Executions Without Representation: Executive Overreach and the Death Penalty in Washington, D.C.

*Reem Haikal**

> Even at the federal level, there are important limits on the President's authority . . . . Nowhere are these limits more important than in the administration of the criminal law. For good reason, particular criminal matters are not directed by the President personally but are handled by career prosecutors and law enforcement officials who are dedicated to serving the public and promoting public safety. The President does not and should not decide who or what to investigate or prosecute or when an investigation or prosecution should happen.[1]

Introduction

The District of Columbia (the "District" or "D.C.") has abolished capital punishment through every democratic mechanism available.[2] For more than fifty years, its elected officials and voters have rejected executions, repealed death penalty statutes, and adopted life without parole as the District's maximum punishment.[3] Yet the District's local autonomy exists only by congressional delegation,[4] and its residents—despite paying federal taxes and bearing all the duties of citizenship[5]—have no voting representation in Congress.[6] Structural asymmetries have long

---

* Assistant Professor of Law at Thurgood Marshall School of Law, Texas Southern University. I am sincerely grateful to the Editorial Board of the *George Mason Civil Rights Law Journal* for their thoughtful editorial work and careful engagement with this Article. I also owe special thanks to Kym Dreyer, Class of 2026, whose initiative and outstanding assistance made a significant contribution to this work. To my property students, Class of 2028, with love.

1 Barack Obama, Commentary, *The President's Role in Advancing Criminal Justice Reform*, 130 Harv. L. Rev. 811, 823 (2017).

2 *See District of Columbia*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/district-of-columbia (last visited June 8, 2026).

3 *See id.*

4 *See* D.C. Code § 1-201.02(a) (2026).

5 Lawrence M. Frankel, Comment, *National Representation for the District of Columbia: A Legislative Solution*, 139 U. Pa. L. Rev. 1659, 1663-64 (1991).

6 2 U.S.C. § 25a.

made the District vulnerable to the shifting priorities of national politics; that vulnerability is now acute.

On the first day of his second term, President Donald J. Trump ("President Trump" or "Trump") issued an executive order titled "Restoring the Death Penalty and Protecting Public Safety", which framed capital punishment as an essential tool for deterring and punishing violent crime.[7] The order faulted political and judicial opposition for undermining capital punishment, criticized the prior administration's moratorium and commutations, and framed capital punishment as constitutionally authorized and essential to public safety.[8] President Trump's order directed federal prosecutors to pursue "the death penalty where possible."[9] Thereafter, the Trump Administration issued additional executive orders declaring a "crime emergency,"[10] deploying federal personnel,[11] and asserting unprecedented operational authority over the District's Metropolitan Police Department. The Trump Administration's actions raise a constitutional question with deep historical roots: whether the federal government may impose the machinery of death in a jurisdiction that has democratically abolished it, and whether such intervention disrupts the constitutional separation of powers.

The U.S. Supreme Court ("Supreme Court") has made clear that the Eighth Amendment forbids mandatory death sentences[12] and demands individualized sentencing in every capital case.[13] In fact, the

---

7 Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025).

8 *See id.*

9 *Id.* The broader directive appears in section 3, subsection (a), which instructs that the Attorney General shall pursue the death penalty for all crimes of a severity demanding its use. *Id.* This language encompasses eligible murders in the District of Columbia, beyond the specific categories listed in subsection (b), because homicide prosecutions in the District are handled federally,. *See id.* (instructing the Attorney General, where consistent with applicable law, to pursue federal jurisdiction and seek the death penalty regardless of other factors for every federal capital crime involving the murder of a law-enforcement officer or committed by an alien illegally present in the country). The repeated use of mandatory language reinforces the order's categorical framing and raises concerns about constrained individualized discretion.

10 Exec. Order No. 14339, 90 Fed. Reg. 42121 (Aug. 25, 2025).

11 *See* 32 U.S.C. § 102; *see also* C. Todd Lopez, *National Guard Mobilizes 800 Troops in D.C. to Support Federal, Local Law Enforcement*, U.S. DEP'T. OF WAR (Aug. 14, 2025) (describing the deployment of National Guard troops in the District of Columbia following the declaration of a crime emergency), https://www.war.gov/News/News-Stories/Article/Article/4275149/national-guard-mobilizes-800-troops-in-dc-to-support-federal-local-law-enforcem/.

12 Furman v. Georgia, 408 U.S. 238, 239-40 (1972) (per curiam).

13 *See* Woodson v. North Carolina, 428 U.S. 280, 304-05 (1976) (plurality opinion); Eddings v. Oklahoma, 455 U.S. 104, 110-11 (1982); Sumner v. Shuman, 483 U.S. 66, 78-80 (1987); *see also* Miller v. Alabama, 567 U.S. 460, 465 (2012) (holding that mandatory life without parole for individuals

Federal Death Penalty Act (FDPA) requires case-specific prosecutorial judgment,[14] instates multilayered internal review,[15] and imposes the proof beyond a reasonable doubt standard on the jury—or the court, if the defendant waives a jury—before imposing a death sentence.[16] A presidential directive demanding that federal prosecutors seek death in every eligible D.C. case risks collapsing that statutory architecture into political command, undermining both the Eighth Amendment's individualized-sentencing requirement[17] and the separation of powers, which bars the President of the United States from unilaterally creating criminal punishment.[18]

This Article argues that President Trump's directives,[19] including his death penalty order,[20] the crime emergency order,[21] and the memorandum directing federal prosecutors to seek death in all eligible D.C. cases (collectively, "Trump's directives" or "the directives"),[22] are unconstitutional for three independent reasons. First, Trump's directives recreate the very features the Supreme Court has invalidated for half a century: the elimination of individualized sentencing and the conversion of capital punishment into a mandatory regime. Second, Trump's directives exceed executive authority under federal law by displacing the FDPA's case-specific prosecutorial framework with a uniform

---

under the age of 18 at the time of their alleged crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments").

14 *See* U.S. Dep't of Just., Just. Manual § 9-10.130 (2007).

15 *See id.*, *see also* U.S. Dep't of Just., Just. Manual § 9-10.050 (2014) (defining the confidentiality requirement).

16 *See* 18 U.S.C. § 3593(c)-(d).

17 *See* cases cited *supra* note 13.

18 *See* United States v. Hudson & Goodwin, 11 U.S. 32, 34 (1812) ("The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offence."); *see also* Loving v. United States, 517 U.S. 748, 773-74 (1996) (upholding Congress's delegation to the President to prescribe aggravating factors in military capital cases and emphasizing that such authority derived from congressional authorization is consistent with separation-of-powers principles).

19 *See generally* Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025) (restoring the Death Penalty and Protecting Public Safety); Exec. Order No. 14339, 90 Fed. Reg. 42121 (Aug. 25, 2025) (declaring a crime emergency in D.C.); Memorandum on Enforcing the Death Penalty Laws in the District of Columbia to Deter and Punish the Most Heinous Crimes, 2025 DAILY COMPILATION PRESIDENTIAL DOCUMENTS 1 (Sept. 25, 2025) (enforcing the Death Penalty Laws in the District of Columbia to Deter and Punish the Most Heinous Crimes) [hereinafter Memorandum on Enforcing Death Penalty Laws in D.C.].

20 *See* Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025).

21 *See* Exec. Order No. 14333, 90 Fed. Reg. 39301 (Aug. 11, 2025).

22 Memorandum on Enforcing Death Penalty Laws in D.C., *supra* note 19.

charging expectation. Third, Trump's directives override the District's democratically ratified abolition of capital punishment, imposing death in a jurisdiction whose residents lack voting representation in Congress—a modern form of execution without representation. Together, these constitutional deficiencies show that federal executions in the District cannot proceed by executive fiat. The Constitution does not permit such executions, the FDPA does not authorize them, and the District's democratic choices squarely reject them.

Part I of this Article shows that the Eighth Amendment's prohibition on mandatory death penalties, together with its proportionality jurisprudence, bars any directive that eliminates individualized judgment. Part II explains that the FDPA structurally embeds individualized discretion and that a presidential charging command contradicts both the statutory and separation-of-powers limits on executive authority. Part III situates these developments within the District's unique constitutional status, its home-rule framework, and the recent surge of federal intervention, demonstrating why the president cannot unilaterally reimpose capital punishment in a District that has repeatedly abolished it.

I. DEMOCRATIC LEGITIMACY AND THE CONSTITUTIONAL BAN ON MANDATORY DEATH PENALTIES

The Eighth Amendment flatly forbids mandatory capital punishment.[23] Consistent with that command, the U.S. Constitution directly prohibits any blanket federal directive to seek death sentences

---

23 Furman v. Georgia, 408 U.S. 238, 239-40 (1972); Sumner v. Shuman, 483 U.S. 66, 78-80 (1987) (striking down Nevada's mandatory death penalty statute for life-term inmates convicted of murder). The *Sumner* court concluded that such a statute could not be reconciled with the individualized sentencing requirement of the Eighth and Fourteenth Amendments. *Sumner*, 483 U.S. at 77-78. The statute redefined capital murder to consist only of two elements—the defendant was already serving a life sentence and he committed murder. *Id.* at 78. Once both elements were satisfied, imposition of death was automatic. *Id.* The *Sumner* court emphasized that this framework left no room to consider whether mitigating circumstances might justify a lesser punishment, rendering the death sentence a foregone conclusion. *Id.* at 78-79. Recognizing that the degree of culpability varies even among inmates convicted of murder, the *Sumner* court held that the mandatory imposition of death failed to account for differences in personal responsibility or involvement and, therefore, could not withstand constitutional scrutiny. *Id.* at 79-80; *see* Eddings v. Oklahoma, 455 U.S. 104, 110-11 (1982); Woodson v. North Carolina, 428 U.S. 280, 304-05 (1976); Miller v. Alabama, 567 U.S. 460, 465 (2012) (striking down statutes imposing mandatory life without parole sentences on juvenile homicide offenders, holding that the statutes violated the Eighth Amendment's prohibition on cruel and unusual punishments). The *Miller* court reasoned

in the District. This Part first traces the Supreme Court's development of the individualized-sentencing requirement. Next, this Part shows how Eighth Amendment principles prohibit any scheme that eliminates case-specific judgment. Finally, the discussion applies Eighth Amendment doctrines to the Trump directives, demonstrating that a universal charging command functionally reintroduces the type of mandatory capital regime the Supreme Court has long rejected. The following section then considers the distinct democratic implications of imposing such a regime in the District of Columbia.

A. *The Eighth Amendment and the Ban on Mandatory Death Penalties*

To situate the Trump directives in the District within the broader constitutional landscape, this Article traces the Supreme Court's modern capitalpunishment jurisprudence and the doctrinal categories that have shaped it over the past fifty years. The Supreme Court has consistently held that mandatory capital punishment schemes violate the Eighth Amendment's requirement of individualized sentencing.[24] The Court's capital-punishment jurisprudence began with *Furman v. Georgia* in 1972. In *Furman*, the Court invalidated then-existing deathpenalty schemes for producing arbitrary, unpredictable, and discriminatorily applied sentences—conditions the majority viewed as incompatible with the Eighth Amendment.[25] *Furman* became the doctrinal pivot point for the Court's subsequent efforts to discipline

that such schemes foreclosed any discretion to impose a lesser sentence, even where a judge or jury might find that the offender's youth, immaturity, and potential for reform warranted a different outcome. *Miller*, 567 U.S. at 465. By preventing consideration of a juvenile's diminished culpability and heightened capacity for change, the mandatory penalty ran afoul of the court's consistent requirement that sentencers consider mitigating circumstances before imposing the most severe punishments. *Id.*

[24] *See* cases cited *supra* notes 12-13; *Woodson*, 428 U.S. at 287, 293, 304-05.

[25] *See Furman*, 408 U.S. at 239-40. In a set of five concurring opinions, a majority of the court concluded that the death penalty, as imposed in the cases before it, violated the Eighth Amendment. Two justices concluded that the death penalty was unconstitutional per se. *See id.* at 305 (Brennan, J., concurring); *id.* at 358-59 (Marshall, J., concurring). The others concluded that it can be cruel and unusual in practice. *See id.* at 256-57 (Douglas, J., concurring) (discretionary statutes are applied selectively and, hence, are unconstitutional in their operation); *id.* at 310 (Stewart, J., concurring) (systems that allow wanton and freakish imposition of the death penalty violate the Eighth and Fourteenth Amendments); *id.* at 312-13 (White, J., concurring) (the penalty is so infrequently imposed under the statutes as administered, that the statutes fail to comport with the Eighth Amendment).

capital punishment.[26] Later, in *Gregg v. Georgia*, the Court upheld revised sentencing schemes designed to channel jury discretion and mitigate the arbitrariness identified in *Furman*.[27] In the decades since, the Court has built a sustained body of Eighth Amendment law that sharply restricts when and how courts may impose the death penalty. That body of law is grouped into three major doctrinal categories: individualized sentencing, narrowing and proportionality constraints, and categorical bans. Considering each grouping helps clarify the trajectory of the Court's jurisprudence and the constitutional backdrop against which the Trump directives must be evaluated.

