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Seventh Judicial District, Fremont County
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

STATE OF IDAHO, Plaintiff, v. CHAD DAYBELL, Defendant.	Case No.: CR22-21-1623 MOTION TO STRIKE THE DEATH PENALTY AS ARBITRARY, CAPRICIOUS, & DISPROPORTIONATE IN LIGHT OF STRIKING DEATH IN CO-DEFENDANT'S CASE

COMES NOW the Defendant, Chad Daybell, and through undersigned counsel, submits this Motion to Strike the Death Penalty as Arbitrary, Capricious, and Disproportionate in light of Striking Death in Co-Defendant's Case. Pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Idaho Const. Article I, Sections 6, 7, 8 and 13, as well as the legal authorities cited below, Mr. Daybell respectfully requests that the Court strike the death penalty as a sentencing option to avoid a situation where the severity of punishment turns on a co-defendant's decision whether or not to waive speedy trial rights, as opposed to their relative levels of culpability, in violation of fundamental constitutional rights and judicial fairness.

FACTUAL AND PROCEDURAL BACKGROUND

The State of Idaho has charged Chad Daybell and Lori Vallow as co-defendants in connection with the deaths of Tylee Ryan, J.J. Vallow, and Tamara Douglas Daybell. On August

5, 2021, and May 2, 2022, the State filed its Notice of Intent to Seek Death Penalty against Mr. Daybell and Ms. Vallow, respectively. On August 19, 2021, Mr. Daybell waived his right to a speedy trial. On March 3, 2023, the Court severed Mr. Daybell's and Ms. Vallow's trials.

On March 21, 2023, the Court struck the State's May 2, 2022, Notice of Intent to Seek the Death Penalty against Ms. Vallow. From the bench, the Court stated that striking death was "an appropriate discovery sanction" and was necessary to ensure that the constitutional rights of Ms. Vallow were protected. The Court did not extend the decision to Mr. Daybell, even though the State had committed the same discovery violations against Mr. Daybell, since he had waived his speedy trial rights. As such, the Court has permitted the continued pursuit of only one co-defendant's death due solely to that defendant's waiver of speedy trial rights.[1]

ARGUMENT

"The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988) (citations omitted). Additionally, the U.S. Supreme Court has held that the Eighth Amendment demands that the death penalty, as the most severe punishment, "must be limited to those offenders who commit a narrow category of the most serious crimes *and* whose extreme culpability makes them the most deserving of execution." *Simmons*, 543 U.S. at 568 (internal quotation marks omitted).

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[1] When the Court struck the death penalty in Ms. Vallow's case, the State made clear that it still desired to seek her death and that its position as to her meriting the death penalty had not changed. The State requested alternative remedies, including a continuance, that would have permitted the State to continue seeking her death. The Court denied this request because she had asserted her speedy trial rights. As such, the decision to strike death in Ms. Vallow's case—and the decision to continue pursuing it in Mr. Daybell's case—did not turn on an assertion that Ms. Vallow is less culpable than Mr. Daybell.

There must be a "meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not." *Gregg v. Georgia*, 428 U.S. 188 (1976) (quoting *Furman v. Georgia*, 408 U.S. 238, 313 (1972) (White, J., concurring)). Amongst the entire class of murderers, the death penalty must be reserved for "the worst of the worst." *Kansas v. Marsh*, 548 U.S. 163, 206 (2006) (Souter, J., dissenting). While every murder is appalling, "the average murderer" is insufficiently culpable to "justify the most extreme sanction available to the State." *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). Though the State has wide latitude under the Eighth Amendment to seek severe non-death sentences in all other criminal cases, the Eighth Amendment's special constraints on the death penalty must be enforced by this Court.

