



January 26, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect civil and human rights in the United States, and the undersigned organizations, we write to urge you to act on your promise of ensuring equality, equity, and justice in our criminal legal system by immediately commuting the sentences of all individuals under federal sentence of death, and reinstating the federal moratorium on the use of the death penalty. Any criminal legal system truly dedicated to the pursuit of justice should recognize the humanity of all those who come into contact with it, not sanction the use of a discriminatory practice that denies individuals their rights, fails to respect their dignity, and stands in stark contrast to the fundamental values of our democratic system of governance. If we are to truly forge a nation as good as its ideals, the federal government must take swift action to commute the sentences of those currently under federal sentence of death and end the government's cruel, ineffective, and irreversible use of the death penalty.

For seventeen years, the federal government operated under an informal moratorium on federal executions until, in July 2019, the Trump administration announced a new lethal injection protocol and with it, the intention to resume federal executions.¹ While initially delayed over just six months, former President Donald Trump's Justice Department hurriedly moved to execute thirteen individuals – Daniel Lee, Wesley Purkey, Dustin Honken, Lezmond Mitchell, Keith Nelson, William LeCroy, Jr., Christopher Vialva, Orlando Hall, Brandon Bernard, Alfred Bourgeois, Lisa Montgomery, Corey Johnson, and Dustin Higgs – just before the end of his presidency. As Supreme Court Justice Sonia Sotomayor noted in her dissent in *United States v. Dustin John Higgs*, “to put that in historical context, the Federal Government will have executed more than three times as many people in the last six months than it had in the previous six decades.”² In a period already marked by significant loss, as more than 419,000 Americans have died of COVID-19, as well as protest against a criminal legal system that systemically harms communities of color, the expediency with which the Trump administration raced to implement these executions while failing to take necessary action to protect individuals during the pandemic – and especially incarcerated individuals such as the 14 people on federal death row who became ill with the virus – is particularly disgraceful.³

¹ United States Department of Justice, Federal Government to Resume Capital Punishment After Nearly Two Decade Lapse. (July 25, 2019). <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>

² *United States v. Dustin John Higgs*, 592 U.S. ____ (2021). https://www.supremecourt.gov/opinions/20pdf/20-927_i42k.pdf

³ Fuchs, H. *Virus Hits Federal Death Row, Prompting Calls for Delays in Executions*. THE NEW YORK TIMES. (Dec. 21, 2020). <https://www.nytimes.com/2020/12/21/us/politics/coronavirus-death-row-executions.html>



Such state-sanctioned killing is not only inhumane, but in deep conflict with many of our country's most fundamental democratic principles and civil rights protections. A cruel and unusual punishment, the death penalty fails to comport with either the 8th or 14th Amendments and violates our obligations under international law. Since 1973, more than 170 individuals have been sentenced to death and exonerated on innocence grounds, demonstrating the high propensity for error in our criminal legal system and the unfathomable consequences that may follow.⁴ The only way to eliminate the possibility of executing an innocent person is to do away with the punishment altogether.

Moreover, the use of the death penalty continues to perpetuate patterns of racial and economic oppression endemic to the American criminal legal system. Throughout history, African Americans have been routinely put to death for offenses for which white individuals received lesser punishments, were more likely to be executed as juveniles, and were less likely to have their death sentence convictions reviewed by higher courts than were their white counterparts.⁵ Still today, stark racial disparities in the application of capital punishment exists. For example, while just 13 percent of the U.S. population is Black,⁶ 20 of the 49 individuals remaining on federal death row – or 41 percent – are African American.⁷ Additionally, factors such as discrimination against low-income individuals, failures to acknowledge individuals' histories of abuse or disability statuses, and other forms of systemic inequities in our criminal legal system more broadly further engrain and entrench the worst parts of this system in its resultant death penalty decisions. In states where the death penalty continues to be used, 72 percent of those executed in 2018 had severe mental illness, intellectual disability, brain injury, or a history of chronic childhood trauma and abuse, and nearly a quarter were executed for crimes occurring when they were 21 years of age or younger.⁸

For these reasons, we expressed our opposition to its continued existence and our support of policy approaches to end its use in our November 24, 2020 letter expressing our coalition's transition priorities.⁹ And we are not alone. In fact, momentum against the use of the death penalty has been growing in recent years as a number of states have recognized that it is an expensive, ineffective, and error prone practice too flawed to fix. Ten states have ended the use of their death penalty since 2007, bringing the total number of states that have either abolished the practice or imposed a moratorium on its use to 25, and the number of states that have not carried out an execution in more than a decade to 33.¹⁰ This momentum has also been reflected in public opinion, as opposition to the use of capital punishment rose to its highest point in fifty years in 2020.¹¹

This momentum has also been evidenced through the actions of the millions of individuals who, during the six months of the Trump administration's execution spree, took to the streets to protest police brutality and systemic racism and demand a wholesale transformation of our criminal legal system. Such a transformation cannot occur

⁴ Death Penalty Information Center, *Innocence: Overview*. (2021). <https://deathpenaltyinfo.org/policy-issues/innocence>

⁵ American Civil Liberties Union. *The Case Against the Death Penalty*. <https://www.aclu.org/other/case-against-death-penalty>

⁶ United States Census Bureau. *Quick Facts*. (Population estimates as of July 1, 2019).