The first category of cases focuses on the procedural dimension of capital punishment, emphasizing that reliability in capital sentencing requires individualized consideration rather than categorical imposition. After *Furman*, the Court in *Gregg* upheld guideddiscretion statutes that meaningfully channel jury decision-making and reduce the risk of arbitrary or capricious death sentences.[28] In *Gregg,* the Court explained that legislatures minimize arbitrariness by narrowing death eligibility and structuring the sentencer's consideration of aggravating and mitigating factors.[29] In upholding Georgia's revised statute, the Court found that its bifurcated proceedings and statutory aggravating factors sufficiently guided jury discretion to satisfy the Eighth Amendment's requirement that the death penalty not be imposed arbitrarily or capriciously.[30] In *Woodson v. North Carolina*, the Court struck down a statute imposing a mandatory death penalty for all first-degree murders,[31] holding that the Eighth and Fourteenth

26 *See, e.g.*, Lockett v. Ohio, 438 U.S. 586, 598, 602 (1978) (plurality opinion).

27 *See* 428 U.S. 153, 197-98, 206-07 (1976) (plurality opinion) (reasoning that Georgia's revised capital sentencing scheme (1) required juries to make specific findings regarding the offense or the defendant before imposing death and (2) incorporated appellate proportionality review to reduce arbitrariness thereby prevented the "wanton[] and freakish[] impos[ition]" of death identified in *Furman* and holding that the statutory system under which Gregg was sentenced did not violate the U.S. Constitution).

28 *See id.*

29 *Id.* at 193-95.

30 *Id.* at 196-98 (upholding Georgia's capital sentencing scheme, which required (1) a bifurcated trial; (2) limited death eligibility to specified aggravated murders; (3) the jury to find at least one statutory aggravating factor beyond a reasonable doubt, and (4) provided for automatic appellate review; explaining that although some jury discretion remains, "the discretion to be exercised is controlled by clear and objective standards so as to produce non-discriminatory application" (internal quotation marks omitted)).

31 *See* 428 U.S. 280, 287, 293, 305 (1976). *Woodson* presented a foundational question under the Eighth and Fourteenth Amendments: whether a state may impose a death sentence automatically

Amendments make consideration of the offender's character, record, and the circumstances of the offense constitutionally indispensable.[32] The Court also rejected North Carolina's argument that eliminating jury discretion remedied *Furman*'s defects, concluding that mandatory statutes merely replaced unguided discretion with an equally unconstitutional system that failed to confront the underlying problem.[33] Later decisions, such as *Lockett v. Ohio* and *Eddings v. Oklahoma*, reinforced that sentencers must give meaningful effect to mitigating evidence and that no categorical scheme can foreclose individualized consideration.[34] Together, these cases establish that capital sentencing must incorporate

for an entire class of homicide offenses, without permitting any individualized consideration of the defendant or the circumstances of the crime. *See id.* at 285. The *Woodson* court concluded that such mandatory schemes are incompatible with modern standards of decency. *Id.* at 295-96. American experience showed that automatic death sentences were both excessively harsh and unworkably rigid, as reflected in two critical indicators: jury behavior and legislative developments. *See id.* at 293. For centuries, juries routinely refused to convict defendants when a mandatory death sentence was the inevitable consequence, a pattern that spurred early reforms separating murder into degrees and reducing the number of capital offenses. *Id.* This persistent reluctance led legislatures, including Congress and multiple states, to authorize discretionary sentencing in capital cases. *See id.* at 293-94.

32 Woodson v. North Carolina, 428 U.S. 280, 304 (1976).

33 *See id.* at 302-05 (explaining that North Carolina's mandatory death penalty scheme suffered multiple constitutional flaws: (1) it did not cure the *Furman* court's concern about unguided jury discretion because history showed that juries confronted with mandatory death sentences routinely avoided first-degree murder convictions, effectively exercising discretion in secret rather than through guided standards; (2) the statute provided no sentencing criteria to channel discretion or allow meaningful judicial review, thereby risking even greater arbitrariness than the discretionary systems struck down in *Furman*; and (3) the scheme failed to permit individualized consideration of the defendant's character, record, or the circumstances of the offense—treating all persons convicted of a broad class of homicide offenses as indistinguishable and denying the constitutional requirement of particularized sentencing in capital cases).

34 *See* 438 U.S. 586, 604, 606 (1978) (invalidating Ohio's death penalty statute for precluding the individualized consideration of mitigating factors constitutionally required in capital cases, and holding that the Eighth and Fourteenth Amendments require individualized capital sentencing that permits sentencers to consider any relevant mitigating evidence concerning the defendant's character, background, record, and the circumstances of the offense); 455 U.S. 104, 110-11 (1982) (reaffirming that the Eighth and Fourteenth Amendments require the sentencer to consider any mitigating evidence a defendant offers—whether related to character, background, or the circumstances of the offense and holding that a capital sentencing body may not treat any category of mitigation as legally irrelevant). Building on *Lockett*, the *Eddings* court emphasized the long historical movement away from rigid mandatory death sentences toward individualized sentencing and explained that a constitutional capital scheme must allow full and independent mitigating weight to all relevant factors. *See id.* at 110-12. The death sentence violated the U.S. Constitution because the sentencing judge in *Eddings* refused to consider substantial mitigating evidence,. *See id.* at 115-16.

procedural mechanisms that promote individualized consideration and avoid arbitrary outcomes.[35]

A second category of cases addresses the Eighth Amendment's proportionality requirement and the related necessity of narrowing eligibility for the death penalty. In *Coker v. Georgia*, the Court held that the death penalty is a disproportionate punishment for the rape of an adult woman when the victim's life is not taken, finding that such a penalty violates the Eighth Amendment's prohibition on cruel and unusual punishment.[36] In *Enmund v. Florida*, the Court further limited the reach of the death penalty, holding that it cannot be imposed on a defendant who did not kill, attempt to kill, or intend a killing to occur.[37] The Court explained that executing someone whose role was limited to participation in a felony would be disproportionate to that person's personal culpability and inconsistent with the Eighth Amendment's requirement that punishment reflect individual moral guilt.[38] At the same time, the Court has enforced proportionality through doctrines requiring clear and objective standards that meaningfully narrow death eligibility.[39] In *Godfrey v. Georgia*, the Court invalidated the use of a vague aggravating circumstance describing murders as "outrageously or wantonly vile, horrible, and inhuman," concluding that such language failed to provide a principled basis for distinguishing cases in which the death penalty may be imposed.[40]

---

35 Gregg v. Georgia, 428 U.S. 153, 206-07 (1976); *Woodson*, 428 U.S. at 304-305; *Lockett*, 438 U.S. at 604, 606; *Eddings*, 455 U.S. at 110-12.

36 433 U.S. 584, 592, 598-99 (1977) (concluding that even Georgia's statutory aggravating circumstances, such as prior capital felony convictions and the commission of rape during another capital felony, could not justify executing a defendant for rape where the victim survived because the unique severity and irrevocability of the death penalty is excessive if the underlying crime did not result in death).

37 458 U.S. 782, 800-01 (1982).

38 *Id.*

39 *See* Godfrey v. Georgia, 446 U.S. 420, 428 (1980); *see also* Maynard v. Cartwright, 486 U.S. 356, 361-64 (1988) (holding that an aggravating factor labeling a murder as "especially heinous, atrocious, or cruel" was unconstitutionally vague absent a limiting construction that genuinely guided the sentencer's discretion); *see also* Sumner v. Shuman, 483 U.S. 66, 78-80 (1987); McCleskey v. Kemp, 481 U.S. 279, 305-06 (1987) (reaffirming that the Constitution allows only a narrow range of discretion in capital sentencing: states must rationally define who is eligible for death and must permit the sentencer to consider any mitigating factor that justify a lesser punishment).

40 446 U.S. at 428-29, 433 (emphasizing that vague, aggravating language offered no restraint on sentencing and left jurors without any meaningful guidance: "In the case before us, the Georgia Supreme Court has affirmed a sentence of death based upon no more than a finding that the offense was 'outrageously or wantonly vile, horrible and inhuman.' There is nothing in these few words, standing alone, that implies any inherent restraint on the arbitrary and capricious infliction of the

A final category of cases reflects the Court's categorical ban on the use of capital punishment for certain classes of offenders. Beginning with *Ford v. Wainwright*, the Court held that the Eighth Amendment prohibits executing individuals who are insane at the time of execution,[41] and stressed that courts must conduct competency determinations through neutral, individualized procedures rather than by the executive branch alone.[42] The Court extended this categorical approach in *Atkins v. Virginia*, barring the execution of people with intellectual disabilities,[43] and in *Roper v. Simmons*, prohibiting capital punishment for crimes committed by individuals under the age of eighteen.[44]

Taken together, these three strands of the Court's modern capital punishment jurisprudence—individualized sentencing,[45] narrowing and proportionality requirements,[46] and categorical bans[47]—form a coherent constitutional framework that sharply limits when and how the death penalty can be imposed. Viewed against this backdrop, the Trump directives stand in marked tension with the Court's post-*Furman* trajectory. Rather than operating within the carefully constructed constitutional boundaries the Court has articulated over the past five decades, the directives attempt to reintroduce features the Court has repeatedly rejected, including mandatory expectations, diminished individualized consideration, and an expansive conception of death eligibility.

---

death sentence. A person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.' Such a view may, in fact, have been one to which the members of the jury in this case subscribed. If so, their preconceptions were not dispelled by the trial judge's sentencing instructions. These gave the jury no guidance concerning the meaning of any of [the aggravating circumstances'] terms. In fact, the jury's interpretation of [that circumstance] can only be the subject of sheer speculation.").

41 *See* 477 U.S. 399, 409-10 (1986).

42 *See id.* at 416-17. In *Ford*, the court explained that Florida's procedures were unconstitutional because they vested complete control of the competency determination in the governor who appointed the evaluators and made the final decision, despite having overseen the entire prosecution. *Id.* at 416. Historically, the court noted, postponing execution for insanity was a legal requirement rather than a matter of executive clemency, offering no support for giving unreviewable authority to the governor. *Id.* The court held that the process must ensure reliable factfinding, neutral expert assessment, and meaningful adversarial presentation because competency to be executed triggers a constitutional limitation on state power. *Id.* at 416-17. Florida's scheme, thus, failed to meet these standards. *Id.*

43 Atkins v. Virginia, 536 U.S. 304, 321 (2002).

44 Roper v. Simmons, 543 U.S. 551, 578 (2005).

45 *See* cases cited *supra* notes 27, 31-34 and accompanying text.

46 *See* cases cited *supra* notes 36-37 and accompanying text.

47 *See* cases cited *supra* notes 41-44 and accompanying text.

Most notably, the Trump Memorandum on Enforcing Death Penalty Laws in D.C. ("the Memorandum"), which strongly encourages federal prosecutors to seek the death penalty "in all appropriate cases[,]"[48] is functionally indistinguishable from a mandatory capital regime. Although phrased in discretionary terms, the Memorandum creates a presumption in favor of capital punishment whenever statutory eligibility exists, treating capital charging as the expected course in qualifying cases. By framing death as the anticipated default, the Memorandum risks collapsing individualized judgment into categorical policy. The Memorandum, thus, revives the elimination of individualized consideration.[49] As the Court held in *Woodson,* the Eighth Amendment forbids capital sentencing schemes that eliminate individualized consideration and treat defendants as constitutionally interchangeable.[50] In addition, when applied in a jurisdiction that has repeatedly abolished capital punishment,[51] the Memorandum and other Trump directives[52] expose a direct conflict with the District's settled democratic judgment rejecting death as punishment.[53]

B. *Democratic Illegitimacy and Executions Without Representation*

D.C.'s residents are U.S. citizens who shoulder the same obligations as state residents, such as paying federal taxes and obeying federal laws. Yet, because of historical happenstance and geography, they lack effective representation in the federal government.[54] This "taxation

48 Memorandum on Enforcing Death Penalty Laws in D.C., *supra* note 19.

49 *See* Woodson v. North Carolina, 428 U.S. 280, 304-05 (1976).

50 *Id.* In *Woodson*, the court traced the origins of mandatory capital punishment to English common law and colonial practice, noting that death was imposed automatically for serious offenses, such as murder, treason, and piracy, at a time when local populations exercised little meaningful control over criminal law. *Id.* at 289. Although the American colonies eventually narrowed the range of capital offenses, they retained a mandatory structure that treated offenders as undifferentiated. *See id.* at 290-91. The *Woodson* court rejected the modern continuation of this model, emphasizing that mandatory capital sentencing schemes "accord[] no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense," and, instead, treat every defendant as "a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death." *Id.* at 304.

51 *See* Lyle Therese A. Hilotin-Lee, *District of Columbia Capital Punishment Laws*, FINDLAW (Sept. 27, 2024), https://www.findlaw.com/state/dc-law/district-of-columbia-capital-punishment-laws.html.

52 *See* sources cited *supra* note 19.

53 *See* Hilotin-Lee, *supra* note 51.

