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THE STATE OF VERMONT
OFFICE OF THE ATTORNEY
GENERAL

THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY
GENERAL



Karl A. Racine
District of Columbia
Attorney General

August 23, 2019

The Honorable William Barr
Attorney General
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

Re: Reinstatement of federal death penalty.

Dear Attorney General Barr:

We, the Attorneys General of Vermont, the District of Columbia, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, Washington, and Wisconsin, write to express our opposition and urge the Department of Justice to reconsider the directive announced on July 25, 2019, to reinstate the use of the death penalty for federal prisoners. The government should not be in the business of killing its own citizens. That is especially true given what we know of the death penalty's flaws: It is applied inconsistently and unfairly, is racially biased, and is given to innocent people. It does not deter violence and it does not protect public safety. And these problems come with an enormously costly financial burden.

Grave punishments for horrible crimes are right and necessary, but the death penalty is wrong.

Decades worth of data demonstrates that the death penalty is not applied fairly or consistently yielding discrimination on the basis of race, wealth, socio-economic status, and geography. All told, about 43% of all Americans executed by the state since 1976 were people of

color, and 55% of those awaiting execution today are people of color.¹ Studies have repeatedly shown that those who murder white victims are far more likely to be sentenced to die than those who kill black victims,² and some studies indicate that black defendants are more likely to face the death penalty than white defendants.³ Over 75% of murder victims in cases that result in execution are white, even though white people make up about 50% of murder victims overall.⁴

Similarly, studies have shown that low-income defendants are more likely to be given the death penalty, and defendants who kill people of higher socio-economic status are more likely to be given a sentence of death than those who kill people of lower socio-economic status.⁵ Geography matters too: rates of death sentences vary greatly depending on where a defendant goes to trial.⁶

The federal system is not immune to these failings. According to the Department of Justice's own statistics, of the 59 people on federal death row at the end of 2017 nearly half were black⁷—despite the fact that black Americans make up less than 13% of the country's population.⁸ And nearly half of all current federal death sentences were handed out in just three states: Texas, Virginia, and Missouri.⁹

¹ The American Civil Liberties Union, at <https://www.aclu.org/other/race-and-death-penalty>

² See, e.g., Katherine Beckett, Heather Evans, *Race, Death, and Justice: Capital Sentencing in Washington State, 1981-2014*. 6 COLUM. J. RACE & L. 77 (2016); Phillips, Scott, *Continued Racial Disparities in the Capital of Capital Punishment? The Rosenthal Era* (April 3, 2012) *Houston Law Review*, Vol. 50, No. 1, 2012; U Denver Legal Studies Research Paper No. 12-05; Johnson, Sheri Lynn and Blume, John H. and Eisenberg, Theodore and Hans, Valerie P. and Wells, Martin T., *The Delaware Death Penalty: An Empirical Study* (March 11, 2012) *Iowa Law Review*, Cornell Legal Studies Research Paper No. 12-24; Glenn L. Pierce and Michael L. Radelet, *Death Sentencing in East Baton Rouge Parish, 1990-2008*, 71 *La. L. Rev.* (2011);

³ Katherine Beckett, Heather Evans, *supra* note 1; Johnson, Sheri Lynn and Blume, John H. and Eisenberg, Theodore and Hans, Valerie P. and Wells, Martin T., *supra* note 1; David C. Baldus, George Woodworth, David Zuckerman, and Neil Alan Weiner, *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview with Recent Findings from Philadelphia*, 83 *Cornell L. Rev.* 1638 (1998)

⁴ Death Penalty Information Center, at <https://deathpenaltyinfo.org/policy-issues/race/ways-that-race-can-affect-death-sentencing>, and The American Civil Liberties Union, at <https://www.aclu.org/other/case-against-death-penalty>. Data taken from FBI crime statistics.

⁵ Johnson, Jeffery L., and Colleen F. Johnson. *Poverty and the Death Penalty*. *Journal of Economic Issues*, vol. 35, no. 2, 2001, pp. 517–523; J.H. Fortenberry, *Socio-Economic Attributes Affecting the Imposition of the Death Penalty*, abstract at: <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=61530>.

⁶ Death Penalty Information Center, at <https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1562867044.pdf>, and at <https://deathpenaltyinfo.org/stories/examples-of-geographic-disparity>; Equal Justice Initiative study, summary at: <https://eji.org/news/study-geographic-disparities-death-sentencing-alabama-counties>.

⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Capital Punishment, 2017: Selected Findings*, July 2019, found at: <https://www.bjs.gov/content/pub/pdf/cp17sf.pdf>

⁸ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Capital Punishment, 2017: Selected Findings*, July 2019, found at: <https://www.bjs.gov/content/pub/pdf/cp17sf.pdf>

⁹ Death Penalty Information Center, at: <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/list-of-federal-death-row-prisoners>.

The death penalty is a lottery, but a lottery heavily weighted in favor of wealth and whiteness and against poverty and people of color.

If they can ever be justified, state-sponsored punishments of death must be free from error. They are not. Since 1973, 166 people on death row in the United States have been exonerated and released.¹⁰ A 2014 study by legal experts from the University of Michigan and Michigan State concluded that one in every 25 inmates on death row is innocent. This was, as the authors put it, a “conservative estimate.”¹¹ Many will never be cleared—and it’s impossible to know how many have already been wrongfully executed. No system of justice can remain legitimate when it risks irreversible, unappealable mistakes.

Perhaps these serious problems might be warranted if the death penalty deterred violent crime. Experience shows it does not. States without the death penalty have *lower* homicide rates than those with it—in most years since 2000, that difference has been well over 20%.¹² Statistics have shown that law enforcement officers are no more likely to be killed in jurisdictions without the death penalty than in those with it.¹³

The lack of effective deterrence renders the huge costs to the government of death penalty litigation a waste of resources. Budget reviews demonstrate that such litigation usually costs governments far more than imprisoning somebody for life—often multiple times more.¹⁴ Without offering effective deterrence, such costs amount to a waste of resources. This is fiscally irresponsible.

Many people sentenced to death are guilty of truly heinous crimes. They deserve the harshest punishments, including life in prison without the possibility of release. Some of the problems of capital punishment—racial bias, inconsistency, and mistaken convictions—apply to the criminal justice system more broadly. But death is different. Death is final. There is no appeal from death. It is not just for the government to execute people when the punishment is

¹⁰ Death Penalty Information Center, searchable database: <https://deathpenaltyinfo.org/policy-issues/innocence-database>.

¹¹ Gross, S. R., et al. “Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death.” Proceedings of the National Academy of Sciences, vol. 111, no. 20, 2014, pp. 7230–35., available at doi:10.1073/pnas.1306417111: <https://www.pnas.org/content/111/20/7230>

¹² Death Penalty Information Center, compiled from FBI crime statistics: <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>.

¹³ William C. Bailey Ruth D. Peterson, *Police Killings and Capital Punishment: The Post-Furman Period*, Criminology, Volume 25, Issue 1, February 1987; The American Civil Liberties Union: <https://www.aclu.org/other/case-against-death-penalty>.

¹⁴ Calvin Johnson and William Quigley, *An Analysis of the Economic Cost of Maintaining A Capital Punishment System In The Pelican State*, Loyola University New Orleans, May 2, 2019; *Report of the Judicial Council Death Penalty Advisory Committee*,” Judicial Council, Kansas Legislature, Feb. 13, 2014; N. Brambila, F. Turner, and M. Urban, “*Capital punishment in Pennsylvania: When death means life*,” Reading Eagle, December 14, 2014; Judge Arthur L. Alarcón and Paula M. Mitchell, *Costs of Capital Punishment in California: Will Voters Choose Reform this November?*, 46 Loy. L.A. L. Rev. S1 (2012).

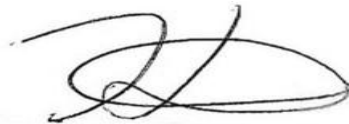
carried out so unequally and unfairly. It is not just to impose an error-ridden punishment for which there is no possibility of correction.

It is a grave mistake for the federal government to restart, in former Supreme Court Justice Harry Blackmun's words, "the machinery of death."¹⁵ As the chief law enforcement officers in our respective states, we urge you to reverse this decision.

Sincerely,



Thomas J. Donovan, Jr.
Vermont Attorney General



Karl A. Racine
District of Columbia Attorney General



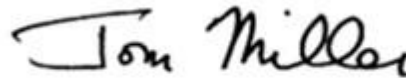
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¹⁵ *Callins v. Collins*, 510 U.S. 1141, 1145 (J. Blackmun, dissenting) (1994).



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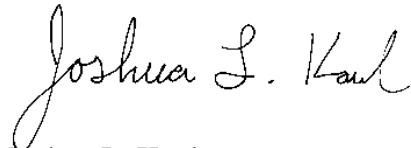
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