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

⁷ Federal Capital Habeas Project. *Federal Death Row Population By Race*. (Updated Jan. 19, 2021).

<https://2255.capdefnet.org/General-Statistics/Federal-Death-Row-Population-By-Race>

⁸ Death Penalty Information Center. *The Death Penalty in 2018: Year End Report*. 2018 Execution Data. (revised July 2019).

[https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2018-year-end-report#:~:text=\(Washington%20D.C.\)%20With%2025,Penalty%20Information%20Center%20\(DPIC\).&text=2018%20was%20the%20fourth%20year,with%20fewer%20than%2030%20executions](https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2018-year-end-report#:~:text=(Washington%20D.C.)%20With%2025,Penalty%20Information%20Center%20(DPIC).&text=2018%20was%20the%20fourth%20year,with%20fewer%20than%2030%20executions)

⁹ The Leadership Conference on Civil and Human Rights. *Transition Priorities*. (Nov 24, 2020).

<http://civilrightsdocs.info/pdf/policy/task-force-priorities/Transition-ShortToplinePriorities-TheLeadershipConference-November2020-FINAL.pdf>

¹⁰ Death Penalty Information Center. *State by State*. (2021). <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state>

¹¹ Death Penalty Information Center. *Gallup Poll: Public Support for the Death Penalty Lowest in a Half-Century*. (Nov. 24, 2020). <https://deathpenaltyinfo.org/news/gallup-poll-public-support-for-the-death-penalty-lowest-in-a-half-century>

without addressing the role the death penalty has played in reinforcing false and racialized perceptions of dangerousness, and espousing the idea that public safety is promoted and justice is achieved through harsh punishment. In order to enact truly comprehensive reforms that reimagine public safety in our communities, we must acknowledge that increased criminalization and excessively punitive policies are not an effective response to violence, and the only way to create genuine public safety is to invest in the health, education, economic opportunity, and general well-being of all individuals.

As a candidate, you campaigned on a platform centered on strengthening “America’s commitment to justice,” based on the core beliefs that we must eliminate racial, income-based, and other disparities, and create a criminal legal system focused not on cruelty and punishment, but on “redemption and rehabilitation.”¹² Now, as president, you have the unique ability to begin effectuating these policy goals immediately by using your executive clemency powers to commute the sentences of the individuals on federal death row today. You have the power to:

- dismantle the federal death chamber at FCC Terre Haute;
- rescind the lethal injection protocol; rescind the “Manner of Execution”¹³ regulation that took effect in December 2020;
- establish clear executive guidelines that prohibit federal prosecutors from seeking the death penalty;
- withdraw authorization for all pending death penalty trial cases; and
- issue a federal moratorium on federal executions, providing relief to those whose lives lay in the balance should the Department of Justice continue to hold the power to schedule federal executions.

These are all actions you can begin to implement immediately, without the assistance of Congress, and we respectfully implore you to do so. We also recognize that if there is one thing that the waning months of the Trump presidency also made clear, it is the horrendous implications of simply having an informal federal death penalty moratorium in place. Therefore, we also encourage you to prioritize working with Congress to deliver on your campaign promise to work to end the death penalty through legislation such as H.R. 262, the Federal Death Penalty Prohibition Act, introduced by Senator Dick Durbin and Representative Ayanna Pressley.

Over the past year, millions of individuals have made clear that our nation must meaningfully address systemic racism and inequality and fundamentally transform our criminal legal system as we continue our work to chart a path towards a more fair, just, and inclusive society. By virtue of the office you now hold, you have the power to take swift, decisive action to begin to right the injustices of today and prevent them from continuing to occur tomorrow. As youth poet laureate Amanda Gorman proclaimed on your inaugural stage: “If we merge mercy with might and might with right, then love becomes our legacy and change our children’s birthright.”¹⁴ By taking immediate action to commute the sentences of the 49 individuals on federal death row, you have the ability to show that the Biden-Harris administration will govern with mercy and will work to put the might of the federal government behind policies that recognize, reflect, and respect the dignity, humanity, and rights of all individuals.

¹² The Biden Plan for Strengthening America’s Commitment to Justice. <https://joebiden.com/justice/>

¹³ Manner of Federal Executions. 85 C.F.R. 75846. (Nov. 27, 2020)

<https://www.federalregister.gov/documents/2020/11/27/2020-25867/manner-of-federal-executions>; See also, corrected Final Rule, 85 C.F.R. 76979. (Dec. 1, 2020). <https://www.federalregister.gov/documents/2020/12/01/C1-2020-25867/manner-of-federal-executions>

¹⁴ A. Gorman. *The Hill We Climb*. (Jan. 20, 2021).



If you have any questions about the issues raised in this letter, please contact Sakira Cook of The Leadership Conference at cook@civilrights.org, Cynthia W. Roseberry of the American Civil Liberties Union at Crseberry@aclu.org, Kristina Roth of Amnesty International USA at kroth@aiusa.org, and Lisa Cylar Barrett of the NAACP Legal Defense Fund at lcylarbarrett@naacpldf.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
Amnesty International USA
NAACP Legal Defense Fund