54 *See* Frankel, *supra* note 5, at 1663-64.

without representation" produces a basic fairness problem and a striking irony: the nation that champions representative democracy abroad governs from a capital whose own residents have no meaningful voice in federal decision-making.[55] The scale of this democratic deficit continues to grow. The U.S. Census Bureau reported that D.C.'s population increased by about 15,000 residents from July 2023 to July 2024, reaching 702,250, the city's largest annual gain since 2013 and its first return above 700,000 since 2019.[56]

Although D.C. is represented in the House of Representatives by a Delegate, this Delegate has the right to debate but no right to vote on legislation.[57] Congress codified this limitation in 2 U.S.C. § 25a, which specifies that the Delegate has privileges similar to those of a state representative but without voting rights.[58] D.C. residents have long protested their lack of congressional representation despite paying federal taxes, culminating in strong support for statehood in recent years.[59] Courts have upheld this lack of voting representation

---

[55] *Id.* at 1664-65.

[56] GOV. OF D.C., *New Census Data Shows DC's Population Surpasses 700,000 for the First Time in Five Years*, EXEC. OFF. OF THE MAYOR (Dec. 19, 2024), https://mayor.dc.gov/release/new-census-data-shows-dc%E2%80%99s-population-surpasses-700000-first-time-five-years.

[57] *See* 2 U.S.C. § 25a(a) ("The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the 'Delegate to the House of Representatives from the District of Columbia', who shall be elected by the voters of the District of Columbia in accordance with the District of Columbia Election Act. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress."); *see also* 2 U.S.C. § 25a(b) ("No individual may hold the office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election-

> (1) he is a qualified elector (as that term is defined in section 2(2) of the District of Columbia Election Act[] of the District of Columbia;
>
> (2) he is at least twenty-five years of age;
>
> (3) he holds no other paid public office; and
>
> (4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection.").

[58] 2 U.S.C. § 25a(a).

[59] Qasim Nauman, *Federal Takeover or 51st State? Trump Weighs In on D.C. Debate,* N.Y. TIMES (Feb. 20, 2025), https://www.nytimes.com/2025/02/20/us/politics/trump-dc-federal-takeover.html. Washington, D.C. residents, who pay federal taxes without congressional representation, have long protested this arrangement—even placing "Taxation Without Representation" on license plates in 2000. *Id.* In 2016, 86% of voters supported statehood for the District of Columbia.

for D.C. residents as consistent with the U.S. Constitution.[60] The U.S. Constitution ties congressional representation to statehood, and the District is not a state. In *Adams v. Clinton*, the U.S. District Court for the District of Columbia (the "District Court") concluded that the inability of D.C. residents to vote for congressional representatives is a consequence of Article I of the U.S. Constitution, which limits representation to the "people of the several states."[61] The Supreme Court summarily affirmed that judgment.[62] Similarly, in *Banner v. United States*, the D.C. Circuit Court of Appeals affirmed that the U.S. Constitution denies D.C. residents voting representation in Congress, emphasizing Congress's unique legislative authority over the District under Article I, Section 8, Clause 17.[63]

Set within this framework of structural disenfranchisement, D.C. residents have abolished capital punishment through every available democratic channel: council legislation, referenda, and repeated rejections of reinstatement proposals.[64] Yet, the very body that exercises

Id. Advocates note that nearly 45% of the city's population is Black, meaning that the District of Columbia would become the only plurality-Black state, and Democrats widely favor the proposal given the District's strong Democratic voting record. *Id.*

60 *See* Adams v. Clinton, 90 F. Supp. 2d 35, 37, 47-48 (D.D.C. 2000); *see also* Banner v. United States, 428 F.3d 303, 308-09 (D.C. Cir. 2005) (recognizing Congress's authority to exercise state-like police and regulatory powers over the District of Columbia).

61 *See* 90 F. Supp. 2d at 37, 47-48. In a set of consolidated actions, seventy-five District of Columbia residents and the District itself contested the denial of their right to elect voting members of Congress. *Id.* at 37. They contended that taxation and compulsory military service without representation violated fundamental democratic principles embodied in the Declaration of Independence. *Id.* Although no party disputed the fairness of their claims, the court concluded—while acknowledging the seriousness of the grievances—that constitutional text and Supreme Court precedent foreclosed judicial relief, leaving any remedy to the political branches. *See id.* at 47-53. The court explained that the U.S. Constitution consistently limits representation in the House to the "people of the several states," and ties voter qualifications to those of state legislatures. *See id.* at 47-48. The District cannot be treated as a state for representation purposes because the district has never had a state legislature and Congress's exclusive authority under the District Clause cannot be recharacterized without reducing the Qualifications Clause to a tautology,. *See id.* at 48. The court further noted that Article I's Apportionment Clause expressly refers to "the several States . . . included within this Union[,]" a limitation reinforced by Article IV's provision for state admission. Adams v. Clinton, 90 F. Supp. 2d 35, 48 (D.D.C. 2000). The District was never among the original states, has never been admitted as one, and is described in the U.S. Constitution as a distinct "District" serving as the national seat of government, excluded from enumeration and initial apportionment of representatives. *Id.*; *see also* U.S. CONST. art. I, § 2, cl. 1 (providing that representatives are chosen "by the People of the several States").

62 *Adams*, 531 U.S. at 941 (2000).

63 428 F.3d at 308-09.

64 Hilotin-Lee, *supra* note 51.

power over D.C.[65] lacks voting representation in Congress.[66] Executions carried out under Trump's directives would, therefore, not only conflict with local law but also against the will of a disenfranchised population. Adherence to Trump's directives is, quite literally, execution without representation. The democratic deficit does not expand presidential authority. Decisions about capital punishment in the District belong to Congress. The Trump directives on the death penalty in D.C., therefore, implicate a deeper constitutional problem: separation of powers.

II. STATUTORY, ETHICAL, AND INSTITUTIONAL LIMITS ON PRESIDENTIAL POWER

This Part explains how the Federal Death Penalty Act (FDPA) creates a system grounded in individualized prosecutorial judgment[67] rather than broad executive command. This Section begins by outlining the FDPA's capital eligibility framework[68] and the U.S. Department of Justice's internal review process, both of which are designed to ensure case-specific decision-making.[69] Then, this Part describes the procedural safeguards that govern capital sentencing, including jury findings,[70] heightened proof requirements,[71] and the structured weighing of aggravating and mitigating factors.[72] The discussion also examines the ethical and institutional norms that protect the independence of federal prosecutors. Part II further highlights the judiciary's traditional reluctance to intrude on charging decisions.[73] This Part concludes by showing how the Trump directives disrupt this statutory and ethical architecture by attempting to replace individualized discretion with a uniform expectation that federal prosecutors seek death in every eligible D.C. case.

---

65 Council of D.C. v. Gray, 42 F. Supp. 3d 134, 139 (D.D.C. 2014).

66 *See* 2 U.S.C. § 25a(a).

67 *See* U.S. Dep't of Just., Just. Manual § 9-10.030 (2007).

68 *See* 18 U.S.C. §§ 794(a), 2381, 1111, 1114, 1118.

69 U.S. Dep't of Just., Just. Manual § 9-10.030 (2007).

70 18 U.S.C. § 3593(d).

71 *Id.* § 3593(c).

72 U.S. Dep't of Just., Just. Manual § 9-10.180 (2014).

73 *See* Rebecca Krauss, *The Theory of Prosecutorial Discretion in Federal Law: Origins and Development*, 6 SETON HALL CIR. REV. 1, 5, 9-10 (2009).

A. *The FDPA's Individualized-Discretion Requirement*

Federal law authorizes capital punishment in a narrow set of circumstances. First, Congress designates a set of offenses as per se capital eligible, including treason, gathering or delivering national-defense information to aid a foreign government,[74] and several homicide offenses made death-eligible by statute.[75] Second, beyond those enumerated crimes,[76] the FDPA provides a general eligibility framework: a defendant may face a capital sentence for any offense that Congress has made death-eligible only if the sentencer finds one of the statute's intent predicates under 18 U.S.C. § 3591(a)(2)—intentional killing, intentional serious-bodily-injury resulting in death, intentional participation in lethal conduct, or knowingly engaging in violent conduct with a grave risk of death resulting in a fatality.[77]

The federal capital regime is structured around individualized authorization by the Attorney General.[78] Before any U.S. attorney may seek the death penalty, the case must proceed through the U.S. Department of Justice's capital case review process, which includes submission of a detailed evaluation, defense presentation, and a recommendation to the Attorney General.[79] The Attorney General

---

74 *See* 18 U.S.C. §§ 794(a), 2381.

75 *See* 18 U.S.C. § 1118(a) (making *any* federal prisoner already serving a life sentence death-eligible if he commits murder while confined in a federal correctional institution); 18 U.S.C. § 1111 (defining first-degree murder, which is punishable by death within the special maritime and territorial jurisdiction of the United States, as "willful, deliberate, malicious, and premeditated killing[,]" as well as felony murder during specified serious offenses such as arson, kidnapping, treason, espionage, sabotage, aggravated sexual abuse, child abuse, burglary, or robbery, or murder involving torture or a pattern of child assault); 18 U.S.C. § 1114(a) (extending capital eligibility to the killing of federal officers, employees, members of the uniformed services, or persons assisting them, adopting § 1111's first-degree murder definition and its death-penalty authorization).

76 *See* 18 U.S.C. § 3591(a)(1) (incorporating 18 U.S.C. §§ 794, 2381—the statutes governing espionage and treason—into the FDPA's capital framework, making them the only offenses for which death eligibility is automatic rather than dependent on the § 3591(a)(2) intent predicates).

77 *Id.* § 3591(a)(2).

78 *See* U.S. Dep't of Just., Just. Manual § 9-10.130 (2020).

79 *Id.* ("The Capital Review Committee shall review the materials submitted by the United States Attorney or Assistant Attorney General and any materials submitted by defense counsel. The Capital Review Committee will consider all information presented to it, including any allegation of individual or systemic racial bias in the Federal administration of the death penalty. After considering all information submitted to it, the Committee shall make a recommendation to the Attorney General through the Deputy Attorney General. If the Committee's recommendation differs from that of the United States Attorney or Assistant

makes the ultimate authorization decision,[80] not the President. Under Section 9-10.080 of the Justice Manual, when prosecutors contemplate a capital prosecution, the U.S. Attorney must prepare a detailed memorandum analyzing aggravating and mitigating factors, the defendant's and victim's backgrounds, and the federal interest, along with input from defense counsel.[81] After submission to the Capital Case Section, the case moves to the Capital Review Committee under Section 9-10.130 for further evaluation and a recommendation.[82] The Committee then issues a nonbinding recommendation to the Attorney General, who alone has the authority to authorize or decline pursuit of the death penalty.[83] This multilayered process reflects a deliberate insulation of charging discretion from political command, emphasizing that capital authorization is an individualized, evidence-based decision. This process presupposes case-by-case judgment[84] and is irreconcilable with any categorical presidential order to seek death in every homicide case in D.C. The U.S. Department of Justice's own manual reinforces this framework: § 9-10.020 confirms that federal death penalty procedure is governed by the FDPA—codified at 18 U.S.C. §§ 3591-3599[85]—underscoring that the statute, not executive preference, defines the governing process.

Attorney General, the United States Attorney or Assistant Attorney General shall be provided with a copy of the Committee's recommendation memorandum when it is transmitted to the Deputy Attorney General. The United States Attorney or Assistant Attorney General may respond to the Committee's analysis in a memorandum directed to the Deputy Attorney General. The Deputy Attorney General will then make a recommendation to the Attorney General. The Attorney General will make the final decision whether the Government should file a notice of intent to seek the death penalty.")

80 *Id.*; *see also* U.S. Dep't of Just., Just. Manual § 9-10.050 (2014) ("Except as otherwise provided herein (*see* JM 9-10.160(B)), the Attorney General will make the final decision whether to seek the death penalty.").

81 U.S. Dep't of Just., Just. Manual § 9-10.080 (2018).

82 *Id.*

83 U.S. Dep't of Just., Just. Manual § 9-10.050; U.S. Dep't of Just., Just. Manual § 9-10.130.

84 U.S. Dep't of Just., Just. Manual § 9-10.030 (2007) ("The review of cases under this Chapter culminates in a decision to seek, or not to seek, the death penalty against an individual defendant. Each such decision must be based upon the facts and law applicable to the case and be set within a framework of consistent and even-handed national application of Federal capital sentencing laws. Arbitrary or impermissible factors—such as a defendant's race, ethnicity, or religion—will not inform any stage of the decision-making process. The overriding goal of the review process is to allow proper individualized consideration of the appropriate factors relevant to each case.").

85 *See* 18 U.S.C. § 3591-3599.

