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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, **Plaintiff,** **V.** **BRYAN C. KOHBERGER,** **Defendant.**	**CASE NUMBER CR01-24-31665** **DEFENDANT'S REPLY TO THE STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby submits his reply to the State's Opposition to Defendant's Motion to Continue filed with the Court on June 5, 2025.

The State's objection to Mr. Kohberger's motion invites reversible error. Prosecutors have an ethical and legal obligation to seek justice over convictions. *See Berger v. United*

States, 295 U.S. 78 (1935); Idaho Rules of Professional Conduct (IRPC) Rule 3.8, (Special Duties of a Prosecutor). When defense counsel requires a continuance to complete the constitutionally-required mitigation investigation, the State has no legitimate interest in objecting, for any conviction and/or death sentence obtained under such circumstances would rest on a constitutionally defective foundation. As such, courts reviewing death sentences have recognized that "[w]hen attorney error amounts to constitutionally ineffective assistance of counsel, **that error is imputed to the State**. *Coleman v. Thompson*, 501 U.S. 722, 754 (1991) (emphasis added). For when a State obtains a conviction against a defendant who was denied the effective assistance of counsel, 'it is the State that unconstitutionally deprives the defendant of his liberty.' *Cuyler v. Sullivan*, 446 U.S. 335, 343, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)." *Deck v. Steele*, 249 F. Supp. 3d 991, 1081 (E.D. Mo. 2017) (rev'd on procedural grounds by *Deck v. Jennings*, 978 F.3d 578 (8th Cir. 2020)).

1. Compliance with the Court's Scheduling Order Does Not Fulfill Mr. Kohberger's Right to Effective Assistance of Counsel in a Capital Case.

The State suggests that counsel's prior compliance with the Court's Scheduling Order somehow weighs against the present request for a continuance. But defense counsel's adherence to deadlines demonstrates diligence, not finality. Compliance was a good-faith effort to meet the Court's expectations, not a concession that the defense investigation is complete.

The defense has now identified information and developments that make clear additional time is necessary to meet the minimum standards of effective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), and to fulfill the capital defense duties articulated in *Wiggins v. Smith*, 539 U.S. 510 (2003) and other Supreme Court cases. The fact that prior deadlines were met does not somehow negate the need for a continuance where the timeline is insufficient to complete the investigation and presentation of a constitutionally adequate penalty-phase defense.

Defense counsel has provided a detailed showing of good cause and necessity—including specific investigative avenues that case law explicitly establishes as constitutionally required in a capital case—through the *ex parte* pleading and an accompanying affidavit from the mitigation specialist. The purpose of the *ex parte* pleading was to provide the Court with this critical context, without revealing privileged work product and trial strategy to the prosecution. The Court is therefore apprised of the scope and necessity of the additional investigation, and the record does not support the State's assertion that all relevant ground has already been "plowed."

2. Mr. Kohberger's Case Has Been Pending for Less Than Two and One-Half Years; That Is a Short Duration Compared to Other Capital Cases.

The State's suggestion that Defendant is seeking a "perpetual continuance" mischaracterizes the request. The defense is not seeking an indefinite delay; it is seeking a reasonable and necessary adjustment of the trial schedule to allow constitutionally required mitigation investigation to be completed. The absence of a proposed new trial date simply reflects that the next appropriate step would be for the Court to vacate the current trial date and then enter a revised scheduling order based on input from all parties, as is customary.

It is both common and appropriate in capital cases for trial schedules to be revisited as new facts emerge or as the defense becomes aware that essential tasks cannot be completed in the time originally allotted. The defense identified specific areas of investigation that are outstanding and has submitted those to the Court *ex parte* for review. The precise amount of time needed will depend, in part, on the results of those ongoing efforts.

The State's assertion that "over two years" should be presumed sufficient time ignores the law and the practical realities of capital litigation and the high-profile nature of this case. The Sixth Amendment right to effective assistance of counsel does not impose a rigid calendar requirement; it guarantees a meaningful opportunity for counsel to prepare and investigate under the facts and complexities of the individual case. Denying this continuance based solely on the

passage of time—without considering the specific barriers, scope of investigation, and recent developments—would be an abuse of discretion.

