

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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December 15, 2021

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Garland:

We write to request information regarding whether the Department of Justice (DOJ) plans to resume federal executions and whether DOJ plans to procure pentobarbital sodium for use in federal executions.

On August 14, 2019, the Subcommittee on Civil Rights and Civil Liberties wrote to DOJ regarding the Trump Administration's decision to resume federal executions using pentobarbital sodium in a single-drug, lethal-injection protocol, a practice that had been halted pending a review ordered by the Obama Administration.¹ Before the federal single-drug protocol was adopted, there were multiple reports of states using pentobarbital in executions on inmates, causing them to scream of burning pain and writhe in agony while strapped to gurneys.² Despite these concerning reports, the Trump Administration used pentobarbital sourced from compounding pharmacies not regulated by the Food and Drug Administration (FDA) to conduct 13 executions between July 14, 2020, and January 16, 2021. These executions—carried out in less than one year—surpass the total number of federal executions conducted in the previous 70 years, between 1949 and 2019.³

On July 1, 2021, the Biden Administration issued a moratorium on all federal executions pending a review of the Trump Administration's federal death penalty policies and practices,

¹ Letter from Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Attorney General William Barr, Department of Justice (Aug. 14, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-08-14.%20Raskin%20and%20Pressley%20to%20DoJ-Barr%20re.%20Death%20Penalty.pdf>). On July 25, 2019, DOJ directed the Federal Bureau of Prisons (BOP) to adopt an addendum to BOP's Execution Protocol that provided for the use of pentobarbital.

² *Inmates Said the Drug Burned as They Died. This Is How Texas Gets Its Execution Drugs.*, BuzzFeed News (Nov. 28, 2018) (online at www.buzzfeednews.com/article/chrismcDaniel/inmates-said-the-drug-burned-as-they-died-this-is-how-texas?bfsource=relatedmanual).

³ Federal Bureau of Prisons, *Historical Information: Capital Punishment* (online at www.bop.gov/about/history/federal_executions.jsp) (accessed Oct. 3, 2021).

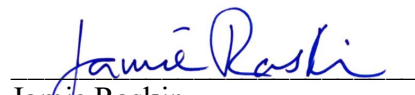
including its July 2019 Federal Execution Protocol Addendum.⁴ However, on October 13, 2021, DOJ urged the U.S. Supreme Court to reinstate the death penalty for Boston Marathon bomber Dzhokhar Tsarnaev, whose death sentence was overturned by an appeals court last year, raising new questions about its plans to resume federal executions.⁵

Given its recent actions, we are concerned that DOJ may renew its efforts to obtain pentobarbital from non-FDA-regulated pharmacies for use in future federal executions. This would be consistent with the actions of certain states that have continued using single-drug pentobarbital in state executions. For example, Texas has executed three inmates using pentobarbital since May 2021. The most recent use of pentobarbital in a state execution occurred in Missouri on October 5, 2021, when 61-year old Ernest Johnson was put to death.⁶ At least 14 states have adopted the single-drug pentobarbital execution protocol, though not all have used it.⁷


For these reasons, we request that you provide a staff briefing by December 22, 2021, regarding the status of DOJ's July 2021 review, including any findings; any plans to resume federal executions; any plans to procure pentobarbital for the purpose of conducting executions; and DOJ's policies, practices, or guidance on federal executions.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" and "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Subcommittee's requests. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties



Ayanna Pressley
Member
Subcommittee on Civil Rights and
Civil Liberties

⁴ Memorandum from Attorney General Merrick Garland, Department of Justice, to the Deputy Attorney General, the Associate Attorney General, and Heads of Department Components, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021) (online at www.justice.gov/opa/page/file/1408636/download).

⁵ *Supreme Court Appears Likely to Allow Death Sentence for Boston Marathon Bomber*, NBC News (Oct. 13, 2021) (online at www.nbcnews.com/politics/supreme-court/supreme-court-considers-reimposing-death-sentence-boston-marathon-bomber-n1281270).

⁶ Death Penalty Information Center, *Execution List 2021* (online at www.deathpenaltyinfo.org/executions/2021) (accessed Oct. 3, 2021).

⁷ Death Penalty Information Center, *Overview of Lethal Injection Protocols* (online at www.deathpenaltyinfo.org/executions/lethal-injection/overview-of-lethal-injection-protocols) (accessed Oct. 3, 2021).

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cc: The Honorable Nancy Mace, Ranking Member
Subcommittee on Civil Rights and Civil Liberties