Even when § 3591's gateway is satisfied,[86] the statute requires that the government provide formal notice of intent to seek death.[87] The FDPA prescribes a detailed process to ensure that capital sentencing remains individualized and legally constrained. Section 3593 provides that the court must hold a hearing "before the jury that determined the defendant's guilt,"[88] or, if that jury cannot serve, the court must impanel a new jury of twelve members and hold the hearing before it.[89] Only at the defendant's request, and with the government's approval, may the judge act as sentencer.[90] Congress also prohibited a presentence report, requiring instead that the parties present all relevant information during the hearing itself.[91] In other words, the statute mandates that sentencing authority resides with the jury or judge,[92] not the President. The statute gives courts wide latitude in what they may admit at the hearing but imposes safeguards to cabin that discretion.[93] Most critically, Congress drew sharp lines around the findings required to authorize

---

86 *See* 18 U.S.C. § 3591 (defining the offenses and statutory criteria that determine when a defendant may be eligible for a capital sentence).

87 18 U.S.C. § 3593(a) ("(a) Notice by the Government.—If, in a case involving an offense described in section 3591 [18 USCS § 3591], the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, the attorney shall, a reasonable time before the trial or before acceptance by the court of a plea of guilty, sign and file with the court, and serve on the defendant, a notice—

> (1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter [18 USCS §§ 3591 et seq.] and that the government will seek the sentence of death; and
>
> (2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family, and may include oral testimony, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim and the victim's family, and any other relevant information. The court may permit the attorney for the government to amend the notice upon a showing of good cause.").

88 *Id.* § 3593(b)(1).

89 *Id.* § 3593(b)(2).

90 *Id.* § 3593(b)(3).

91 *Id.* § 3593(c).

92 *See id.* § 3593(b)-(c).

93 *See* 18 U.S.C. § 3593(c) (stating information relevant to aggravating or mitigating factors is admissible "regardless of its admissibility under the rules governing admission of evidence at criminal trials[,]" but may be excluded if its probative value is outweighed by unfair prejudice or confusion).

death.[94] "The jury, or if there is no jury, the court, shall . . . return special findings identifying any aggravating factor or factors set forth in section 3592 . . . found to exist."[95] The statute requires prosecutors to prove aggravating factors to a unanimous jury beyond a reasonable doubt.[96] By contrast, any juror may find mitigating factors by a preponderance of the evidence.[97] The FDPA further requires the sentencer to weigh aggravating factors against mitigating factors and then decide whether death is justified, providing that "the jury by unanimous vote, or if there is no jury, the court, shall recommend whether the defendant should be sentenced to death, to life imprisonment without possibility of release[,] or some other lesser sentence."[98] The FDPA safeguards force prosecutors to specify the factual basis and aggravating circumstances in each case, preserving a structure of tailored evaluation rather than a blanket policy. Collectively, these safeguards reflect Congress's judgment that criminal punishment at its most severe must be tethered to a highly structured process.

The American Bar Association (ABA) Standards for the Prosecution Function emphasize that prosecutors are independent administrators of justice,[99] not instruments of executive command. The ABA provides that prosecutors must exercise sound discretion and independent judgment in the performance of their duties,[100] and emphasizes that their primary obligation is to seek justice within the bounds of law, not merely to obtain convictions.[101] Prosecutors must also abide by applicable ethical rules and maintain professional independence in the exercise of their charging authority.[102] A presidential directive that pressures prosecutors

---

94 *See id.* § 3593(d).

95 *Id.*

96 *Id.* § 3593(c)-(d).

97 *Id.*

98 *Id.* § 3593(e).

99 A.B.A., CRIM. JUST. STANDARDS 3-1.2(a)-(b) (4th ed. 2017).

100 *Id.* at 3-1.2(a).

101 *Id.* at 3-1.2(b) ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.").

102 *Id.* at 3-1.2(c) ("The prosecutor should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. The prosecutor should avoid an appearance of impropriety in performing the prosecution function.

to seek capital charges in all murders committed in D.C. supplants that professional independence with a political directive, inverting the ethical structure that governs prosecutorial decision-making under the ABA. The ABA's emphasis on independence reflects a more profound structural concern about preserving the integrity and legitimacy of the criminal justice system.

Prosecutors wield the sovereign power to initiate charges, including the uniquely consequential decision to seek capital punishment.[103] Prosecutorial judgments must be insulated from political pressure, partisan objectives, or directives that compromise individualized assessment. Independence ensures that prosecutors ground their charging decisions in law, evidence, and the interests of justice rather than external command. When political actors attempt to dictate outcomes, particularly in matters as grave as capital charging, prosecutorial discretion risks becoming an instrument of executive will rather than a safeguard of fairness. Although federal prosecutors serve within the executive branch, their ethical and professional obligations require individualized judgment, not mechanical adherence to categorical political directives.[104]

Federal courts have likewise reinforced prosecutorial autonomy by treating charging decisions as a core executive function shielded from judicial supervision.[105] Invoking the separation-of-powers doctrine, courts have reasoned that the decision whether and how to prosecute lies within the executive's exclusive province under the Take Care Clause.[106] By declining to supervise charging decisions on separation-of-powers grounds, courts have allowed prosecutorial practices to expand into spaces once supervised by judges.[107] The courts' entrenched deference makes any presidential directive over prosecution far more consequential: when the judiciary steps back, executive overreach fills

A prosecutor should seek out, and the prosecutor's office should provide, supervisory advice and ethical guidance when the proper course of prosecutorial conduct seems unclear. A prosecutor who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.").

[103] *See* Krauss, *supra* note 73, at 4-5, 9-10; Megan S. Wright, Shima Baradaran Baughman & Christopher Robertson, *Inside the Black Box of Prosecutor Discretion*, 55 U.C. DAVIS L. REV. 2133, 2133 (2022).

[104] *See* A.B.A., *supra* note 99, at 3-1.2(c).

[105] *See* Krauss, *supra* note 73, at 10.

[106] *Id.* at 10-11.

[107] *Id.* at 9-10.

the void, magnifying the tension among statutory limits, professional ethics, and constitutional structure.

The executive authority over federal prosecutors is reinforced by statute. U.S. attorneys are presidential appointees confirmed by the Senate,[108] serving four-year terms and remaining in office until the President appoints a successor who qualifies for office.[109] Each is also subject to removal at the President's discretion.[110] The statute, thus, vests the President with authority both to appoint and dismiss the nation's chief federal prosecutors,[111] underscoring the executive's hierarchical control over prosecutorial policy and priorities. Even within the unitary executive, however, the President does not have an unfettered right to steer individual criminal cases or investigations.[112] Longstanding laws, policies, and norms insulate federal prosecutors from White House pressure in specific matters, permitting discussion of general prosecutorial policy but forbidding contacts that could skew charging or investigative decisions for political ends.[113]

These guardrails—refined over roughly eight decades—exist for the same reason Congress is barred from dictating outcomes in particular prosecutions: to prevent the appearance and reality of politically motivated justice.[114] Trump's first presidency tested the durability of these guardrails in practice when the line between executive oversight and prosecutorial independence came under pressure. Most notably, Trump sought to influence the U.S. Department of Justice's response to the investigation of Russia that took place after the 2016 election.[115]

In early March 2017, after learning that Attorney General Jeff Sessions planned to recuse himself from the Russia investigation,

---

108 28 U.S.C. § 541(a).

109 *Id.* § 541(b).

110 *Id.* § 541(c).

111 *Id.* § 541(a)-(c).

112 Todd David Peterson, *Federal Prosecutorial Independence*, 15 DUKE J. CONST. L. & PUB. POL'Y 217, 261-262 (2020).

113 *Id.* at 262.

114 *Id.* (arguing that presidential supervision of the U.S. Department of Justice does not extend to directing outcomes in particular cases; enduring U.S. Department of Justice –White House contact restrictions protect prosecutorial independence by allowing high-level policy dialogue while prohibiting case-specific interference, precisely to avert partisan manipulation of criminal charging).

115 *See* ROBERT S. MUELLER, III, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 ELECTION 48-49, 110-11 (2019); SETH ABRAMSON, PROOF OF CONSPIRACY: HOW TRUMP'S INTERNATIONAL COLLUSION IS THREATENING AMERICAN DEMOCRACY 542-43 (2019).

Trump directed the White House Counsel to discourage the decision.[116] According to the Mueller Report, the President viewed Jeff Sessions' recusal as politically damaging and feared it would leave the administration vulnerable to an inquiry that could undermine his presidency and obstruct his policy agenda.[117] Despite pressure to the contrary, Jeff Sessions followed the advice of ethics officials and announced his recusal on March 2, 2017.[118] After the recusal, Trump repeatedly castigated Jeff Sessions in public and private, tweeting that the "Russian Witch Hunt Hoax continues, all because Jeff Sessions didn't tell me he was going to recuse himself."[119] Trump later declared that he had appointed "an Attorney General that never took control of the Justice Department."[120] The episode illustrates an early attempt by Trump to shape the investigative process by pressuring the U.S. Department of Justice's leadership to disregard established ethical norms. As the Mueller Report demonstrates, Trump repeatedly sought to discredit or remove investigators, punish perceived adversaries, and act contrary to institutional constraints.[121] Furthermore, the Mueller Report identifies multiple instances in which Trump publicly criticized or attempted to direct his Attorney General, including an August 1, 2018, tweet urging that "Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now."[122]

President Trump's pattern of public exhortation continued well beyond his first presidency. During his second presidency, Trump used Truth Social to press Attorney General Pamela Bondi to investigate

---

[116] *See* MUELLER, *supra* note 115, at 48-49.

[117] *Id.* at 49.

[118] *Id.*

[119] *See id.* at 93-94, 110-11.

[120] *Id.* at 111.

[121] ABRAMSON, *supra* note 115, at 542-43. As Abramson explains, the Mueller Report portrays Trump as repeatedly denying his own actions while privately pressing advisers to remove or undermine Special Counsel Mueller despite being warned that such efforts could be viewed as obstruction of justice. *Id.* at 542. As summarized by Abramson, the Mueller Report depicts Trump chastising advisers for accurately documenting his conduct, seeking to manufacture conflicts of interest to justify Special Counsel Mueller's removal, and acting against the advice of senior White House officials who told him his planned interventions were improper. *See id.* at 542-43. Abramson situates these episodes within a broader pattern in which Trump routinely retaliated against individuals he perceived as adversaries or insufficiently loyal, using the machinery of government to punish perceived foes rather than respecting institutional limits. *See id.*

[122] *See* MUELLER, *supra* note 115, at 107-11.

and potentially prosecute named political adversaries,[123] declaring, "We can't delay any longer, it's killing our reputation and credibility. They impeached me twice, and indicted me (5 times!), OVER NOTHING. JUSTICE MUST BE SERVED, NOW!!!"[124] Trump continued to target officials who challenged him or participated in investigating his administration.[125] The U.S. Department of Justice dismissed several career prosecutors involved in cases related to the President, and eight senior Federal Bureau of Investigation officials connected to the January 6th investigation were also removed.[126] Taken together, the President's public interventions in prosecutorial matters raise concerns about the politicization of institutions traditionally expected to operate with professional independence.

B. *Separation of Powers and the Limits of Executive Authority*

The separation of powers principle holds that, absent specific exceptions, no branch of government may compel or control the actions of another.[127] At the same time, the U.S. Constitution provides limited and expressly defined checks: the President may veto legislation and appoint judges, Congress confirms executive officers and judges, and controls appropriations, and the judiciary interprets the law with binding effect.[128] These checks exist only where the U.S. Constitution explicitly grants them and cannot be inferred from a branch's general powers.[129] The separation of powers ensures that no single branch can unilaterally wield the government's coercive authority in criminal punishment.[130] Congress defines crimes through general legislation, the executive selects whom to prosecute in its discretion, and the judiciary determines guilt or innocence—an allocation designed to prevent arbitrary punishment by

---

123 Robin Levinson-King, *Trump Pushes Justice Department to Prosecute his Political Opponents*, BBC (Sept. 21, 2025), https://www.bbc.com/news/articles/c1wgg4vgeedo.

124 Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Sept. 20, 2025, at 17:44 ET), https://truthsocial.com/@realDonaldTrump/115239044548033727.

125 *See* Madeline Halpert, *'You're fired': The People Trump Has Sacked Since Taking Office*, BBC (Feb. 8, 2025), https://www.bbc.com/news/articles/c4g3yk3m3z4o.

126 *Id.*

127 James C. McKay Jr., *Separation of Powers in the District of Columbia Under Home Rule*, 27 CATH. UNIV. L. REV. 515, 518 (1978).

128 *Id.* at 517.

129 *Id.* at 517-18; *see also* INS v. Chadha, 462 U.S. 919, 945-46 (1983) (emphasizing that explicit and unambiguous constitutional provisions define the powers and procedures of each branch).

130 Peterson, *supra* note 112, at 224.

requiring all three branches to participate before a defendant's liberty is taken.[131]

This structural allocation defines the limits of presidential authority. The U.S. Constitution has long rejected the idea that the President may unilaterally create or alter the law.[132] In cases such as *Youngstown Sheet and Tube Company v. Sawyer*, *Clinton v. City of New York*, and *Hamdan v. Rumsfeld*, the Supreme Court has insisted that the executive may not assume legislative authority.[133] The decision to unilaterally authorize capital punishment is precisely such a legislative judgment: whether a jurisdiction permits death is for Congress to determine, not the President. By directing federal prosecutors to pursue death sentences in D.C. despite local abolition and congressional silence, Trump operates outside the established structural allocation.