In this case, there is a single distinguishing feature that explains why the State continues to seek the death penalty against Mr. Daybell even after it was struck against Ms. Vallow—Mr. Daybell waived his right to speedy trial. **Willingness to waive speedy trial rights cannot constitutionally be the deciding factor in who lives and who dies.** *See, e.g.*, *People v. Kliner*, 705 N.E.2d 850, 897 (Ill. 1998) (holding that, in capital cases, "similarly situated codefendants should not be given arbitrarily or unreasonably disparate sentences"); *Larzelere v. State*, 676 So.2d 394, 406 (Fla. 1996) ("When a codefendant (or coconspirator) is equally as culpable or more culpable than the defendant, disparate treatment of the codefendant may render the defendant's punishment disproportionate."). The willingness to waive speedy trial rights does not correspond to the defendants most culpable and deserving of death, and therefore it is unconstitutionally arbitrary under *Furman* and *Gregg* for this willingness to waive to determine which co-defendant remains eligible for the death penalty. The prosecution cannot continue to seek Mr. Daybell's execution solely because he waived his speedy trial rights, while his co-defendant did not. It would

be at odds with the reality of the criminal justice system—and would establish dangerous precedent regarding how to advise clients in co-defendant cases—to suggest that Mr. Daybell should face a far more severe punishment than his co-defendant, simply because he waived constitutional right.

I. It Is Unconstitutionally Arbitrary and Capricious to Continue Seeking Mr. Daybell's Death.

Given that the death penalty must be reserved only for the "worst of the worst," the pursuit of a death sentence must be based on the relative culpability of a person accused of murder, and cannot be based on arbitrary or capricious factors outside of a defendant's own alleged offenses and characteristics. *See Chapman v. United States*, 500 U.S. 453, 465 (1991) (holding that due process prohibits the imposition of punishment based on "arbitrary distinction"). "The Government violates a defendant's right to due process under the Fifth Amendment to the United States Constitution when its decision to seek the death penalty is arbitrary and capricious." *United States v. Littrell*, 478 F. Supp. 2d 1179, 1180 (C.D. Cal. 2007) (striking death as a potential sentencing option after finding that the government's decision to seek the penalty was arbitrary when compared to co-defendants). Ultimately, to comport with a criminal defendant's due process rights, and to avoid violating the right to be free from cruel and unusual punishment, the death penalty may only be sought "in a way that can ***rationally*** **distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not.**"[2] *Spaziano v. Florida*, 468 U.S. 447, 460 (1984), *overruled on other grounds by Hurst v. Florida*, 136 S. Ct. 616 (2016) (emphasis added).

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[2] As the Supreme Court has made clear, when decisions to seek or impose a death sentence rest on arbitrary and capricious factors—*i.e.*, those that do not relate to the offender's alleged crimes or relative culpability—it does not matter whether the factors *intentionally* impacted the deecisions; impermissible considerations violate a defendant's rights regardless of intention. *See, e.g.*, *Godfrey v. Georgia*, 446 U.S. 420, 427 (1980).

The legitimacy of our entire system of capital punishment is premised on the notion that the death penalty must be imposed fairly, and with reasonable consistency, or not at all. *Gregg*, 428 U.S. at 188-89 ("*Furman* mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action."). As Justice Stewart opined in *Gregg*:

> Indeed, the death sentences examined by the Court in *Furman* were cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of [capital crimes], many just as reprehensible as these, the petitioners [in *Furman* were] among a capriciously selected random handful upon whom the sentence of death has in fact been imposed. . . . [T]he Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.

Gregg, 425 U.S. at 188 (internal quotations and citations omitted).

Just as the decision of who lives and dies cannot rest on chance, it also cannot turn on the rights asserted (or waived) by a criminal defendant during prosecution. In *United States v. Jackson*, 390 U.S. 570 (1968), the Supreme Court examined and struck down the Federal Kidnaping Act, which prohibited the death penalty for defendants who acceded to a bench trial and abandoned their right to contest their guilt before a jury but authorized death where defendant proceeded to jury trial. The Court reasoned that "[t]he goal of limiting the death penalty to cases is [sic] which a jury recommends it is an entirely legitimate one. But that goal can be achieved without penalizing those defendants who plead not guilty and demand jury trial." *Id.* at 582. In a similar way, it was a "legitimate" aim of this Court to ensure that Ms. Vallow did not face the death penalty based on incomplete or late discovery, but that goal does not permit authorizing differential punishments

between her and her co-defendant—against the stated desires of the prosecution—solely because she asserted her speedy trial right while her co-defendant waived it.

