolish the death penalty and create a more just legal system. The July 1 memorandum announces a review of procedures related to conducting executions while ignoring the substantive problems of executions altogether. There are no procedural reforms that will eliminate the arbitrariness, anti-Blackness, or imperfectness of the death penalty. This can only be accomplished by putting an end to capital punishment. Without such bold and definitive action, future administrations may reverse this memorandum and cruelly execute Americans without any recourse.

In conjunction with the moratorium on executions, Department of Justice prosecutors must stop seeking the death penalty. The inconsistent logic of halting executions while, at the same time, advocating for its use has grave consequences. Recently, the Department of Justice has withdrawn capital punishment requests in seven cases.¹² We believe this action is a step in the right direction, but why were these specific cases chosen? Does a broader policy directive to stop pursuing capital sentences exist? Continuing to seek capital sentences undermines the entire purpose of the review and produces a significant conflict of interest. The Department of Justice is unable to facilitate a good-faith, objective review of the manner in which executions are conducted if its attorneys are simultaneously responsible for arguing in favor of conducting executions to judges and juries.

⁶ *Executions by Race and Race of Victim*, DEATH PENALTY INFORMATION CENTER (2021),

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

⁷ *Quick Facts*, U.S. CENSUS BUREAU (2020), <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

⁸ *Racial Demographics*, DEATH PENALTY INFORMATION CENTER (Oct. 1, 2020), <https://deathpenaltyinfo.org/death-row/overview/demographics>.

⁹ *Whom the State Kills*, HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW (2020), <https://harvardcrcl.org/wp-content/uploads/sites/10/2020/07/07.30.2020-Phillips-Marceau-For-Website.pdf>.

¹⁰ *Rate of false conviction of criminal defendants who are sentenced to death*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA (March 25, 2014), <https://www.pnas.org/content/pnas/111/20/7230.full.pdf>.

¹¹ *Innocence Database*, DEATH PENALTY INFORMATION CENTER (2021), <https://deathpenaltyinfo.org/policy-issues/innocence-database>.

¹² *U.S. Won't Seek Death Penalty in 7 Cases, Signaling a Shift Under Biden*, NY TIMES (July 22, 2021), <https://www.nytimes.com/2021/07/22/nyregion/justice-department-death-penalty.html>.

These opposing actions are irreconcilable. For example, the July 1 memorandum discusses the torturous pain caused by the lethal injection method as potentially violative of the Department of Justice's "responsibility to treat individuals humanely and avoid unnecessary pain and suffering."¹³ If there is a genuine concern of cruelty in conducting executions, which we believe is self-evident and is acknowledged by the Department, it is unethical to advocate for such punishment.

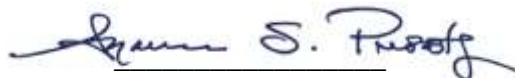
Further, there is historical precedent on the danger of expanding the size of death row before a review concludes. When the Obama Administration continued seeking the death penalty during a moratorium on executions, it created a greater pool of people for the Trump Administration to execute when he took office. On July 25th, 2019, there were 59 Americans on federal death row. That number has dwindled to 46 as our country witnessed an unprecedented execution spree in which the United States government killed 13 American citizens in just six months. We must learn from this horrific and dark chapter in order to stop it from ever occurring again.

While the United States Congress considers legislation to abolish the death penalty, which has an unprecedented and growing level of support, the Department of Justice still has a moral obligation to take immediate, decisive action. The Biden-Harris Administration was elected on the promise of abolishing the federal death penalty, and we are committed to using every legislative tool to help fulfill it.¹⁴ However, it is critical that the Department of Justice moves with urgency like lives depend on it, because they quite literally do.

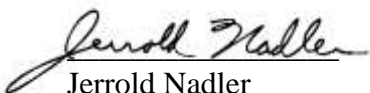
Sincerely,



Adriano Espaillat
Member of Congress



Ayanna Pressley
Member of Congress



Jerrold Nadler
Member of Congress
Chairman, House Judiciary Committee



Cori Bush
Member of Congress

¹³ *Moratorium on Federal Executions Pending Review of Policies and Procedures*, DEPARTMENT OF JUSTICE (July 1, 2021), <https://www.justice.gov/opa/page/file/1408636/download>.

¹⁴ *The Biden Plan for Strengthening America's Commitment to Justice*, JOE BIDEN (2021), <https://joebiden.com/justice/>.