Article II provides that "[t]he executive Power shall be vested in a President . . .";[134] that "[h]e shall take Care that the Laws be faithfully executed";[135] and that "[he] shall be Commander in Chief of the Army and Navy of the United States."[136] Yet presidential powers are constrained by the separation of powers established by the Constitution, which vests legislative power exclusively in Congress and denies the President authority to create law on his own.[137] The Take Care Clause does not permit the President to suspend, disregard, or forbid the execution of laws enacted by Congress, because such a reading would transform the duty to "faithfully execute[]" the laws into a unilateral power to nullify them.[138]

Article I, Section 7, Clause 2 of the Constitution outlines the process for enacting laws, requiring bicameral approval in Congress and presentment to the President, who may either approve or veto the

131 *Id.* at 223-24.

132 *See, e.g.*, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 588-89 (1952); *see also* Clinton v. City of New York, 524 U.S. 417, 439-40 (1998) (recognizing that constitutional silence regarding unilateral presidential amendment or repeal of enacted statutes may be construed as a prohibition).

133 *See Sawyer*, 343 U.S. at 588-89; *Clinton*, 524 U.S. at 439-440; *see also* Hamdan v. Rumsfeld, 548 U.S. 557, 591-92, 593-94 (2006) (rejecting the President's attempt to create military commissions inconsistent with statutory limits imposed by Congress).

134 U.S. CONST. art. II, § 1, cl. 1.

135 *Id.* § 3, cl. 1.

136 *Id.* § 2, cl. 1.

137 *See id.* art. I, § 7, cl. 2.

138 Kendall v. United States, 37 U.S. 524, 612-13 (1838).

legislation.[139] In *Clinton*, the Court struck down the Line Item Veto Act, emphasizing that although the U.S. Constitution grants the President a defined role in the legislative process, it does not allow unilateral action to amend or repeal statutes once enacted.[140] The Court treated the constitutional silence regarding any presidential authority to cancel or amend duly enacted statutes as an express prohibition, reasoning that Article I's carefully negotiated procedures for enacting laws were designed to be exclusive.[141] Drawing on both historical practice and the Presentment Clause, the Court stressed that the President must approve or reject a bill in its entirety and may not alter it piecemeal.[142] The statute at issue in *Clinton* allowed the President, after signing a bill into law, to cancel discrete spending and tax provisions, thereby changing the legal effect of statutes without bicameralism and presentment.[143] The Court held that statutory cancellations that produce truncated versions of duly enacted laws, therefore, bypass the "single, finely wrought and exhaustively considered" process the constitutional Framers required.[144]

Just as the line-item veto created "truncated versions" of bills outside the finely wrought procedure for enacting statutes,[145] Trump's Memorandum directing prosecutors to seek the death penalty in D.C. similarly attempts to reshape the practical application of federal capital punishment outside Congress's legislative role. Whether capital punishment applies in D.C. is a legislative judgment reserved to Congress,[146] not a choice made by the executive. D.C.'s settled abolition of capital punishment,[147] together with Congress's exclusive authority over the District,[148] render Trump's directives a unilateral exercise of power beyond the President's constitutional role.

---

139 U.S. CONST. art. I, § 7, cl. 2.

140 Clinton v. City of New York, 524 U.S. 417, 439 (1998) ("Although the Constitution expressly authorizes the President to play a role in the process of enacting statutes, it is *silent* on the subject of unilateral Presidential action that either repeals or amends parts of duly enacted statutes." (emphasis added)).

141 *Id.*

142 *See id*. at 439-40.

143 *See id*. at 436-38, 448.

144 *Id.* at 439-40.

145 *Id.* at 440.

146 *See* Council of D.C. v. Gray, 42 F. Supp. 3d 134, 139 (D.D.C. 2014); *see also* United States v. Williams, 216 F.3d 1099, 1101 (D.C. Cir. 2000) (explaining that Congress retains ultimate legislative authority over the District despite delegating certain powers to the D.C. Council).

147 *See* Hilotin-Lee, *supra* note 51.

148 *See Gray*, 42 F. Supp. 3d at 139; *Williams*, 216 F.3d at 1101.

Concern about unilateral executive alteration of law is not unique to *Clinton*;[149] it reflects a broader constitutional principle that has guided the Court for decades. In *Youngstown*, the Court considered whether the President could seize the nation's steel mills during the Korean War to avert an economic catastrophe.[150] The mills' owners argued, and the Court agreed, that President Harry S. Truman's order to seize the mills was unconstitutional lawmaking reserved to Congress, while the government defended it as an exercise of inherent executive and Commander-in-Chief powers in a time of emergency.[151] The Court held that the President's power to execute laws does not include the authority to make laws, emphasizing that the U.S. Constitution entrusts lawmaking power solely to Congress.[152] The *Youngstown* Court emphasized that even under the Commander-in-Chief clause, the President does not possess the power to seize private property to resolve domestic disputes such as labor strikes; that power belongs to Congress, not the military.[153] The Court also rejected reliance on the President's general executive powers, explaining that the Take Care Clause underscores his duty to enforce the law, not to make it.[154] The U.S. Constitution confines the President's role in legislation to recommending measures and exercising the veto, while ensuring that the power to enact laws belongs exclusively to Congress.[155] *Youngstown*'s reasoning underscores why Trump's directives cannot stand. Just as former President Truman could not invoke his Commander-in-Chief powers to seize private industry in the name of wartime necessity,[156] Trump cannot invoke his executive authority to transform Congress's carefully bounded death penalty statute into a sweeping policy directive. The Take Care Clause obliges the President to enforce the law as written,[157] not to refashion it.

In *Hamdan*, the Court again confronted the limits of unilateral executive authority.[158] The case arose from the Bush Administration's

149 Clinton v. City of New York, 524 U.S. 417, 439-40 (1998).

150 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 582 (1952).

151 *See id.* at 582, 588.

152 *Id.* at 588-89.

153 *Id.* at 587.

154 *See id.*

155 *Id.*

156 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952).

157 *See id.*

158 *See* Hamdan v. Rumsfeld, 548 U.S. 557, 591-92 (2006).

creation of military commissions at Guantánamo Bay to try detainees for war-related offenses.[159] Hamdan argued, and the Court agreed, that the President lacked independent authority to establish those tribunals without congressional authorization and that the commissions, as structured, violated both the Uniform Code of Military Justice and the Geneva Conventions.[160] Following the September 11, 2001 attacks, President George W. Bush issued a sweeping order governing the detention, treatment, and trial of certain noncitizens in the war on terrorism.[161] Yet, even although supporters defended the commission as necessary, it remained a tribunal created by executive order alone, neither mentioned in the U.S. Constitution nor authorized by statute.[162] Exigency by itself, the Court explained, cannot justify the creation of penal tribunals outside the framework of Articles I and III unless some other constitutional provision expressly authorizes such action.[163]

Hamdan illustrates a core principle: even in moments of national crisis[164] and wartime detention, the Court will reject an attempt to bypass statutory frameworks,[165] reaffirming that "[t]he power to make the necessary laws is in Congress; the power to execute in the President."[166] Similarly, a presidential directive that the death penalty be pursued in D.C. would rest on executive will rather than legislative authorization. Both moves share the same flaw: they convert the President from an enforcer of the law into its architect, eroding the separation of powers and leaving punishment untethered from democratic legitimacy.

---

159 *See id.* at 566-67.

160 *Id.* at 567, 635.

161 *See id.* at 567-68. In the aftermath of the September 11th attacks, President George W. Bush issued a military order governing the detention, treatment, and trial of certain noncitizens in the war on terrorism. *Id.* at 568. The order applied to any noncitizen whom the President determined had ties to Al Qaeda or had participated in terrorist activities against the United States, and it required that such individuals be tried before military commissions for all offenses within that forum's jurisdiction, with available punishments including life imprisonment or death. *Id.*

162 Hamdan v. Rumsfeld, 548 U.S. 557, 590 (2006).

163 *Id.* at 591.

164 *Id.* at 568, 590-91.

165 *Id.* at 567, 634.

166 *Id.* at 591-92 (citing *Ex parte Milligan*, 71 U.S. 2, 139 (1866)).

III. THE DISTRICT'S LEGAL STATUS, HOME RULE, AND EMERGING FEDERAL CONFLICT

This Part first traces the origins and limits of D.C.'s self-governance under the Home Rule Act, highlighting how Congress delegated local authority while retaining ultimate control. Part III then examines D.C.'s longstanding and democratically affirmed abolition of capital punishment,[167] a commitment that now stands in direct tension with federal efforts to reinstate executions.[168] The discussion next turns to the recent escalation of federal intervention in D.C.,[169] including a series of executive orders,[170] emergency declarations,[171] and administrative actions[172] that collectively seek to reassert federal authority over local policing and criminal justice. Together, these developments frame the central conflict addressed in this Article: whether the federal government may impose capital punishment in a jurisdiction that has repeatedly abolished it under delegated home-rule authority, and how the District's limited political representation heightens the constitutional stakes of that question.

A. *Background and the Home Rule*

The District holds a unique constitutional status.[173] "It is not a local municipal authority, but was established under the Constitution as the seat of the National Government."[174] In 1788, Maryland authorized the cession of land for the federal capital, and Congress formally accepted

---

167 *See District of Columbia*, *supra* note 2.

168 *Id.*

169 *See* Exec. Order No. 14333, 90 Fed. Reg. 39301, 39301-03 (Aug. 11, 2025); Exec. Order No. 14339, 90 Fed. Reg. 42121, 42121 (Aug. 25, 2025); *see also* Lopez, *supra* note 11 (deploying 800 National Guard troops in the District to support federal and local law enforcement); OFF. OF THE ATT'Y GEN., ORD. NO. 6370-2025: RESTORING SAFETY AND SECURITY TO THE DISTRICT OF COLUMBIA (2025) (asserting federal control over the Metropolitan Police Department and directing emergency law-enforcement measures in the District), https://www.justice.gov/ag/media/1411281/dl?inline [hereinafter Attorney General Order].

170 *See generally* Exec. Order No. 14333, 90 Fed. Reg. 39301 (declaring a crime emergency in the District); Exec. Order No. 14339, 90 Fed. Reg. 42121 (addressing the declared crime emergency in the District).

171 *Id.*; *see also* Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025) (restoring the death penalty and protecting public safety).

172 Attorney General Order, *supra* note 169.

173 *See* District of Columbia v. Murphy, 314 U.S. 441, 452 (1941).

174 *Id.*

it in the 1790 Residence Act, preserving the operation of state laws until Congress provided otherwise.[175] President George Washington fixed the ten-mile-square boundaries in 1791, Maryland ratified the cession later that year, and on December 1, 1800, the national government officially relocated to its new seat.[176]

Article I, Section 8, Clause 17 of the U.S. Constitution grants Congress exclusive legislative authority over D.C.[177] Exercising this authority, Congress enacted the Organic Act of February 27, 1801, which formally placed the District under federal jurisdiction.[178] The Act applied Maryland law to the Washington County portion and Virginia law to the Alexandria portion, and it established a circuit court to administer justice within the new federal territory.[179] Later, in 1871, Congress briefly experimented with limited local self-government by creating a territorial structure headed by a presidentially appointed governor and legislature, but that system was short-lived and ultimately repealed.[180]

In 1874, Congress abolished the short-lived territorial government it had created three years earlier and replaced it with a presidentially appointed three-member commission.[181] By 1878, Congress repealed all legislative authority, leaving only administrative functions.[182] From 1878 until the passage of the Home Rule Act in 1973, Congress exercised direct and exclusive control over D.C.'s governance with little input from its residents.[183] D.C. residents also lacked the right to vote for President or Vice President until the ratification of the Twenty-Third Amendment in 1961, which granted D.C. a limited number of electors capped at the total allotted to the least populous state.[184]

Direct congressional control over the District continued until 1973, when Congress passed the District of Columbia Self-Government and Governmental Reorganization Act (the "Home Rule Act"), codified at D.C. Code § 1-201.01 et seq.[185] The Home Rule Act represented a

---

175 *See* Albaugh v. Tawes, 233 F. Supp. 576, 577 (D. Md. 1964).

176 *Id.* at 577-78.

177 U.S. CONST. art. I, § 8, cl. 17.

178 *See* Council of D.C. v. Gray, 42 F. Supp. 3d 134, 139 (D.D.C. 2014).

179 Gertman v. Burdick, 123 F.2d 924, 928 (D.C. Cir. 1941).

180 *Gray*, 42 F. Supp. 3d at 139.

181 *See id.*

182 *See id.*

183 *See id.*

184 *See* U.S. CONST. amend. XXIII.