However, even engaging with the State's flawed argument, two years and three months between indictment and trial is less time than in many run-of-the-mill capital cases that are not high profile. The Federal Death Penalty Resource Counsel tracks federal capital cases and published a resource in 2021 tracking the amount of time it took for cases brought to trial between 2010 and 2020 (prior to the pandemic, which slowed everything down). The average time between indictment and the beginning of trial was 1299 days, or 3.55 years. *See* Declaration of Ben Cohen Regarding Time Period Between Indictment and Trial in Federal Death Penalty Cases Between 2010-2020 (Attached as Exhibit A). And recent high-profile capital cases have taken longer to get to trial. For example, defendant Nikolas Cruz in Florida was pre-trial for more than 4 years. This is true even though he pled guilty, leaving the penalty decision of life without parole or death penalty as the sole issue to be decided.

3. This Capital Case is Extraordinary Both in Complexity and Media Attention.

Mr. Kohberger's case is not an "ordinary" capital case. The defense has had to navigate extraordinary barriers including reluctant or traumatized lay witnesses, difficulty retaining qualified experts because it is a highly publicized and controversial case, ongoing prejudicial media coverage—including violations of court orders that have required legal and strategic attention—and logistical delays in a complex mitigation investigation across multiple institutions and jurisdictions.

Even though three and half years represents an average pretrial timeline in capital litigation, that average does not account for the added complexity, resistance, and logistical challenges inherent in this case. At the current trial setting, Mr. Kohberger's case will be less than two years and three months from indictment. Rushing this case to trial on the schedule that is both shorter than average capital cases and without flexibility to account for the added

complexity will compromise the fundamental rights guaranteed to Mr. Kohberger under the Sixth, Eighth, and Fourteenth Amendments and make any resulting conviction and/or death sentence vulnerable to reversal.

4. The Recent Dateline Episode and Media Leaks Are Uniquely Prejudicial and Distinct from Ordinary Media Coverage.

The State's argument that the Dateline episode does not require a continuance, and that in fact "proceeding to trial as scheduled may actually avoid any negative consequences from future publicity," completely misses the point. The defense is not asking for a continuance based on the ordinary publicity that attends high-profile criminal proceedings, such as coverage of court dates and public filings. This is something wholly different: a highly dramatized TV special, complete with ominous music and narrations, first-person testimonials, faux experts, and non-public information that was leaked in violation of the Court's non-dissemination order. It was a choregraphed narrative broadcast to millions of viewers and advertised to millions more. It aired nationally and was promoted heavily across commercial breaks, streaming platforms, and social media, maximizing its visibility and impact. It was designed to provoke strong emotional reactions, which is exactly the influence that taints jury pools and risks depriving Mr. Kohberger of a fair trial.

Worse still, a book that claims to contain "the most comprehensive narrative" of the "investigation and evidence to date" is set to be published on July 14, 2025.[1] It promises information based on interviews with local law enforcement. Its release will almost certainly trigger another wave of media coverage just two weeks before jury selection is set to begin, and if the publisher's claims are accurate, that coverage will likely include non-public information presented not under oath or subject to cross-examination but packaged in a narrative designed to provoke public interest and sell books. If the book contains new leaks, a further investigation

[1] *See* James Patterson, "The Idaho Four: An American Tragedy," https://www.amazon.com/Idaho-Four-American-Tragedy/dp/0316572853

into the source of those disclosures will be necessary. The book is not the end of what is to come as the trial begins, as currently scheduled. Amazon Prime Video is releasing a docuseries on July 11, 2025 called *One Night in Idaho: The College Murders*. It is a four-part series. It promises to be told in an "captivating, tense, and emotionally wrenching detail" by people who are likely to be witnesses in trial. The families of Ethan Chapin and Madison Mogen are extensively interviewed for the series, according to press materials and the trailer. Further, James Patterson, author of the aforementioned book, is noted as one of the Directors and Producers of the Docuseries. These publications dispersed at the time trial begins will capture untold attention and will be media fodder, especially as witnesses in this capital trial take the stand.

Thus, the appropriate remedy is to investigate the source(s) of the violations and impose accountability, not to force this case to trial in the shadow of tainted public discourse. Time will both allow this Court to reassert control over the fairness of the proceedings by imposing accountability, which will communicate the seriousness of the violation and the importance of a fair process and will allow the effects of this particularized and inflammatory coverage to subside.

