

## JOINT STATEMENT FROM ELECTED PROSECUTORS PLEDGING TO WORK TOWARDS THE ELIMINATION OF THE DEATH PENALTY

February 2022

We are a bipartisan group of elected prosecutors representing communities across every region of the country. We come from large cities as well as small rural communities and we bring to our elected positions a wide range of backgrounds and decades of experience in the field of prosecution. We share a joint vision for a more fair, just, and accountable criminal legal system.

Many of us have been on the frontlines of the effort to reform the American death penalty. Others have witnessed — and in some cases been directly involved in — prosecutorial efforts to seek capital punishment. Although we hold varied opinions surrounding the death penalty and hail from jurisdictions with different starting points on the propriety of this sentence, we have all now arrived at the same inexorable conclusion: our country’s system of capital punishment is broken. It is time to work together toward systemic changes that will bring about the elimination of the death penalty nationwide.

The United States was one of only 18 countries, the only Western democracy, and the only country in the Americas to use the death penalty in 2020.<sup>1</sup> Not only do we continue to separate ourselves from our peer nations by imposing the death penalty, but we do so in a way that is — on a national scale — arbitrary and capricious. Today, we have a capital punishment system that costs taxpayers over \$1 million per death sentence, runs counter to our constitutional ban against cruel and unusual punishment and guarantees of due process and equal protection, fails as an effective deterrent, and does not reduce crime.<sup>2</sup>

Based on these and other concerns, 23 states to date have abolished the death penalty outright, while decades of Supreme Court precedent have limited its use. However, even as use of the death penalty continues to wane, far too many cases offer troubling examples of its application in situations that should concern us all. We stand together in urging all prosecutive leaders to, at a minimum, refuse to seek death sentences against individuals with cognitive impairments or otherwise diminished culpability, and to work to remedy past cases that resulted in unjust capital sentences.

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<sup>1</sup> Death sentences and executions 2020, Amnesty International (2021), [amnesty.org/en/documents/act50/3760/2021/en/](https://www.amnesty.org/en/documents/act50/3760/2021/en/).

<sup>2</sup> Torin McFarland, The death penalty vs. life incarceration: A financial analysis Susquehanna University Political Review (2016), [scholarlycommons.susqu.edu/cgi/viewcontent.cgi?article=1026&context=supr](https://scholarlycommons.susqu.edu/cgi/viewcontent.cgi?article=1026&context=supr) (calculated in 2015 dollars) (other studies have calculated costs in some states to be significantly higher; see the Death Penalty Information Center’s Facts About the Death Penalty for an overview of additional research at [https://www.supremecourt.gov/opinions/urls\\_cited/ot2016/16-5247/16-5247-2.pdf](https://www.supremecourt.gov/opinions/urls_cited/ot2016/16-5247/16-5247-2.pdf)); Michael Radelet & Traci Lacoock, Do Executions Lower Homicide Rates: The Views of Leading Criminologists (2009), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7323&context=jclc>.

When the Supreme Court revived the death penalty in 1976, it did so on the premise that it would affect only the so-called “worst of the worst” — people who “commit a narrow category of the most serious crimes” and demonstrate “extreme culpability.”<sup>3</sup> Yet today, nearly 50 years and countless reform efforts later, the death penalty still targets not the worst of the worst, but rather the unluckiest of the unluckiest: people who endured sexual abuse and other unspeakable trauma as children; people with long histories of severe mental illness or traumatic brain injuries, including people struggling with PTSD after serving in the military; people who committed crimes during a psychotic break they can’t even remember; people who, because of incomplete cognitive development or other intellectual disability, have never been able to fully function as adults; people with trial lawyers so derelict in their duties and obligations that they never bothered to uncover long histories of illness and trauma. This, tragically, is the profile of death row in America.