185 District of Columbia v. Bender, 906 A.2d 277, 279 (D.C. 2006).

compromise: it delegated limited powers of self-government through a modernized tripartite structure while expressly preserving Congress's ultimate authority under Article I.[186] The statute makes clear that Congress sought to preserve its ultimate authority while granting residents certain powers of local self-government.[187] Although the Home Rule Act established a local council and a charter functioning much like a constitution, both remain subject to congressional control, highlighting that D.C. autonomy exists only by congressional delegation.[188]

In practice, the District Mayor, much like the President, can propose legislation and veto acts of the legislature.[189] Unlike the President, however, the District Mayor does not have the power to nominate judges.[190] Likewise, although the council parallels Congress in holding the power of the purse over the executive branch, it cannot alter the judiciary's budget or generally participate in executive appointments, except where expressly allowed.[191] The Home Rule Act delegated limited self-governance to D.C. but retained Congress's ultimate authority to override local laws.[192] The Home Rule Act explicitly states that its purpose was to grant the District powers of local self-government, including the election of local officials and authority to legislate on local matters, while at the same time preserving Congress's constitutional supremacy under Article I, Section 8.[193] In short, the

---

186 *See Gray*, 42 F. Supp. 3d at 139-40.

187 D.C. CODE § 1-201.02(a) (2026) ("Subject to the retention by Congress of the ultimate legislative authority over the nation's capital granted by article I, § 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.").

188 *Gray*, 42 F. Supp. 3d at 139-40; *see also* United States v. Williams, 216 F.3d 1099, 1101 (D.C. Cir. 2000) (stating that while the Home Rule Act delegated certain legislative powers to the D.C. Council, Congress retained ultimate authority and imposed clear limits on D.C. Council's lawmaking and most notably, the D.C. Council cannot amend or repeal any act of Congress that has broader application beyond the District itself).

189 McKay, *supra* note 127, at 518.

190 *Id.*

191 *See id.*

192 *See* D.C. CODE § 1-201.02(a) (2026).

193 *Id.*; *see* JOSEPH V. JAROSCAK & BEN LEUBSDORF, GOVERNING THE DISTRICT OF COLUMBIA: OVERVIEW AND TIMELINE 1-2 (2026). Since 1973, the District has functioned under the Home Rule Act, which authorizes an elected mayor to administer city affairs and a thirteen-member

Home Rule Act sought to modernize and reorganize D.C.'s government and relieve Congress of the burden of managing essentially local issues, without diminishing its ultimate control over the District.[194]

Although Congress delegated limited powers of self-government under the Home Rule Act,[195] D.C. has never achieved true autonomy; its authority remains constitutionally subordinate and subject to the shifting priorities of the federal government. In recent years, the federal political branches have repeatedly overridden D.C.'s policy choices to align the District with preferences at odds with its electorate.[196] A notable example came in 2023, when Congress, with President Joseph R. Biden's approval, blocked the D.C. Council's long-debated criminal code revision after republican lawmakers objected that it was too lenient on crime.[197] The limits of D.C.'s autonomy are also evident in more recent contexts. Under pressure from the Trump administration, Mayor Muriel Bowser ordered the removal of the "Black Lives Matter" mural near the White House, oversaw the clearing of unhoused encampments to avoid federal intervention, and permitted city police to assist federal officers in evictions.[198]

In February 2025, Representative Andy Ogles, along with several co-sponsors, introduced the Bringing Oversight to Washington and Safety to Every Resident Act (the "BOWSER Act"), a bill that would repeal the Home Rule Act in its entirety one year after enactment.[199] Republicans have long opposed D.C. statehood and have repeatedly sought to curtail the District's autonomy.[200] Speaking to reporters aboard Air Force One in February 2025, Trump said, "I think we should

council to legislate on local matters. *Id.* at 1. The Home Rule Act grants broad authority to pass laws on "all rightful subjects of legislation[,]" but expressly subjects that authority to the U.S. Constitution, the Home Rule Act's own limitations, and Congress's continuing oversight. *Id.* Congress reserves the right to block District laws through a review process and has done so on multiple occasions, nullifying several measures and restricting others through appropriations riders. *See id.* at 1-2.

194 *See* D.C. CODE § 1-201.02(a) (2026).

195 *See* sources cited *supra* notes 188, 193.

196 *See generally* Meryl Justin Chertoff, *Washington, DC Needs Stronger 'Home Rule,'* STATE CT. REP. (Apr. 11, 2025) (describing Congress's authority to review and override D.C. legislation under the Home Rule Act), https://statecourtreport.org/our-work/analysis-opinion/washington-dc-needs-stronger-home-rule.

197 *Id.*

198 *Id.*

199 *See* BOWSER Act, H.R. 1089, 119th Cong. (2025).

200 *See* Nauman, *supra* note 59.

govern [the] District of Columbia. I think that we should run it strong, run it with law and order, make it absolutely flawlessly beautiful."[201]

B. *D.C. Abolition of the Death Penalty*

The balance struck in the Home Rule Act frames the current conflict: Congress preserved ultimate authority,[202] yet D.C. has exercised its delegated powers to abolish capital punishment,[203] a choice now in direct tension with Trump's mandate to reinstate it.[204] With this delegated authority, the District—including its council and voters—have consistently chosen abolition.[205] The District has not merely stepped away from capital punishment; it has repudiated it through a series of unequivocal actions.[206] After *Furman* effectively nullified its preexisting statute in 1972, the D.C. Council moved swiftly to eliminate the statute's residual authority by formally repealing it in 1981.[207] A decade later, D.C. voters rejected reinstatement at the ballot box by a two-to-one margin in a 1992 referendum,[208] closing the door on capital punishment through direct democracy. The District then adopted life without parole as its maximum sentence,[209] reinforcing its commitment to noncapital sentencing. In the years since, the council has rejected efforts to restore the death penalty.[210]

Yet on the first day of his second term as President, Trump issued an executive order titled "Restoring the Death Penalty and Protecting Public Safety" (the "Order").[211] The Order characterizes capital punishment as an essential tool for deterring and punishing violent crime, and it asserts that politicians and judges who oppose the practice have undermined the nation's laws.[212] Section 3 of the Order provides that "[t]he Attorney General shall pursue the death penalty for all

---

201 *Id.*

202 Council of D.C. v. Gray, 42 F. Supp. 3d 134, 139-40 (D.D.C. 2014).

203 *District of Columbia*, *supra* note 2.

204 *See* Memorandum on Enforcing Death Penalty Laws in D.C., *supra* note 19.

205 *See District of Columbia*, *supra* note 2.

206 *See id.*

207 *Id.*

208 *Id.*

209 *Id.*

210 *Id.*

211 *See* Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025).

212 *Id.* at 8463.

crimes of a severity demanding its use."[213] The Order further directs that the Attorney General shall, "where consistent with applicable law, pursue Federal jurisdiction and seek the death penalty regardless of other factors for every federal capital crime involving" either "[t]he murder of a law-enforcement officer[,]" or "[a] capital crime committed by an alien illegally present in this country."[214] The Order additionally instructs that "[t]he Attorney General shall encourage State attorneys general and district attorneys to bring State capital charges" for such offenses.[215] Months later, during a cabinet meeting, President Trump stated that "if somebody kills somebody in the capital, Washington, DC, we're going to be seeking the death penalty,"[216] notwithstanding the District's decades-long abolition of executions.[217] The FDPA requires individualized, case-specific prosecutorial judgment,[218] yet President Trump's Order sought to convert that discretionary framework into an across-the-board expectation that federal prosecutors pursue capital punishment in every eligible case.

President Trump's Order stands in sharp contrast to the District's long and unwavering rejection of capital punishment. D.C. has not executed a prisoner since 1957, and since then has taken repeated steps to abolish and resist reinstatement of capital punishment.[219] Even narrowly tailored proposals to restore executions, such as a 1997 bill for the murder of public safety employees, have been rejected.[220] That legislative and popular commitment finds concrete expression in the District's sentencing framework for first-degree murder. Under D.C. law, first-degree murder is punishable not by death, but by a sentencing scheme that authorizes life imprisonment without the possibility of release if the government proves aggravating circumstances beyond a reasonable doubt.[221]

---

213 *Id.*

214 *Id.*

215 *Id.* at 8463-64.

216 Bernd Debusmann Jr., *Trump Calls for Death Penalty for DC Murder Cases,* BBC (Aug. 26, 2025) (reporting President Trump's cabinet meeting remarks that the federal government would seek the death penalty for individuals who commit murder in Washington, D.C.), https://www.bbc.com/news/articles/cly69112d2po.

217 *See District of Columbia*, *supra* note 2.

218 U.S. Dep't of Just., Just. Manual §§ 9-10.020 (2014), 9-10.030 (2007), 9-10.130 (2020).

219 Hilotin-Lee, *supra* note 51.

220 *Id.*

221 D.C. CODE § 22-2104.01(a) (2026) (providing that when a defendant is convicted of first-degree murder, a separate sentencing proceeding must be held to determine whether the

Despite the District's clear rejection of capital punishment,[222] the FDPA's statutory framework leaves the decision to pursue federal capital charges in the hands of the executive branch.[223] Under the FDPA, however, that decision is intended to operate through individualized prosecutorial judgments and jury determinations in certain cases.[224] The Order disregards this statutory and procedural architecture by transforming what Congress required to be individualized prosecutorial and jury findings into an across-the-board policy directive. The Order substitutes political will for legal judgment, collapsing both due process and separation-of-powers safeguards.

C. *Federal Escalation and the Present Conflict*

On August 11, 2025, Trump issued an executive order titled "Declaring a Crime Emergency in the District of Columbia" (the "Emergency Order"), invoking what he described as his authority under Section 740 of the Home Rule Act.[225] He warned that "[c]rime is out of control in the District of Columbia[,]" endangering citizens,

---

defendant should receive a sentence greater than sixty years, up to and including life without parole); *id.* § 22-2104.01(b) (stating that in that proceeding, the trier of fact must find beyond a reasonable doubt that one or more aggravating circumstances exist); *id.* § 22-2104.01(b)(1)-(12) (enumerating twelve aggravators (1) murder committed in the course of a kidnapping or abduction; (2) murder for hire; (3) murder to avoid arrest or escape custody; (4) murder that was "especially heinous, atrocious, or cruel"; (5) drive-by or random shooting; (6) multiple murders arising out of one incident; (7) murder committed on the basis of the victim's race, religion, national origin, sexual orientation, or gender identity or expression; (8) murder committed during robbery, arson, rape, or sexual offense; (9) murder committed because the victim was a witness or potential witness; (10) murder of a victim who was especially vulnerable due to age or infirmity; (11) murder committed after substantial planning; or (12) murder committed by a defendant with a prior conviction for homicide, attempted homicide, or at least two prior "crime of violence" convictions as defined in D.C. Code § 22-4501(1B)); *id.* § 22-2104.01(c) (stating that if one or more aggravating circumstances are found, the court may impose a sentence greater than sixty years and up to life without release); *id.* § 22-2104.01(d) (addressing if an appellate court reverses solely on a sentencing error, retrial is limited to the sentencing phase).

222 *District of Columbia*, *supra* note 2.

223 U.S. Dep't of Just., Just. Manual § 9-10.130 (2020); *see also id.* § 9-10.050 (2014) (providing that the Attorney General makes the final decision on whether to seek the death penalty).

224 *See* U.S. Dep't of Just., Just. Manual § 9-10.030 (2007); *see also id.* §§ 9-10.080 (2018) (requiring individualized review and recommendation before seeking the death penalty), 9-10.130 (2020) (providing for Capital Review Committee evaluation and recommendation); 18 U.S.C. § 3593(d) (requiring the jury, or if there is no jury, the court, to make findings on aggravating factors in federal capital cases).

225 Exec. Order No. 14333, 90 Fed. Reg. 39301, 39301 (Aug. 11, 2025).

federal workers, and the operation of the government itself.[226] The Emergency Order highlighted D.C.'s high homicide rate of 27.54 per 100,000 residents in 2024, along with the nation's highest vehicle theft rate, calling the city "among the top 20 percent of the most dangerous cities in the world."[227] Asserting a "solemn duty" to ensure safety in the nation's capital, President Trump directed the D.C. Mayor to provide the services of the Metropolitan Police "for Federal purposes," with operational control delegated to the Attorney General.[228] Two weeks later, President Trump issued another executive order entitled "Additional Measures to Address the Crime Emergency in the District of Columbia" (the "Intervention Order") to address what he called "the rampant violence and disorder that have undermined the proper and safe functioning of the Federal Government, and therefore, the Nation . . . ."[229]

---

226 *Id.* (explicitly faulting the District for alleged breakdowns in public safety, the Emergency Order declared: "The city government's failure to maintain public order and safety has had a dire impact on the Federal Government's ability to operate efficiently to address the Nation's broader interests without fear of our workers being subjected to rampant violence.").

227 *Id.* (setting out a narrative of severe consequences flowing from crime in Washington, D.C., the Emergency Order asserted: "The increase in violent crime in the heart of our Republic has consequences beyond the individual tragedies that have dominated media coverage. Such lawlessness also poses intolerable risks to the vital Federal functions that take place in the District of Columbia. Violence and crime hamper the recruitment and retention of essential Federal employees, undermine critical functions of Government and thus the well-being of the entire Nation, and erode confidence in the strength of the United States. These conditions are disgraceful anywhere, but particularly in the capital of our Nation and the seat of the Federal Government. Citizens, tourists, and Federal workers deserve peace and security, not fear and violence. The smooth functioning of executive departments and agencies, courts, diplomatic missions, and the Federal Government demands an effective law-enforcement mechanism capable of halting the precipitous rise in violent crime, not one that permits Government workers to be violently attacked by mobs or fatally shot close to the Federal buildings where they work.").

