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November 17, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-001

Dear Attorney General Barr,

We write to urge an immediate stay in the upcoming scheduled federal executions of Orlando Hall (November 19), Lisa Montgomery (December 8), and Brandon Bernard (December 10). Our nation is weathering a pandemic that has brought it to its knees—one that is projected to worsen in the coming weeks. This will make any scheduled execution a tinderbox for further outbreaks and exacerbate concerns over the possibility of miscarriage of justice.

Spikes in COVID-19 not only endanger the public, they decrease the accessibility of essential services. The ability to effectively see a client, schedule a hearing, or argue a case decreases as our hospitals fill and our leaders are afflicted. To preserve the sanctity of all Americans' constitutional rights, it is imperative that we maintain a climate where men and women who have been sentenced to death have every available legal recourse in the days before their execution. The only way to ensure this is to stay these executions.

Your agency's persistence in carrying out these executions is an unnecessary health risk that cannot be overstated. Executions like that of Orlando Hall—scheduled for this Thursday—risk the health of thousands, including Bureau of Prison ("BOP") employees, contractors, attorneys, medical personnel, spiritual advisers, and family members. They also often require interstate travel among those slated to attend, further exacerbating the spread of the virus.

On July 14, 16 and 17 of this year, Daniel Lewis Lee, Wesley Purkey and Dustin Honken, respectively, were executed at FCC Terre Haute, a facility in Indiana with known cases of COVID-19. In the weeks following these executions, the county where the prison is located experienced a surge of confirmed COVID-19 cases. Despite this, Lezmond Mitchell and Keith Nelson were executed on August 26 and 28, respectively, at the same facility, and then William LeCroy on September 22 and

Christopher Vialva on September 24.¹ As of September 15, three inmates had died from COVID-19. These examples indicate a causal link between executions and COVID-19 surges; therefore, the upcoming scheduled executions must be stayed.

These COVID-19 infections associated with executions were predictable, foreseeable, and present an unnecessary risk to innocent life. Prisons executions themselves carry with them the inherent risk of being the site of a super-spreader event, given the significant limitations surrounding social distancing. When combined with the hundreds of persons required to carry out an execution, the risks are even further amplified. Despite this, Department of Justice has chosen to continue carrying out these executions, further denying constitutional rights to prisoners while endangering the lives of those around them.

These unprecedented risks and challenges have caused direct exposure and illness to legal teams especially. Out of real concern for their health and safety, Daniel Lewis Lee's attorneys had to miss his July 14 execution entirely and Dustin Honkin was denied his right to spiritual counsel at his September 17 execution as a result of the pandemic. Lisa Montgomery is scheduled to be executed on December 8 and is at risk of being without counsel at that time, as her attorneys recently contracted COVID-19 during their visits to her at Federal Medical Center in Carswell, Texas. Currently, the state of Texas has the highest number of COVID-19 cases in the nation. Her lawyers are too sick to meet the deadline for her clemency petition set for this Sunday. The Department of Justice denied their request for an extension, despite their battle with this deadly virus.

Continuing to execute federal death row inmates during a time when nearly every state in the nation has postponed executions due to significant public health concerns stemming from the COVID-19 pandemic is reckless and immoral. Our agencies should be focused on protecting and saving American lives, not causing senseless and unnecessary risk to innocent persons charged with carrying out federal executions.

Hundreds of thousands of our fellow citizens have lost loved ones to this deadly pandemic. By stopping these executions, you and your agency can prevent more unnecessary deaths. We reiterate our commitment to the suspension of all federal executions at this time, ask for you to prioritize federal employee lives and stay all pending federal executions, and request a response to this letter within 15 calendar days from its receipt.

Sincerely,



Karen Bass
Chair, Congressional Black Caucus



Henry C. "Hank" Johnson, Jr.
Secretary, Congressional Black Caucus

¹ "New Data Connect the Federal Executions and a COVID-19 Outbreak in Indiana." Capital Punishment Project at ACLU. September 22, 2020. <https://www.aclu.org/news/capital-punishment/new-data-connect-the-federal-executions-and-a-covid-19-outbreak-in-indiana/>