



November 25, 2024

President Joseph Biden
The White House
1600 Pennsylvania Ave N.W.
Washington, D.C.

Re: Prosecutors and Law Enforcement Leaders in Support of Clemency for Federal Death Row

Dear President Biden:

We are a group of 38 current and former District Attorneys,¹ Attorneys General, and law enforcement leaders, and former United States Attorneys, Department of Justice officials, and judges writing to urge you to fulfill your commitment to justice and use your power to immediately clear the federal death row. We call on you to commute the sentences of every person currently sentenced to death in the federal system.

In the waning days of the first Trump Administration, the federal government executed thirteen people in rapid succession. These executions were an assault on human dignity and an affront to the American values that you represent. 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 crime and rehabilitate themselves, and a disabled woman who suffered an unspeakable history of abuse and trauma. These tragedies demand bold and definitive action. They also demand a return to the fundamental values of human decency in this nation.

We applaud your stance against the death penalty and believe that this is a critical moment in our nation for action and justice. We need clear and lasting steps that will ensure that the next administration will not execute the people currently facing death sentences in the federal system. The Trump Administration's prior rush to execute federal prisoners during a global pandemic demonstrated that a regard for justice, due process, and the rule of law did not guide or dictate their actions. Their abandonment of these hallmarks of American jurisprudence—and stated interest in doing so again—requires a full commutation of all federal death sentences. In this moment, we ask you to lead by example and choose justice, mercy, and compassion for our nation.

Make no mistake: the crimes for which the people on federal death row were sentenced to death are horrific and heartbreaking, and our hearts go out to the victims and their families. However, unlike what we might want to believe, we know that we have not always 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 people with long histories of debilitating mental illness, childhoods marred by unspeakable physical and mental abuse, and intellectual disabilities that have

¹ This term is used generally to refer to any chief local elected prosecutor, including State's Attorneys, County Attorneys, and Prosecuting Attorneys.

prevented them from leading independent adult lives. We have also likely executed the innocent.² Many have tried to make America's death penalty system more just. But the way that the death penalty has been carried out in our country raises serious concerns that it has not been applied consistent with our constitutional ban against cruel and unusual punishment and the guarantees of due process and equal protection under the law.³ The death penalty's immense flaws were particularly apparent in the Trump Administration's rush to execute thirteen people in the last six months of his presidency.⁴

Race has also always played 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. The pernicious and racially disparate legacy of the death penalty is incontrovertible: people of color have accounted for a disproportionate 44% of executions in the United States since 1976, and 57% 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, 304 Black defendants were executed for crimes perpetrated against a white victim.⁶ Strikingly, while over 75% of all death penalty cases involve white victims,⁷ less than one-half of all murder victims are white.⁸ This research underscores the systemic racism evident throughout our justice system.

Condemning people to death by the state does not advance public safety. The death penalty fails as an effective deterrent and does not reduce crime.⁹ As an outdated, error-riddled, and racially-biased practice, its continued use—and the potential for its abuse—erodes public trust in the criminal legal system and undermines the legitimacy of the entire criminal legal system. This erosion of trust and faith in the legitimacy of the criminal legal system threatens to reduce public cooperation with the criminal legal system and, consequently, jeopardizes public safety.

Our nation's use 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 in the 1930s and 40s. 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.

² Death Penalty Information Center, *Executed But Possibly Innocent*, <https://deathpenaltyinfo.org/policy-issues/innocence/executed-but-possibly-innocent>; Andrew Cohen, *Yes, America, We Have Executed an Innocent Man*, *The Atlantic* (May 14, 2012), <https://www.theatlantic.com/national/archive/2012/05/yes-america-we-have-executed-an-innocent-man/257106/>.

³ ACLU, *The Case Against the Death Penalty*, <https://www.aclu.org/other/case-against-death-penalty>.

⁴ Michael Tarm, *Fuller Picture Emerges of the 13 Federal Executions at the End of Trump's Presidency*, AP (Oct. 3, 2023) <https://apnews.com/article/trump-executions-biden-death-penalty-brandon-bernard-c1b26807c5c40b337d14485c3d6df2de>.

⁵ As of January 1, 2024; Legal Defense Fund, *Death Row U.S.A. 1* (Winter 2024), <https://www.naacpldf.org/wp-content/uploads/DRUSAWinter202490.pdf>.