228 *Id.* at 39302 ("(a) The Attorney General shall monitor and regularly consult with any senior official the Attorney General deems appropriate on the special conditions of an emergency nature that exist in the District of Columbia that require the use of the Metropolitan Police force for Federal purposes.").

229 Exec. Order No. 14339, 90 Fed. Reg. 42121, 42121 (Aug. 25, 2025). This order mandated a broad range of federal interventions. *See id.* at 42121-23. This order also directed the National Park Service to hire additional U.S. Park Police to enforce both federal law and the D.C. Code; authorized the U.S. Attorney for the District to hire new prosecutors for violent and property crimes; and ordered the "D.C. Safe and Beautiful Task Force" to establish a national volunteer portal for applicants to join federal law enforcement. *Id.* at 42121. The order further required U.S. Department of Justice components and other federal agencies to train and equip specialized law enforcement units dedicated to the capital, with authority to deploy nationwide if "public safety and order has been lost." *Id.* The U.S. Secretary of Defense was instructed to establish a new D.C. National Guard unit devoted to public safety, deputize its members under federal law, and

In the following days, the federal response deepened. On August 14, 2025, the U.S. Department of War announced the mobilization of 800 National Guard troops under Title 32[230] authority to support local and federal law enforcement in D.C., with officials emphasizing that they would remain "until law and order has been restored in the [D]istrict, as determined by the President."[231] That same month, federal rhetoric also escalated: the U.S. Attorney for D.C., Jeanine Pirro, condemned a grand jury's refusal to return a felony indictment against a former U.S.

---

ensure every state's National Guard maintained trained personnel available for "rapid nationwide deployment." *Id.* at 42121-22. Beyond policing, the order tasked the Secretary of Housing and Urban Development with investigating the D.C. Housing Authority and landlords for noncompliance with safety provisions, with referrals to federal and local law enforcement as appropriate, and required the Secretary of Transportation to conduct heightened inspections of federally funded transit systems for worker safety risks. *Id.* at 42122. Finally, the Attorney General was directed to review the Metropolitan Police Department's General Orders and request modifications from the D.C. Mayor to address the declared emergency. Exec. Order No. 14339, 90 Fed. Reg. at 42122.

230 *See* 32 U.S.C. § 102 ("In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal duty and retained as long as so needed."); *see also* 32 U.S.C. § 904 (clarifying the structure of homeland-defense duty performed under Title 32). Section 904 provides that all such missions constitute full-time National Guard duty under § 502(f) and may include support for homeland-defense activities carried out by the Guard. *Id.* § 904(a). The statute limits the duration of Title 32 homeland-defense duty to 180 days, extendable once by the governor—with the concurrence of the U.S. Secretary of Defense—for an additional 90 days in extraordinary circumstances. *Id.* § 904(b). It further requires National Guard members performing Title 32 homeland-defense missions to continue participating in mandatory training under § 502(a), receiving the same pay and benefits for such training as they receive for Title 32 duty. *Id.* § 904(c). Finally, § 904 emphasizes that homeland-defense missions may not degrade the readiness, training quality, or military skills of the units and personnel involved, underscoring Congress's expectation that federally funded, state-controlled operations under Title 32 remain consistent with the National Guard's core military functions. *Id.* § 904(d).

231 Lopez, *supra* note 11. The Department of War reported that about two-hundred Army and Air National Guard personnel would be on duty at a time as part of President Trump's *Safe and Beautiful Task Force*. *Id.* Pentagon Press Secretary Kingsley Wilson characterized the deployment as necessary because "it is disgraceful that we have allowed D.C. to become so incredibly dangerous[,]" and stressed that the National Guard would serve as a deterrent presence. *Id.* The National Guardsmen, operating under Title 32 status, were tasked with monument and facility security, traffic control, community safety patrols, and "area beautification," but were not authorized to make arrests. *Id.* Instead, they could temporarily detain individuals in restricted areas and transfer them to proper authorities. *Id.* Kingsley Wilson compared their role to prior deployments in Los Angeles, noting that all National Guardsmen were trained in de-escalation and retained only the inherent right of self-defense. *Id.*

Department of Justice employee accused of throwing a sandwich at a federal officer, calling it "a damning sign that the [D]istrict's residents don't care about tackling crime."[232]

The administration's escalating involvement culminated in its reliance on Section 740 of the Home Rule Act,[233] the statute governing presidential use of the Metropolitan Police Department (MPD) for federal purposes.[234] Section 740 authorizes a narrowly tailored, time-limited federal call on the MPD when the President determines that special emergency conditions require MPD assistance for federal purposes.[235] Upon such a determination, the President has the authority to direct the D.C. Mayor to furnish MPD services, and the D.C. Mayor

---

[232] Gregory Svirnovskiy, *Washington Residents Are 'So Used to Crime,' Pirro Says*, POLITICO (Aug. 31, 2025), https://www.politico.com/news/2025/08/31/pirro-washington-crime-sandwich-thrower-00538780?cid=apn; *see* Victor Nava, *Jeanine Pirro Blames Elitist Jurors Who Don't Take Crime Seriously for Failure to Indict DC Sandwich Slinger*, NY POST (Aug. 31, 2025), https://nypost.com/2025/08/31/us-news/jeanine-pirro-blames-elitist-jurors-who-dont-take-crime-seriously-for-failure-to-indict-dc-sandwich-slinger/.

[233] *See generally* Exec. Order No. 14333, 90 Fed. Reg. 39301 (Aug. 11, 2025) (invoking Section 740 of the Home Rule Act to direct the D.C. Mayor to provide metropolitan police services for federal purposes).

[234] *See generally* D.C. CODE § 1-207.40 (2026) ("(a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of 48 hours unless the President has, prior to the expiration of such period, notified the Chairmen and ranking minority members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue. (b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of 30 days following the date on which such services are first made available, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs. (c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the 30-day period following the date on which Congress first convenes following such adjournment, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs. (d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of 30 days, unless the Senate and the House of Representatives enact into law a joint resolution authorizing such an extension.").

[235] *See id.*

must comply.[236] That authority is short-lived: it lasts up to forty-eight hours without congressional notice and expires after thirty days unless Congress enacts a joint resolution extending it.[237] Nothing in Section 740 permits the President to assume operational control of the MPD or to reorder local policing policy.[238] Indeed, as the D.C. Circuit has long made clear, "the President is without authority to set aside congressional legislation by executive order."[239]

In response, the District filed a complaint (the "MPD Complaint") against President Trump and other administrative departments in the District Court to block what it viewed as a federal takeover of the MPD.[240] Modern administrative law reinforces that same separation-of-powers principle.[241] Under the Administrative Procedure Act (APA), courts must "hold unlawful and set aside" agency action that exceeds statutory authority or is "arbitrary [and] capricious."[242] The District filed the MPD Complaint the day after Attorney General Pam Bondi issued an order titled "Restoring Safety and Security to the District of Columbia" (the "Bondi Order").[243] The MPD Complaint alleges that the Bondi Order both exceeds statutory authority and constitutes

---

236 *Id.* § 1-207.40(a).

237 *See id.* § 1-207.40(a)-(b).

238 *See id.* § 1-207.40(a)-(d) (limiting any presidential direction to forty-eight hours absent written notice to Congress, and otherwise terminating such services upon the earlier of the emergency's end or thirty days unless extended by joint resolution; if Congress is adjourned sine die, services terminate upon the earlier of the emergency's end, thirty days after Congress reconvenes, or a joint resolution ending or extending the arrangement).

239 In re UMW Int'l Union, 190 F.3d 545, 551 (D.C. Cir. 1999).

240 *See* Complaint at 1-5, District of Columbia v. Trump, No. 1:25-cv-02678 (D.D.C. Aug. 15, 2025).

241 *See* 5 U.S.C. § 706 ("To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—(1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title [5 USCS §§ 556 and 557] or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.").

242 *Id.* § 706(2)(A), (C).

243 Complaint at 4, 26-27, *Trump*, No. 1:25-cv-02678.

arbitrary and capricious agency action under the APA.[244] The Bondi Order, purporting its authority under Section 3 of Trump's Emergency Order and Section 740(a) of the Home Rule Act,[245] appointed Drug Enforcement Administration (DEA) Administrator Terrence C. Cole as "Emergency Police Commissioner" with "all of the powers and duties vested in the District of Columbia Chief of Police."[246] The Bondi Order rescinded existing MPD directives, suspended portions of standing general orders, and directed the MPD to enforce local municipal regulations, including provisions on public space occupancy.[247] The District argues first that Section 740 permits only temporary "services" for federal purposes, not federal command over D.C.'s police force or direction of local policy.[248] By attempting to seize operational control of the MPD, the District argues that the Bondi Order went beyond the narrow statutory authority Congress provided.[249] The District further contends that the Bondi Order is arbitrary and capricious under the APA because it offers no reasoned explanation for supplanting experienced local leadership, does not grapple with foreseeable operational disruption and public-safety risks, and disregards the statute's temporal and notice limits.[250]

As the MPD Complaint stresses, "[i]n the 52 years since the enactment of Home Rule, no President has ever attempted to exercise this limited authority."[251] The MPD Complaint turns on Section 740 of the Home Rule Act, which permits the President, during "special" emergency conditions, to require the mayor to provide MPD services for federal purposes on a strictly time-limited basis.[252] The District further argues that the Trump administration's approach far exceeded that narrow delegation.[253] Rather than requesting discrete assistance for identified federal tasks, the Attorney General issued an order installing a federal "Emergency Police Commissioner[,]" purporting to vest him with the D.C. Chief of Police's powers, requiring MPD

244 *Id.* at 5, 29.

245 Attorney General Order, *supra* note 169, at 1.

246 *Id.* at 1-3.

247 *Id.*

248 Complaint at 2-3, *Trump*, No. 1:25-cv-02678.

249 *Id.* at 4.

250 *Id.* at 28.

251 *Id.* at 2.

252 *Id.* at 2-3.

253 *Id.* at 2, 4.

leadership to obtain his approval before issuing directives, rescinding or suspending existing MPD policies, and directing enforcement of local rules.[254] The MPD Complaint also identifies two independent statutory defects: first, the asserted purposes were quintessentially local policing rather than federal functions;[255] second, the President failed to satisfy the statute's notice and duration requirements, including the obligation to specify the period for which the services would be needed and the thirty-day ceiling absent a joint resolution by Congress.[256] On the District's account, Section 740 preserves local command and authorizes only temporary, purpose-bound assistance; it does not permit the Executive to assume operational control of the MPD or to reorder local law enforcement policy.[257] Framed this way, the MPD Complaint illustrates how Congress structured home rule to keep day-to-day policing in local hands[258] while reserving limited emergency tools for genuine federal needs.[259]

Tension between the executive branch and the MPD gave rise to the District's second major legal challenge. In its second complaint (the "Deployment Complaint") filed in the District Court against the President, the Attorney General, and multiple federal law enforcement agencies in their official capacities, the District alleges that the Trump administration unlawfully deployed more than 2,200 National Guard troops from seven different states to perform day-to-day policing—arming them, placing them under federal military command, and directing them to patrol, search, seize, and arrest in ways that defy congressional limits set in the Home Rule Act.[260] The District further argues that Congress has long exercised exclusive constitutional authority over the governance and security of the nation's capital,[261] including creation and control of the D.C. National Guard.[262] Although the Home Rule Act preserved core local powers, such as the D.C. Mayor's duty to maintain

254 Complaint at 4, *Trump*, No. 1:25-cv-02678.

255 *Id.* at 5.

256 *Id.* at 2-3, 12.

257 *Id.* at 3.

258 *See id.*

259 *See id.* at 2.

260 Complaint at 2, 51, District of Columbia v. Trump, No. 25-cv-03005 (D.D.C. Sept. 4, 2025).

261 *Id.* at 9.

262 *Id.* at 10.

public order,[263] it sharply limited the president's authority to intervene in local policing.[264]

The District advances statutory and constitutional claims to illustrate the breadth of the executive's departure from the Home Rule Act. First, D.C. asserts that the U.S. Department of Defense and Department of Justice acted contrary to law by deploying the D.C. National Guard and out-of-state guard units to police the District without the D.C. Mayor's consent, placing those state-status units under federal military command, and directing Joint Task Force–DC as if it were a federal law enforcement arm.[265] The District also contends that these actions are arbitrary and capricious under the APA, emphasizing the agencies' failure to explain their break from longstanding practice,[266] to consider the public-safety risks of sending inadequately trained guard troops into civilian policing roles,[267] or to weigh the confusion and dangers posed by heavily armed military personnel patrolling District neighborhoods.[268] Second, the District argues that these measures violate the separation of powers, the Take Care Clause, and the District Clause[269] by asserting federal authority over state militias, disregarding statutory limits on military involvement in domestic law enforcement, and attempting to replace the D.C. Mayor's exclusive authority over local policing.[270] In the filing, the District seeks a declaration that these actions violate both the U.S. Constitution and federal law.[271]

Even after these sweeping executive orders, and as litigation proceeded, President Trump issued a third directive targeting D.C.'s criminal justice system. On September 25, 2025, the President released a memorandum entitled "Enforcing the Death Penalty Laws in the District of Columbia to Deter and Punish the Most Heinous Crimes" (the "Trump Memorandum").[272] The Trump Memorandum reaffirmed the Trump administration's commitment to capital punishment, describing it as "an essential part of how our justice system deters and

---

263 *Id.*

264 *Id.* at 10-11

265 *Id.* at 42-43.

