

# United States Senate

WASHINGTON, DC 20510

November 21, 2024

The Honorable Joseph R. Biden, Jr.  
President  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

We applaud your Administration’s decision to pause federal executions while the Department of Justice (DOJ) reviews its death-penalty policies and procedures.<sup>1</sup> Even with additional safeguards in place, the application of capital punishment is an arbitrary and discriminatory practice. We therefore respectfully request that you review the cases of all individuals currently on federal death row and commute to life imprisonment the sentences of all individuals you consider appropriate before the conclusion of your term. A term of life imprisonment would provide accountability, and ensure that these individuals never again pose a threat to public safety, as federal parole has been abolished,<sup>2</sup> but without implicating the myriad issues associated with capital punishment.

As Attorney General Merrick Garland recognized when implementing the federal moratorium on executions, “[s]erious concerns have been raised about the continued use of the death penalty across the country, including arbitrariness in its application, disparate impact on people of color, and the troubling number of exonerations in capital and other serious cases.”<sup>3</sup> For example, while African Americans make up less than 14 percent of the United States population,<sup>4</sup> they account for 40 percent of individuals with death sentences,<sup>5</sup> and 38 percent of those currently on federal death row.<sup>6</sup> Race of the victim is also telling—since capital punishment’s reinstatement in 1976, 75 percent of executions nationwide have been in cases that involved white victims, while just 13 percent were in cases with black victims.<sup>7</sup>

Moreover, those executed have often suffered childhood trauma, mental illness, or brain injury—some more than one.<sup>8</sup> As of July 2020, just before the Trump Administration restarted executions, approximately three-fourths of those under a federal death sentence had

<sup>1</sup> Memorandum for the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021), available at [https://www.justice.gov/d9/2022-12/attorney\\_general\\_memorandum\\_july\\_1\\_2021.pdf](https://www.justice.gov/d9/2022-12/attorney_general_memorandum_july_1_2021.pdf).

<sup>2</sup> *United States Parole Commission*, U.S. Dep’t of Justice (last accessed Nov. 13, 2024), available at <https://www.justice.gov/doj/organization-mission-and-functions-manual-united-states-parole-commission>.

<sup>3</sup> Memorandum for the Attorney General, *supra* note 1.

<sup>4</sup> *Quick Facts*, U.S. Census Bureau (last accessed Oct. 29, 2024), available at <https://www.census.gov/quickfacts/fact/table/US/RHI225223#RHI225223>.

<sup>5</sup> Robert Dunham, *Death Row U.S.A.*, Legal Defense Fund (Jan. 1, 2024), available at <https://www.naacpldf.org/wp-content/uploads/DRUSAWinter202490.pdf>.

<sup>6</sup> *List of Federal Death Row Prisoners*, Death Penalty Information Center (last accessed Oct. 29, 2024), available at <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/list-of-federal-death-row-prisoners>.

<sup>7</sup> *Race and the Death Penalty by the Numbers*, Death Penalty Information Center (last accessed Nov. 8, 2024), available at <https://deathpenaltyinfo.org/policy-issues/race/race-and-the-death-penalty-by-the-numbers>.

“documented histories of childhood trauma and abuse,” and approximately half “exhibit[ed] signs of severe mental illness.”<sup>9</sup> It is not uncommon for federal death-row prisoners to suffer from “[d]evelopmental brain damage, traumatic brain injury, and/or intellectual disability.”<sup>10</sup> And many were convicted for crimes committed before age 25,<sup>11</sup> though brains generally continue developing and maturing through the mid-to-late twenties.<sup>12</sup>

Far from being “reserved only for the most culpable defendants committing the most serious offenses,”<sup>13</sup> as the Supreme Court has said the death penalty should be, overwhelming research demonstrates that capital punishment results in arbitrary and disparate outcomes. In return, society reaps little benefit. Nationwide, questions of innocence abound—both for pending and completed executions.<sup>14</sup> The cost of pursuing capital cases is significantly higher than that of non-capital cases.<sup>15</sup> Notably, some victims’ families do not believe a death sentence achieves justice.<sup>16</sup> And imposing the death penalty has not been shown to deter future crime.<sup>17</sup>

While DOJ can and should continue to enhance criminal justice procedures, discretionary practices and internal regulations—including the current execution moratorium—are easily

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<sup>8</sup> Maurice Chammah and Keri Blakinger, *What Lisa Montgomery Has In Common With Many On Death Row: Extensive Trauma*, Marhsall Project (Jan. 8, 2021), available at <https://www.themarshallproject.org/2021/01/08/what-lisa-montgomery-has-in-common-with-many-on-death-row-extensive-trauma>.