Because this is not an objection to the ordinary media coverage of this case, the prosecution's assertion that proceeding now will avoid further prejudice only holds true if one accepts that leaks and violations of court orders will continue. That is not a valid presumption on which to base denial of a continuance; it is a reason for investigation and enforcement. It would be patently unfair for the State's case to be bolstered through the prejudicial coverage that resulted from state actors violating the court's non-dissemination order, and then to use that unlawful conduct as a *justification* for rushing to trial both before the defense can learn where the leaks originated and before the defense is ready.

Additionally, thorough investigation into the leaks must occur prior to any trial, because it now constitutes a known source of *Brady* material. Interviews with Dateline producers by Idaho news outlets indicate that it was likely multiple sources who leaked sealed information to the media. If any of these unlawful leaks originated from witnesses the State intends to call or from others involved in the investigation, that information is relevant to impeaching their credibility. If the leaks were ongoing and collective, it would tend to show a willingness of investigators to violate court orders, bias against the defendant, or even collusion, which is not only relevant to credibility but may be exculpatory in nature. And if the investigation reveals that other State agents had information about the leaks but failed to disclose it, the omission itself would constitute a *Brady* violation requiring consideration of remedies. Of course, the identity, motives, and actions of those who violated the Court's order are key to the jury's determination of the facts, because this case hinges on whether the police investigation was conducted in a reliable manner or whether it zoomed in on the defendant at the expense of all other suspects.

In short, the prejudice from the Dateline episode requires a continuance both because of the resulting prejudice that is separate and apart from ordinary media coverage, and because trial cannot go forward without a thorough investigation into which person(s) leaked case information and numerous sealed photographs and videos to the media.

5. The Current Jury Selection Process Does Not Allow Enough Time to Select a Fair and Impartial Jury Under the Circumstances.

The State asserts that "the Court's carefully crafted jury selection process has every chance to produce and impartial jury…". To the contrary, the Court has only scheduled two weeks for *voir dire*, which is wholly insufficient to conduct the necessary individual *voir dire* on the vast media coverage as well as death penalty views. Given the popularity of Dateline and the intense public interest in this case, it is not speculative to assume that a significant portion of the jury pool has been exposed to the recent show—either directly or through previews, headlines, or

word of mouth. Any discussion of the extremely prejudicial narrative outside of individual *voir dire* is likely to taint the entire group.

It is not the defense's position that no fair jury can ever be empaneled in this case. Only that, under the current schedule and in light of this development, the safeguards in place are not sufficient to ensure that process. Relying on *voir dire* alone, particularly in such a compressed format, is not adequate to protect Mr. Kohberger's right to an impartial jury under the Sixth and Fourteenth Amendments. Mr. Kohberger must also be able to conduct expansive *voir dire* and not be limited to short time frames and large panels. Constitutionally appropriate *voir dire* in a capital case takes time. Mr. Kohberger must have the necessary time to determine a potential juror's ability to sit on this highly publicized capital case.

6. The ABA Guidelines Define the Prevailing Professional Norms for Effective Assistance and Are Statutorily Adopted in Idaho.

The State argues that the Court need not consider the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases and cites as authority *State v. Porter,* 948 P.2d 127 (1997) *and Hall v. State*, 253 P.3d 716 (2011). First, the State mischaracterizes *Hall v. State,* which does not address the ABA Guidelines at all. The only time the ABA Guidelines are mentioned are in a parenthetical explaining *State v. Porter*. The Court's narrow holding in *Hall*, which is that Idaho law applies standard discovery practices in capital cases in a post-conviction posture, has no bearing on this case.

The State's other cited case is *State v. Porter,* a 1997 case in which the Idaho Supreme Court declined to *adopt* the ABA Guidelines. This case predates later U.S. Supreme Court caselaw that specifically cites the ABA Guidelines as evidence that courts rely on when determining whether trial counsel's performance met the constitutional threshold. *See, e.g., Wiggins v. Smith*, 539 U.S. 510, 524 (2003).

Thus, the fact that the Guidelines were not adopted as binding law in *Porter* does not diminish their authority as a reflection of the professional consensus about prevailing

professional norms. The holding isn't unusual; the Guidelines have not been adopted as binding law by any state supreme court. However, the Idaho Public Defender Statutes, adopted in 2023, requires the State Public Defender to implement the ABA Guidelines for defending attorneys delivering indigent defense. *See* I.C. 19-6005(4). The Guidelines therefore have even more force in Idaho than elsewhere, though in any jurisdiction, they are the most authoritative source of counsel's professional duties in a capital case. Post-conviction courts will use them as a highly persuasive authority when evaluating whether counsel conducted an adequate mitigation investigation, whether appropriate experts were consulted, and whether the defense team performed consistent with capital defense norms.

