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.”¹

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, 2020.² 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, 2020.³ 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.⁴ 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.⁵

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.⁶ The executions that have already taken place since November

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.”

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” 8 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“) 9 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.” 10

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, 11 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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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