We have also seen that racial biases are embedded deep within our system of capital punishment. People of color have accounted for a disproportionate 44% of executions in the United States since 1976 and 58% of defendants currently awaiting execution are people of color.<sup>4</sup> Black defendants accused of crimes against white victims are far more likely to receive the death penalty than other groups.<sup>5</sup> Strikingly, while about 76% of all death penalty cases involve white victims, only one-half of all murder victims are white.<sup>6</sup>

The U.S.’s acceptance of capital punishment is particularly unconscionable given that we know our system too often convicts innocent people. At least 186 people on death row have been exonerated over the last half-century; for every nine people who have been executed since 1976, at least one condemned person has been exonerated.<sup>7</sup> While we will never know how many innocent people we have executed, the National Academy of Sciences estimates that over 4% of current death row prisoners are innocent.<sup>8</sup> And, even in cases that do not lead to a death sentence, the mere prospect of capital punishment can corrupt and corrode the workings of the justice system, compelling innocent people to plead guilty and witnesses to deliver false testimony. In fact, the use or threat of the death penalty was a factor in more than 13% of exonerations across the U.S. in 2019.<sup>9</sup>

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<sup>3</sup> *Gregg v. Georgia*, Oyez, [oyez.org/cases/1975/74-6257](https://www.oyez.org/cases/1975/74-6257); *Kansas v. Marsh*, Oyez, [oyez.org/cases/2005/04-1170](https://www.oyez.org/cases/2005/04-1170); *Roper v. Simmons*, Justia, [supreme.justia.com/cases/federal/us/543/551/](https://supreme.justia.com/cases/federal/us/543/551/).

<sup>4</sup> Death Penalty Information Center, Executions by Race and Race of Victim, [deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim](https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim); Death Penalty Information Center, Current U.S. Death Row Population by Race, [deathpenaltyinfo.org/death-row/overview/demographics](https://deathpenaltyinfo.org/death-row/overview/demographics).

<sup>5</sup> ACLU, Race and the Death Penalty, [aclu.org/other/race-and-death-penalty](https://aclu.org/other/race-and-death-penalty).

<sup>6</sup> *Id.*

<sup>7</sup> Executions by state and region since 1976, Death Penalty Information Center, [deathpenaltyinfo.org/executions/executions-overview/number-of-executions-by-state-and-region-since-1976](https://deathpenaltyinfo.org/executions/executions-overview/number-of-executions-by-state-and-region-since-1976); Innocence, Death Penalty Information Center (2021), [deathpenaltyinfo.org/policy-issues/innocence](https://deathpenaltyinfo.org/policy-issues/innocence).

<sup>8</sup> S.R. Gross et al., Rate of false conviction of criminal defendants who are sentenced to death, 111 Proceedings of the National Academy of Sciences 7230–7235 (2014), [pnas.org/content/111/20/7230](https://pnas.org/content/111/20/7230).

<sup>9</sup> DPIC analysis: Use or threat of death penalty implicated in 19 exoneration cases in 2019, Death Penalty Information Center (2020), [deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-reports/dpic-analysis-2019-exoneration-report-implicates-use-or-threat-of-death-penalty-in-19-wrongful-convictions](https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-reports/dpic-analysis-2019-exoneration-report-implicates-use-or-threat-of-death-penalty-in-19-wrongful-convictions).

We are duty-bound to counter these egregious injustices and we pledge to use our power as prosecutors, whenever and however it may be appropriate, to do so. For those of us in states where the death penalty is still permitted, we will uphold Supreme Court precedent and the interests of justice by refusing to seek the death penalty against people with intellectual disabilities, post-traumatic stress disorder, histories of traumatic brain injury, or other intellectual or cognitive challenges that diminish their ability to fully understand and regulate their own actions. We will support efforts to identify individuals currently on death row in our jurisdictions who experienced these challenges and to seek commutations or other just resolutions. We will also support efforts to overturn existing death sentences in cases that feature a colorable claim of innocence, racial bias, egregiously inadequate or negligent defense counsel, discovery violations, or other misconduct that render us unable to stand by the sentence in good faith. This is the bare minimum that justice demands of us.

As elected prosecutors, we serve as ministers of justice and are obligated to seek outcomes that advance equity, fairness, community safety, and the rule of law. And we are also obligated to reject arbitrariness, racism, and cruelty. We pledge to abide by these obligations by refusing to seek the death penalty against individuals with cognitive impairments or otherwise diminished culpability. And we further commit to work toward the elimination of our nation's failed death penalty system, once and for all.

Respectfully,

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