<sup>9</sup> Robert Dunham, *Insight: Vast Majority on Federal Death Row Have Significant Impairments*, Bloomberg Law (July 8, 2020), available at <https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-vast-majority-on-federal-death-row-have-significant-impairments>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *The Teen Brain: 7 Things to Know*, Nat’l Institute of Mental Health (last accessed Oct. 29, 2024), available at <https://www.nimh.nih.gov/health/publications/the-teen-brain-7-things-to-know#:~:text=Although%20the%20brain%20stops%20growing,the%20last%20parts%20to%20mature>.

<sup>13</sup> *Miller v. Alabama*, 567 U.S. 460, 476 (2012).

<sup>14</sup> See, e.g., *Executed But Possibly Innocent*, Death Penalty Information Center (last accessed Oct. 29, 2024), available at <https://deathpenaltyinfo.org/policy-issues/innocence/executed-but-possibly-innocent> (discussing numerous executions “with strong evidence of innocence”); *Significant Developments in Cases of Innocent Prisoners on Death Row*, Death Penalty Information Center (updated Sept. 25, 2024), available at <https://deathpenaltyinfo.org/significant-developments-in-cases-of-innocent-prisoners-on-death-row>.

<sup>15</sup> A 2010 report showed a high-end defense cost of \$681,556 in a death-eligible but non-authorized federal case, compared to a high-end cost of \$1,788,246 in an authorized case. Jon B. Gould & Lisa Greenman, *Report to the Committee on Defender Services Judicial Conference of the United States Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases*, U.S. Judicial Conference at 26 (Sept. 2010), available at <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf>. Median costs for the cases analyzed were \$44,809 and \$353,185, respectively. *Id.* More recently, in 2021, the American Civil Liberties Union (ACLU) revealed that “[t]he Federal Bureau of Prisons spent nearly \$4.7 million dollars on the first five executions carried out by the Trump administration in July and August 2020, according to redacted government financial records.” *Records Disclose Taxpayers Picked Up a Nearly Million Dollar Price Tag for Each Federal Execution*, Death Penalty Information Center (updated Sept. 25, 2024), available at <https://deathpenaltyinfo.org/records-disclose-taxpayers-picked-up-a-nearly-million-dollar-price-tag-for-each-federal-execution>. In sharp contrast, the average annual cost to house a federal inmate in fiscal year 2022, the most recent year with available data, was \$42,672. *Annual Determination of Cost of Incarceration Fee (COIF)*, 88 FR 65405 (Sept. 22, 2023).

<sup>16</sup> See, e.g., Elliott C. McLaughlin, *They may not forgive Dylann Roof, but they don’t want him dead* (Jan. 12, 2017 5:03 PM), available at <https://www.cnn.com/2017/01/12/us/dylann-roof-victims-oppose-death-penalty/index.html>.

<sup>17</sup> *Five Things About Deterrence*, Nat’l Institute of Justice, U.S. Dep’t of Justice Off. of Justice Programs (May 2016), available at <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

altered or reversed, as demonstrated by the previous administration.<sup>18</sup> As President, only you hold the unilateral power to ensure that individuals currently on federal death row are not executed by commuting their death sentences to life imprisonment.

Thank you for your time and consideration.

Sincerely,



Richard J. Durbin  
United States Senator



Cory A. Booker  
United States Senator



Christopher A. Coons  
United States Senator



Raphael Warnock  
United States Senator



Mazie K. Hirono  
United States Senator



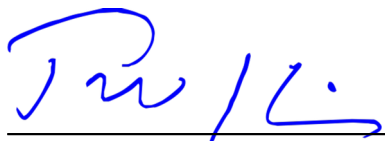
Alex Padilla  
United States Senator



Peter Welch  
United States Senator



Jeffrey A. Merkley  
United States Senator

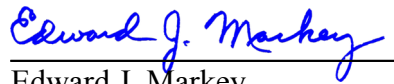


Tim Kaine  
United States Senator



Elizabeth Warren  
United States Senator

<sup>18</sup> *New Details Emerge Surrounding Federal Executions Under Trump Administration*, Death Penalty Information Center (updated Sept. 25, 2024), available at <https://deathpenaltyinfo.org/new-details-emerge-surrounding-federal-executions-under-trump-administration>.



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Edward J. Markey  
United States Senator



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Chris Van Hollen  
United States Senator