The sole distinguishing feature between the penalty being sought in this case and Mr. Daybell's co-defendant's case is that Mr. Daybell waived his speedy trial rights—not because Mr. Daybell is more culpable or somehow deemed more deserving of the death penalty. Only because Mr. Daybell waived his speedy trial rights and thus permitted the State greater time to comply with its discovery obligations does he continue to face the death penalty while Ms. Vallow does not. Thus, the difference in sentence being sought between these co-defendants is not due to the perceived or argued-for culpability in relation to the alleged offenses, but rather due to the State's discovery violations and Mr. Daybell's willingness to permit more time.

II. Permitting More Severe Punishment because a Defendant Waived His Speedy Trial Rights Raises Additional Constitutional Concerns.

If Mr. Daybell had not waived his speedy trial rights, he would not be facing the death penalty. He was not advised of this potential outcome at the time of his waiver and this raises many issues. Both the Sixth Amendment to the United States Constitution and Article 1, § 13, of the Idaho Constitution guarantee to criminal defendants the right to a speedy trial. *State v. Prano*, 170 Idaho 337, 340 (Ct. App. 2021). "The speedy trial guarantees are designed to minimize the possibility of lengthy incarceration prior to trial; to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail; and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *State v. Lopez*, 144 Idaho 349, 352 (Ct. App. 2007); *see also United States v. Loud Hawk*, 474 U.S. 302, 311 (1986); *United States v. MacDonald*, 456 U.S. 1, 8 (1982).

While defendants have constitutional speedy trial rights, these constitutional rights can be waived. *See Lopez*, 144 Idaho at 352. "A waiver is a voluntary relinquishment or abandonment of

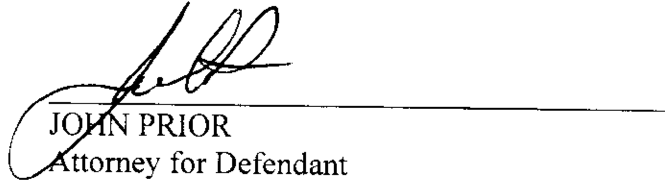
a **known right** or privilege, and courts **should indulge every reasonable presumption against waiver**." *Id.* (emphasis added). When Mr. Daybell waived his right to speedy trial on August 19, 2021, he did not know that it may lead to a situation where he would—solely on the basis of this asserted right—face far more severe punishment than his co-defendant. As such, if this Court does not strike death in this case to ensure reasonably equal treatment of the co-defendants under the law, then Mr. Daybell's initial waiver will be called into question, since he was not advised of this potential and significant consequence. Even if an appellate court determined that his initial waiver was made knowingly, he would have a strong argument that he was provided ineffective assistance of counsel under the Sixth Amendment and Article I, Section 13 of the Idaho Constitution, since he was never advised of this possibility.

CONCLUSION

For the foregoing reasons, Mr. Daybell respectfully requests that this Court strike the State's August 5, 2021, Notice of Intent to Seek the Death Penalty pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Idaho Const. Article I, Sections 6, 7, 8 and 13. In doing so, the Court will ensure that decisions of whether defendants should live or die do not turn on whether they have waived or asserted speedy trial rights, but rather are rooted only in relative levels of culpability and personal characteristics.

NOTICE IS HEREBY GIVEN that on 29th day of November 2023 at the hour of 9:00 am., or as soon thereafter as counsel may be heard, John Prior, attorney for Defendant above named will call up for hearing a hearing for Defendant's Motion to Strike the Death Penalty As Arbitrary, Capricious and Disproportionate before the Honorable Judge Steven W. Boyce District Judge at the Fremont County Courthouse in St Anthony, ID.

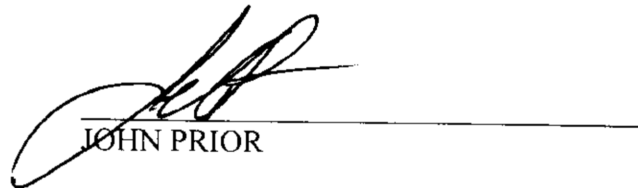
DATED this 9th day of November 2023



JOHN PRIOR
Attorney for Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the FREMONT COUNTY PROSECUTING ATTORNEY'S OFFICE, by efiling and service to prosecutor@co.fremont.id.us on this date.

DATED this 9th day of November 2023.



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