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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR FREMONT COUNTY

<p>STATE OF IDAHO, Plaintiff, vs. LORI VALLOW DAYBELL, Defendant.</p>	<p>Case No. CR22-21-1624 MOTION TO DISMISS THE DEATH PENALTY</p>
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Comes now the Defendant, through her attorneys, and pursuant to the Constitution of the United States, Amendments 5, 8, and 14 (due process, cruel and unusual punishment, equal protection) and the Constitution of the State of Idaho, Article 1, Sections 6 and 13 (due process, cruel and unusual punishment), moves the Court to dismiss the death penalty.

There are still defense motions pending which have been argued and submitted to the Court but not yet ruled upon. As the Court determines its decision on the submitted constitutional motions, the Court should also dismiss the death penalty for the following reasons:

1. **Media saturation of this case is still persistent.** Even though the Court has tempered the media exposure to potential jurors in Ada County by expelling cameras from the courtroom, the risk of the media tainting the juror pool is still great. Non-stop articles about the case and the rehashing of the arguments at each hearing continue to expose potential jurors to prejudice and bias against the defendant.
2. **There have been multiple discovery violations by the government in this case.** The discovery is admittedly voluminous in this case. The government has bates stamped over 80,000 documents in this case, yet has admitted that it's just the bulk of it, not all of it. The government admitted this past week that there are more "statements of a co-defendant," as requested in discovery, that still need to be copied and supplied to defense counsel. Defense counsel don't know what we don't have. It could very well be Brady information. If there's a death sentence in this case, appellate lawyers and post-conviction lawyers will inevitably find additional discovery that has not been turned over, as the government has essentially admitted it hasn't turned everything over. Such discovery failures will cause any death verdict to be vacated and the case will start over.
3. **The government wanting to kill a mentally ill person is a troubling thought.** The fact of defendant's mental illness is known to the court and the government. This past week the government submitted an opinion that maybe the defendant wasn't mentally

ill, but just evil. Even if the government's new opinion of the defendant has some believers that the defendant is just evil, we don't kill witches anymore in America.

4. **The State of Idaho doesn't have chemicals to kill people on death row.** The government has tried mightily to kill Gerald Pizzuto, on death row for 35 years. The Idaho Department of Corrections can't find drugs for killing and so the execution hasn't been carried out. This has caused the Idaho legislature to currently debate a new law of assembling a firing squad, even constructing a new building for the human target. Moral decency certainly can't accept the thought of marching a blind-folded mentally-ill woman in front of a firing squad. Even if the government secures a death verdict for Lori Daybell in this case, the new law won't apply. She will still be subject to the old law. In other words, even if the government is successful in convincing a jury to kill her, it will never happen.

This is a capital murder case, and heightened scrutiny applies to the government's actions when it seeks to kill a defendant. For these reasons, and for the reasons previously stated in motions previously heard but not ruled upon yet by this Court, the Court should dismiss the death penalty in this case.

Dated: March 5, 2023

/s/ Jim Archibald
R. James Archibald, Esq.

Dated: March 5, 2023

/s/ John Thomas
John Thomas, Esq.

Certificate of Service

I hereby certify that on this day I served a true and correct copy of this document on the following by the method of delivery indicated:

Lindsey Blake, Esq. efile and serve

Robert H. Wood, Esq. efile and serve

Dated: March 5, 2023

/s/ Jim Archibald
R. James Archibald, Esq.