

# United States Senate

WASHINGTON, DC 20510

December 21, 2020

The Honorable Michael E. Horowitz  
Inspector General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Mr. Horowitz:

We are writing to seek an investigation of the frenzied and unprecedented “spree of federal executions during [President] Trump’s lame duck period.”<sup>1</sup>

In July 2020, the Trump Administration ended a 17-year hiatus on federal executions when it executed Daniel Lewis Lee, and followed that with six more executions between July 16, 2020, and September 24, 2020.<sup>2</sup> Since his defeat at the polls in the November 2020 election, President Trump and political appointees at the Department of Justice (DOJ) have ramped up the pace of executions during the lame duck period of his presidency, with executions of Orlando Hall on November 19, 2020, Brandon Bernard on December 10, 2020, and Alfred Bourgeois on December 11, 2020.<sup>3</sup> Three more executions are scheduled mere days before the end of President Trump’s term in January 2021, including Lisa Montgomery, who would be the first woman to be put to death by the federal government in 67 years.<sup>4</sup> Similarly, Lezmond Mitchell, who was executed on August 26, 2020, “was the first Native American man to be executed by the federal government in recent history,” and his “supporters claim[] that the Justice Department obtained his sentence only by exploiting a loophole in the law and disregarding tribal sovereignty,” which allows tribes to opt out of the death penalty.<sup>5</sup>

This spree of executions marks a break with both modern history and decades-old practice. The federal government had not executed a federal prisoner since 2003 and had only executed three people in the previous 50 years.<sup>6</sup> The executions that have already taken place since November

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<sup>1</sup> NBC News, Spree of federal executions during Trump's lame-duck period and pandemic is unprecedented, December 9, 2020, <https://www.nbcnews.com/news/us-news/spree-federal-executions-during-trump-s-lame-duck-period-pandemic-n1250565>.

<sup>2</sup> Death Penalty Information Center, Executions Under the Federal Death Penalty, December 2020, <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/executions-under-the-federal-death-penalty>.

<sup>3</sup> Death Penalty Information Center, Executions Under the Federal Death Penalty, December 2020, <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/executions-under-the-federal-death-penalty>.

<sup>4</sup> Time, How COVID-19 Is Impacting the First Scheduled Federal Execution of a Woman in Nearly 70 Years, November 20, 2020, <https://time.com/5914533/lisa-montgomery-execution-coronavirus-death-penalty/>.

<sup>5</sup> New York Times, Justice Dept. Executes Native American Man Convicted of Murder,” August 26, 2020, <https://www.nytimes.com/2020/08/26/us/politics/lezmond-mitchell-executed.html>.

<sup>6</sup> Death Penalty Information Center, Executions Under the Federal Death Penalty, December 2020, <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/executions-under-the-federal-death-penalty>.

3, 2020, and those scheduled to occur in January 2021, are “the first executions under a ‘lame duck’ president in over 100 years,” and come despite the fact that “President-elect Joe Biden has said he intends to end the use of capital punishment by the federal government while in office.”<sup>7</sup>

The reversal of long-standing DOJ policies and protocols for federal executions raises numerous concerns about the fairness and application of the death penalty by the Trump Administration, including the clear evidence that “racial bias against defendants of color and in favor of white victims has a strong effect on who is capitally prosecuted, sentenced to death, and executed”;<sup>8</sup> whether concerns about botched executions (“those involving unanticipated problems or delays that caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner”)<sup>9</sup> have been fully addressed; and whether “employing death sentences during a pandemic is unsafe, particularly when it requires inmates, their families and legal representatives, and teams of federal execution specialists to travel to the federal prison in Terre Haute, Indiana, where executions are held.”<sup>10</sup>

To address these concerns, we ask that you conduct an investigation of the application of the death penalty under President Trump, and that your review include the following matters:

1. What was the policy rationale for the 2019 reversal of long-standing policies and processes that prevented federal executions since 2003? Did DOJ officials conduct appropriate analyses and reviews when determining whether to reverse those policies and procedures?
2. Does the application of the federal death penalty under President Trump exhibit a pattern or practice of racial bias?
3. Has the Trump Administration taken appropriate steps to ensure that federal executions are not botched, and are conducted in the most humane fashion possible?
4. What are the costs of federal executions? Why has the Bureau of Prisons used secretive, no-bid contracts to obtain lethal injection drugs,<sup>11</sup> and was the use of these contracts appropriate?
5. Has the Trump Administration taken appropriate steps to ensure that families and legal representatives of those that are put to death, families of crime victims, and federal officials involved in executions are protected from the spread of COVID-19?

Thank you for your attention to this request.

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<sup>7</sup> Time, *How COVID-19 Is Impacting the First Scheduled Federal Execution of a Woman in Nearly 70 Years*, November 20, 2020, <https://time.com/5914533/lisa-montgomery-execution-coronavirus-death-penalty/>.

<sup>8</sup> Death Penalty Information Center, *Policy Issues: Race*, December 2020, <https://deathpenaltyinfo.org/policy-issues/race>.

<sup>9</sup> Austin Sarat, *Gruesome Spectacles: Botched Executions and America's Death Penalty*, 2014.

<sup>10</sup> NBC News, *Spree of federal executions during Trump's lame-duck period and pandemic is unprecedented*, December 9, 2020, <https://www.nbcnews.com/news/us-news/spree-federal-executions-during-trump-s-lame-duck-period-pandemic-n1250565>.

<sup>11</sup> Citizens for Responsibility and Ethics in Washington, *“New records show Trump’s DOJ rushed a no-bid contract for lethal injection drugs,”* December 3, 2020, <https://www.citizensforethics.org/reports-investigations/crew-investigations/new-records-show-trumps-doj-rushed-a-no-bid-contract-for-lethal-injection-drugs/>.

Sincerely,



Elizabeth Warren  
United States Senator



Cory Booker  
United States Senator



Richard J. Durbin  
United States Senator



Chris Van Hollen  
United States Senator



Edward J. Markey  
United States Senator



Bernard Sanders  
United States Senator



Amy Klobuchar  
United States Senator



Sherrod Brown  
United States Senator