

**Congress of the United States**  
**Washington, DC 20515**

August 28, 2023

The Honorable Lloyd J. Austin III  
Secretary of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Secretary Austin,

We write to express our disappointment regarding the news that the Department of Defense may extend a plea agreement to the masterminds of the September 11th attacks whereby the United States would spare the lives of the individuals responsible for this horrific attack, and deny the families of the victims both justice and closure. Make no mistake, any outcome short of the death penalty for the September 11th plotters would be completely unacceptable, and constitute a total failure of leadership on the part of the Department of Defense.

On September 11, 2001, terrorists took the lives of 2,977 innocent people in a series of cowardly attacks, resulting in the worst act of terror in American history. Although it took significant time and resources, the United States military and intelligence community located and captured those responsible, Khalid Shaikh Mohammed and four other plotters. These men have been detained in Guantanamo Bay since 2003, awaiting punishment for their horrific acts. The victims' families have now been patiently waiting for justice for over twenty years.

Although the news broke last year that these five men might escape trial and a death sentence through negotiated agreement, this outcome was at that time only theoretical.<sup>1</sup> Unfortunately, recent reporting suggests victims' family members received a letter on August 1, 2023 soliciting questions or comments about the possibility of a plea agreement allowing the accused to escape the death penalty.<sup>2</sup> This solicitation invariably leads to the conclusion that a plea agreement removing a death sentence is no longer speculative but is instead a possible outcome.

In addition, a set of "policy principles" connected to the ongoing plea negotiations likewise emerged last year. While ambiguous on their face, a review of Military Commissions filings and relevant reporting indicates that these principles involve high-level government official deliberations. They suggest that the decisions driving this plea agreement occur in Washington, D.C., not at the Military Commission.

---

<sup>1</sup> Carol Rosenberg & Charlie Savage, *Sept. 11 Prosecutors Are in Plea Talks That Could Avert a Death-Penalty Trial*, N.Y. TIMES (Mar. 15, 2022),

<https://www.nytimes.com/2022/03/15/us/politics/gitmo-terrorism-trial.html>

<sup>2</sup> Ellen Knickmeyer & Jennifer Peltz, *Plea negotiations could mean no 9/11 defendants face the death penalty, the US tells families*, ASSOCIATED PRESS (Aug. 16, 2023),

<https://apnews.com/article/guantanamo-911-defendants-76fab68b1faa1a7e1634b10951258710>

Indeed, on March 28, 2023, the *New York Times* reported that “policy principles” were at issue in the pretrial agreement. The report described the policy principles as “mostly the details of how the accused would spend the rest of their lives in prison.”<sup>3</sup> About six months earlier, the *Times* also reported that the judge presiding over the September 11 case canceled pretrial hearings “while prosecutors await a response from the Biden administration on a proposed plea deal that would avert a death-penalty trial for the five defendants.”<sup>4</sup>

During his campaign for president, Joe Biden pledged to “work to pass legislation to eliminate the death penalty at the federal level, and incentivize states to follow the federal example”<sup>5</sup> For example, despite Patrick Crusius’ racially-targeted mass murder of 23 people at an El Paso Wal-Mart in 2019, the Department of Justice inexplicably offered him a plea agreement which allowed him to escape the death penalty. By contrast, local El Paso prosecutors, armed with the same evidence as their federal counterparts, have promised to put the shooter on death row.<sup>6</sup> The Biden Administration’s decision here appears not to be based on the strength of the evidence or the wishes of the victims’ families, but rather a purely political choice, designed to appease the fringe left of his party. Unfortunately, having already injected partisan political concerns into the administration of the death penalty in civilian courts, it now appears the Biden Administration is doing the same in military tribunals.

Victims have spoken out in the media about the proposed plea bargain, indicating that they “were told, and were promised, that we would bring these people responsible to justice, and we expect that to happen[.]”<sup>7</sup> These families have already been robbed of their loved ones, they should not also be robbed of the full measure of justice in this case. The September 11th plotters are mass murderers, deserving of the ultimate punishment. Indeed, if there are persons walking the face of the Earth who are deserving of the death penalty, it is these five men. After over two decades of patiently waiting, the victims’ families deserve closure.

For these reasons, we request that you respond to the questions below no later than September 15, 2023:

---

<sup>3</sup> Carol Rosenberg, *Judge Signals Impatience a Year Into Sept. 11 Case Plea Talks*, N.Y. TIMES (Mar. 28, 2023), <https://www.nytimes.com/2023/03/28/us/politics/september-11-plea-deal-guantanamo.html>

<sup>4</sup> Carol Rosenberg, *Sept. 11 Case Awaits Biden Administration’s Reply on Plea Deal*, N.Y. TIMES (Oct. 23, 2022), <https://www.nytimes.com/2022/10/23/us/politics/sept-11-gitmo-terrorism.html>

<sup>5</sup> Dakin Akone, *Biden campaigned on abolishing the federal death penalty. But 2 years in, advocates see an ‘inconsistent’ message*, CNN (Jan. 22, 2023), <https://www.cnn.com/2023/01/22/politics/joe-biden-federal-death-penalty-abolition/index.html>

<sup>6</sup> Uriel J. García, *Gunman in 2019 El Paso mass shooting receives 90 life sentences*, TEX. TRIBUNE (July 7, 2023), <https://www.texastribune.org/2023/07/07/el-paso-mass-shooting-crusius-life-sentence/>.

<sup>7</sup> Scott MacFarlane, *Pentagon considering plea deals for defendants in 9/11 attacks*, CBS NEWS (Aug. 17, 2023), <https://www.cbsnews.com/news/pentagon-considering-plea-deals-911-defendants/>

1. Why is the administration, through your offices, not working to advance this case and allow prosecutors to try the accused?
2. What exactly constitutes a “policy principle?”
3. What officials are involved with “policy principle” discussions?
4. Why has the administration delayed justice by requiring the prosecution and defense to engage in thirteen status conferences discussing the policy principles?
5. Why is the decision to allow death as a possible sentence so difficult, given the facts of the underlying offense?
6. Who from the Department of Justice, White House Counsel’s Office, or Executive Office of the President did you, your staff, or any member of the relevant Military Commission, speak with regarding whether to seek the death penalty in this case?

Sincerely,



Ted Cruz  
United States Senator, Texas



Nicole Malliotakis  
Member of Congress (NY-11)