

United States Senate

WASHINGTON, DC 20510

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JUDICIARY
RULES AND ADMINISTRATION

April 9, 2021

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

I write to bring to your attention a disturbing trend regarding the use of non-prosecution agreements by the U.S. Attorney's Office for the Central District of California in cases involving environmental justice.

Communities of color, low-income communities, and tribal communities are more likely to live near polluting factories and hazardous waste sites than wealthier and whiter communities. Many such communities in the Los Angeles area are severely impacted by multiple sources of pollution from industrial facilities, traffic congestion, and proximity to ports.

Last month, the *Los Angeles Times* reported that Central District prosecutors have “made more such deals with corporations accused of violating environmental laws than in any of the 93 other such offices in the country.”¹ Specifically, the *Times* reported that 40% of all non-prosecution deals nationwide related to environmental and wildlife cases since the 1990's came out of the Central District of California.

While the sheer number of non-prosecution agreements in the Central District is concerning, given the many environmental injustices facing communities in Los Angeles, it is even more troubling that not all of these deals resulted in the clean-up they were supposed to facilitate. For example, prosecutors from the Central District entered into a non-prosecution agreement with Exide Technologies, which committed decades-worth of environmental crimes by dumping lead and other hazardous contaminants into the air, soil, and water, impacting mostly working-class, Latino communities who continue to suffer from cancer, asthma, learning disabilities, dangerous levels of lead in their blood, and more. Under the deal with federal prosecutors, all Exide had to do to avoid criminal liability was admit to their crimes, close their facility, and agree to pay \$50 million to cover decontamination costs. However, Exide instead

¹ Anna M. Phillips. “L.A. is home to heavy industry — and more federal deals not to prosecute polluters than anywhere else.” *Los Angeles Times*, March 11, 2021.

declared bankruptcy and escaped responsibility for finishing the clean-up, leaving California taxpayers on the hook for the largest environmental clean-up in California's history.

The Exide case and the broader trend in the Central District raise critical questions about whether the Department of Justice's mission of ensuring "fair and impartial administration of justice for all Americans" is truly being served. Therefore, I ask that you answer the following questions:

- What is the Department's policy regarding the use of non-prosecution agreements, and are there written guidelines for prosecutors to follow?
- Why has the U.S. Attorney's Office for the Central District of California entered into more non-prosecution agreements than any other office in the country?
- How does the Department track non-prosecution agreements?

The Department of Justice must hold polluters accountable for environmental crimes that disproportionately impact Black, Latino, and Native American communities. I appreciate your attention to this important matter, and I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Padilla". The signature is fluid and cursive, with the first name "Alex" and last name "Padilla" clearly distinguishable.

Alex Padilla
United States Senator

AP/ss/dm