266 Complaint at 46, *Trump*, No. 25-cv-03005.

267 *Id.*

268 *Id.*

269 *Id.* at 47.

270 *Id.* at 49.

271 *See id.* at 51.

272 Memorandum on Enforcing Death Penalty Laws in D.C., *supra* note 19.

punishes the most reprehensible crimes that often involve grotesque and lethal violence against innocent Americans."[273] President Trump directed the Attorney General and the U.S. Attorney for D.C. to seek the death penalty "in all appropriate cases" and, to the maximum extent practicable, to pursue federal jurisdiction over crimes committed in the District for which capital punishment is available under federal law.[274] The Trump Memorandum deepened the conflict between local abolition and federal authority: despite the District's repeal of capital punishment and residents' repeated rejection of reinstatement, the existence of the death penalty in D.C. ultimately turns on decisions made by federal prosecutors acting under presidential direction. In practical terms, the Trump directives convert the District's abolition into a federal charging policy, not by changing the law through Congress, but by directing federal officials to pursue capital punishment whenever federal jurisdiction can be invoked. Courts have generally rejected challenges to prosecutorial discretion under the FDPA, stressing the procedural safeguards the statute contains.[275] But a directive from the President transforms that statutory duty into political obedience, requiring federal prosecutors to satisfy the preferences of the person in charge, rather than the lawful, individualized judgment the statute requires.

The federal response did not end with President Trump's directives. In the weeks following the Trump Memorandum, the U.S. House of Representatives (the "House") advanced two pieces of legislation[276] aimed at reshaping the D.C. criminal justice framework and further narrowing the space for local self-governance. These bills, each framed as necessary to restore law and order in the capital,[277] illustrate how the present conflict is no longer confined to executive unilateralism, but has expanded into a coordinated, multi-branch effort to override democratically enacted D.C. policies. First, the House passed the District of Columbia Cash Bail Reform Act.[278] This bill would require mandatory

[273] *Id.*

[274] *Id.*

[275] *See, e.g.*, United States v. Purkey, 428 F.3d 738, 748-49 (8th Cir. 2005); United States v. Frank, 8 F. Supp. 2d 253, 264, 266 (S.D.N.Y. 1998).

[276] *See generally* Press Release, Comm. on Oversight and Gov't Reform, House Passes Legislation to Bring Back Commonsense Law Enforcement to D.C. (Nov. 19, 2025) (on file with author) (describing the U.S. House of Representative's advancement of two crime-related bills affecting the District).

[277] *See id.*

[278] District of Columbia Cash Bail Reform Act of 2025, H.R. 5214, 119th Cong. (2025).

pretrial detention for individuals charged with violent or dangerous crimes[279] and impose secured cash bail for a broad category of "public safety or order" offenses,[280] sharply curtailing judicial discretion under D.C. law.[281] Republican sponsors cast the measure as a corrective to what they characterize as lenient local policies that "allow violent offenders to walk free" and positioned the bill as part of Trump's broader effort to nationalize a punitive approach to pretrial detention.[282]

Second, the House passed the "Common-Sense Law Enforcement and Accountability Now in D.C. Act" (the "CLEAN DC Act").[283] This measure would repeal most of the District's Comprehensive Policing and Justice Reform Amendment Act of 2022, which was the council's principal policing-reform statute enacted in response to national calls for accountability.[284] The CLEAN DC Act would restore wide discretionary powers to the MPD, eliminate limits on use-of-force

[279] *Id.* § 2(a)(2) (adding § 23-1322(j): "Notwithstanding any other provision of this section, the judicial officer shall order each person charged with a crime of violence or a dangerous crime . . . be detained for the period before trial."); *id.* § 2(a)(1) (amending § 23-1322(a): "in subsection (a), by striking 'with an offense' and inserting 'with an offense, other than a crime of violence or a dangerous crime . . .'"); *id.* § 2(b)(3) (adding § 23-1325(e): "This provisions of this section shall apply with respect to a person convicted of a crime of violence or a dangerous crime . . . ."); *id.* § 2(c)(1) (amending "burglary" in "dangerous crime" definition to "[b]urglary in the first degree, attempted burglary in the first degree, or burglary with a dangerous weapon."); *id.* § 2(c)(2) (amending "robbery" in dangerous crime definition to "[r]obbery in the first degree, attempted robbery in the first degree, or robbery with a dangerous weapon."); H.R. 5214 § 2(d)(1)-(2) (parallels amendments to "crime of violence" definition striking "burglary" and "robbery" and replacing with the above first-degree/dangerous-weapon formulations).

[280] H.R. 5214 § 3(a)(1)(D) (adding § 23-1321(a)(5): "With respect to a person charged with a public safety or order crime . . . released only upon execution of a secured appearance bond . . ."); *id.* § 3(b)(1) (defining "public safety or order crime" in § 23-1331(7): "failure to appear . . . obstruction of justice; fleeing . . . rioting; inciting a riot; destruction of property; stalking; burglary or robbery (other than burglary or robbery in the first degree or with a dangerous weapon); or a previous conviction of any such offense . . ."); *id.* § 3(b)(2) (defining "secured appearance bond" in § 23-1331(8): "an agreement to forfeit . . . designated property, including money, . . . and post with the court the indicia of ownership . . . or a bail bond with solvent sureties . . .").

[281] *Id.* § 2(e)(1)(C) (striking portions of § 23-1322(e)(1): deleting language that formerly allowed judicial release determinations for certain crimes); *id.* § 2(e)(1)(B) (replacing § 23-1322(c) with a new presumption-of-danger standard: "Subject to rebuttal by the person, it shall be presumed that no condition . . . will reasonably assure the safety of any other person and the community . . ."); *id.* § 3(c)(1) (amending § 23-1321(a): removing the judge's discretion for violent or dangerous crimes); H.R. 5214 § 3(c)(2)(A) (amending § 23-1321(c): replacing "shall" with "may[,]" thereby weakening judicial discretion over release conditions).

[282] *See* Comm. on Oversight and Gov't Reform, *supra* note 276.

[283] Common-Sense Law Enforcement and Accountability Now in DC Act of 2025, H.R. 5107, 119th Cong. (2025).

[284] *Id.* § 2(a).

policies and disciplinary procedures, and reinstate earlier standards that the D.C. Council identified as contributing to excessive force and weak accountability.[285] The bill's sponsors framed it as necessary to reverse "anti-police" reforms and to stabilize the MPD's recruitment and retention, explicitly linking the measures to President Trump's prior efforts to expand federal authority over D.C. policing.[286] House leadership framed these measures as a broader effort to codify President Trump's law-and-order agenda in the District, with republicans openly describing the bills as necessary to override what they characterized as D.C.'s "soft-on-crime" policies and to reassert federal control over local criminal justice decisions, notwithstanding unified opposition from the District's elected officials and the absence of voting representation for District residents in Congress.[287]

The day after the House advanced these bills, the District Court issued relief on the Deployment Complaint that D.C. had filed months earlier, challenging the federal government's deployment of the National Guard.[288] On November 20, 2025, the District Court granted preliminary injunctive relief, concluding that D.C. was likely to succeed on its core statutory challenges.[289] The District Court determined that

---

285 *See* Comm. on Oversight and Gov't Reform, *supra* note 276.

286 *Id.*

287 *Id.* ("House Republicans continue to codify President Trump's crackdown on D.C. crime and passed two more critical bills to reverse the city's dangerous soft-on-crime policies. The CLEAN D.C. Act repeals the D.C. Council's flawed 2022 policing overhaul which Congress already sought to block with bipartisan legislation before President Biden vetoed it. The D.C. CRIMES Act further ensures the city cannot weaken sentencing standards for criminals and requires that violent youth offenders be charged as adults for the most serious offenses. These reforms reflect Republicans' continued commitment to restore law and order in the nation's capital and provides a model for other Democrat-run cities plagued by rising crime," said Speaker Mike Johnson (R-La)."); *see* Olivia George & Meagan Flynn, *Taking Trump's Lead, House Votes to Change D.C. Bail, Policing Laws,* WASH. POST (Nov. 19 2025), https://www.washingtonpost.com/dc-md-va/2025/11/19/house-bills-dc-crime-takeover/.

288 *See* District of Columbia v. Trump, 810 F. Supp. 3d 19, 35 (D.D.C. 2025) ("The Court grants Plaintiff's motion because the DOD Defendants' actions are likely contrary to law under the APA. First, the Court finds that the District has standing to bring its statutory claims and can challenge the DOD Defendants' actions under the APA. Turning to the merits, the Court finds that Defendants lack authority under D.C. law to support their deployment of the DCNG and have exceeded the bounds of their statutory authority under 32 U.S.C. § 502(f) in requesting the deployment of out-of-state National Guards. Finally, the Court concludes that Plaintiff is suffering an irreparable harm to its sovereign powers under the Home Rule Act, which are being usurped by Defendants' unlawful actions. Because the balance of the equities and the public interest also weigh in Plaintiff's favor, the Court grants Plaintiff's motion in relevant part.").

289 *Id.* at 62, 65.

the U.S. Department of War exceeded its authority by deploying the D.C. National Guard for nonmilitary crime-deterrence functions without a request from local officials, and federal officials lacked statutory authorization to summon out-of-state guard units into the District.[290] The District Court found these actions inflicted irreparable harm on the District's exercise of its sovereign powers and that the equities and public interest favored relief.[291]

Although the District Court temporarily stayed the order for twenty-one days to allow for an orderly appeal,[292] the ruling marked the first judicial repudiation of the Trump administration's efforts to supplant local control over D.C.'s policing apparatus. That repudiation, however, did not immediately end the federal deployment. The D.C. Circuit granted an administrative stay permitting the National Guard presence to continue temporarily beyond the District Court's deadline, while expressly cautioning that the stay reflected no view on the legality of the deployment and served only to preserve the status quo pending further appellate review.[293]

CONCLUSION

The conflict now unfolding in Washington, D.C., is not simply a dispute about capital punishment; it is a test of the constitutional architecture that governs the nation's most severe form of punishment. The U.S. Supreme Court has long held that death may be imposed only through individualized, reliable, and legally constrained processes.[294] Congress, through the Federal Death Penalty Act, echoed the U.S. Supreme Court's judgment by constructing a system built on case-specific prosecutorial discretion,[295] multi-layered review,[296] and jury findings grounded in evidence,[297] not policy directives. Further, for more than five decades, the District has exercised its delegated authority to reject capital punishment entirely, reaffirming that decision through

---

290 *Id.* at 28-29.

291 *Id.* at 29.

292 *See id.*

293 District of Columbia v. Trump, No. 25-5418, 2025 WL 3496575, at *1 (D.C. Cir. Dec. 4, 2025) (granting administrative stay pending consideration of motion for stay pending appeal).

294 *See* cases cited *supra* notes 12-13.

295 U.S. Dep't of Just., Just. Manual § 9-10.130 (2007).

296 *Id.*; *see id.* § 9-10.050 (2014).

297 18 U.S.C. § 3593(d).

legislation, democratic referendum, and repeated refusals to reinstate executions.[298]

President Trump's directives sweep all three of these foundations aside. A universal charging expectation in the District resurrects the mandatory death penalty regimes repeatedly condemned by the U.S. Supreme Court. These directives displace the FDPA's structured process with political command, risking the collapse of the statutory safeguards Congress designed to prevent arbitrary or politically motivated punishment. The directives also nullify the District's repeated, democratically expressed choice to abolish the death penalty, imposing death in a jurisdiction that lacks voting representation in a Congress that retains exclusive authority over it.

When these elements are viewed together, the constitutional danger becomes clear. A system that permits the President to dictate death sentences in a jurisdiction that has abolished them is not merely strained; it is structurally unsound. Such a system erodes the separation of powers, disregards statutory limits, and silences a disenfranchised population whose local democratic choices have already been marginalized for more than a century. A system like this also replaces individualized judgment with categorical command, transforming the gravest punishment in American law into an instrument of executive policy.

The death penalty has always required the highest level of constitutional care. In the District, the death penalty requires something more: respect for a community that has chosen abolition, adherence to the statutory framework Congress itself enacted, and fidelity to the Eighth Amendment's promise that politics cannot dictate life-and-death decisions.

---

298 *See District of Columbia*, *supra* note 2.