⁶ *Id.*

⁷ *Id.*

⁸ See, e.g., Statista, *Number of Murder Victims in the United States in 2023, by Race* (2024), <https://www.statista.com/statistics/251877/murder-victims-in-the-us-by-race-ethnicity-and-gender/#:~:text=Published%20by%20Statista%20Research%20Department,586%20victims%20of%20another%20race>.

⁹ Michael Radelet & Traci Lacock, *Do Executions Lower Homicide Rates: The Views of Leading Criminologists* (2009), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7323&context=jclc>; Death Penalty Information Center, *Studies on Deterrence, Debunked* (2012), <https://deathpenaltyinfo.org/policy-issues/deterrence/discussion-of-recent-deterrence-studies>.

For all these reasons, we urge you to commute the sentences of everyone on federal death row. President Biden can set an example for justice-system leaders in difficult times by showing mercy and a respect for both human dignity and the rule of law. Granting clemency informed by conscience and a respect for human dignity advances public trust in the legal system and demonstrates to the American people that the rule of law informed by compassion is the heart of true justice.

Respectfully,

Roy L. Austin, Jr.

Former Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice
Former Deputy Assistant to President Obama for the Office of Urban Affairs, Justice, and Opportunity
(White House Domestic Policy Council)

Donald Ayer

Former Deputy Attorney General, U.S. Department of Justice
Former United States Attorney, Eastern District of California

Wesley Bell

Prosecuting Attorney, St. Louis County, Missouri

Buta Biberaj

Former Commonwealth's Attorney, Loudoun County, Virginia

Chesa Boudin

Former District Attorney, City and County of San Francisco, California

RaShall M. Brackney

Former Chief, Charlottesville Police Department, Virginia

Anthony Brown

Attorney General, Maryland

Chris Burbank

Former Chief, Salt Lake City Police Department, Utah

John Choi

County Attorney, Ramsey County (St. Paul), Minnesota

Dave Clegg

Former District Attorney, Ulster County, New York

Laura Conover

County Attorney, Pima County (Tucson), Arizona

Brendan Cox

Former Chief, Albany Police Department, New York

Parisa Dehghani-Tafti

Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

Matt Ellis

District Attorney, Wasco County, Oregon

Ramin Fatehi

Commonwealth's Attorney, City of Norfolk, Virginia

Stan Garnett

Former District Attorney, Twentieth Judicial District (Boulder), Colorado

Nancy Gertner

Former Senior Judge, U.S. District Court for the District of Massachusetts

George Gascón

District Attorney, Los Angeles County, California

Deborah Gonzalez

District Attorney, Western Judicial Circuit (Athens), Georgia

Andrea Harrington

Former District Attorney, Berkshire County, Massachusetts

James Hingeley

Commonwealth's Attorney, Albemarle County, Virginia

Elizabeth K. Humphries

Commonwealth's Attorney, Fredricksburg, Virginia

Natasha C. Irving

District Attorney, Sixth Prosecutorial District, Maine

Kathy Jennings

Attorney General, Delaware

Justin F. Kollar

Former Prosecuting Attorney, County of Kaua'i, Hawaii

Timothy K. Lewis

Former Judge, U.S. Court of Appeals for the Third Circuit; U.S. District Court for the Western District of Pennsylvania

Anne E. Lopez

Attorney General, Hawaii

Beth McCann

District Attorney, Second Judicial District (Denver), Colorado

Mary Moriarty

County Attorney, Hennepin County (Minneapolis), Minnesota

Bryan Porter

Commonwealth's Attorney, City of Alexandria, Virginia

Abdul D. Pridgen

Chief, San Leandro Police Department, California

Former Chief, Seaside Police Department, California

Mike Schmidt

District Attorney, Multnomah County (Portland), Oregon

Carol Siemon

Former Prosecuting Attorney, Ingham County (Lansing), Michigan

Carter Stewart

Former United States Attorney, Southern District of Ohio

Shannon Taylor

Commonwealth's Attorney, Henrico County, Virginia

James Tierney

Former Attorney General, Maine

Matthew Van Houten

District Attorney, Tompkins County, New York

Seth Waxman

Former Solicitor General of the United States, U.S. Department of Justice