The State also relies on a quote from *Cullen v. Pinholster* that omits critical context—"Beyond the general requirement of reasonableness, specific guidelines are not appropriate. " The next sentence states that this is because "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions." 563 U.S. 170, 195 (2011). It goes on to re-assert counsel's duty to conduct reasonable investigations under the circumstances, and the importance of looking to standards of professional practice at the time of trial. *Id.* at 195-97. That the ABA Guidelines will not be read to constitute *per se* violations of the Sixth Amendment does nothing to advance the State's argument; it does not undermine the relevance of the ABA Guidelines in assessing prevailing professional norms and the reasonableness of counsel's investigation and performance. The State does not and cannot cite any authority holding otherwise.

7. A Continuance Is Necessary to Enforce Mr. Kohberger's State and Federal Constitutional Rights, and These Cannot be Overridden by the Victims' Rights Provision.

The State asserts that the Court should deny a continuance based on the victims' constitutional right to a "timely disposition" under Article 1, § 22 of the Idaho Constitution. But that provision does not and cannot override the defendant's fundamental constitutional rights,

including the rights to a fair trial and the effective assistance of counsel under the Sixth and Fourteenth Amendments to the U.S. Constitution, and Article I, § 13 of the Idaho Constitution. Mr. Kohberger's fundamental constitutional rights are not in tension with the interests of victims; they are essential to ensuring that any outcome is fair and reliable. A constitutionally-sound process, which includes adequate time to develop for cause challenges during *voir dire* in a capital case, is the only one that can serve the interests of all parties, including the victims and the public.

"Timeliness" is also context dependent. The State voluntarily elected to seek the death penalty, knowing full well that doing so would trigger more demanding investigative and procedural obligations, including a comprehensive mitigation investigation and heightened constitutional standards. That decision necessarily guaranteed a longer, more complex pretrial process—and a guarantee that the victims' families would have to wait longer for resolution. These are not unforeseen consequences; they are inherent in the State's pursuit of the most severe punishment available.

If the State believes that the wait is too long or that the required procedural rigor is incompatible with its preferred timeline, it has the ability to withdraw its notice of intent to seek death. A non-capital trial could occur this summer without inviting constitutional error, reversal, and a significantly longer process overall.

A continuance is necessary if the case remains capital, notwithstanding the State's superficial chart. The chart merely lists broad topic areas and claims that the defense has some related records. That says nothing about whether the defense has completed important specific investigation avenues or is in a position to present that information coherently and effectively at trial. The repetitive assertions that "family members can testify about this topic at trial" and "any missing records have been available to Defendant and can be obtained prior to the penalty phase"

likewise hold no weight. This ignores the complexity of securing reliable testimony that has been investigated and corroborated and the real-world barriers to obtaining records.

The State's surface-level examination of significant barriers and proposed method of mitigation presentation by the defense is exactly what would result in reversal, as explained in the Motion to Continue. Constitutionally effective mitigation investigation and presentation requires a process that advances as new details emerge, contextualization, and trust-building with sources, none of the which the State accounts for.

Conclusion

Mr. Kohberger's Motion to Continue is grounded in the need for a full investigation for all mitigating factors reasonably present in his background as well as his right to present such mitigating factors in his capital case so that the jury has the information necessary to make an individualized sentencing determination. Further, the motion is grounded in Mr. Kohberger's right to a fair and impartial jury. As such, his motion to continue must be granted to protect his rights under the State and United States Constitutions.

DATED this ___16____ day of June, 2025.

ANNE C. TAYLOR
ANNE TAYLOR LAW, PLLC

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the ___16____ day of June, 2025 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov
Elisa Massoth – via Email: legalassistant@kmrs.net
Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov
Bicka Barlow, Attorney at Law – via Email: bickabarlow@sbcglobal.net
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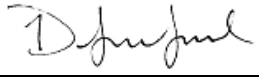

DECLARATION OF G.BEN COHEN REGARDING TIME PERIOD BETWEEN INDICTMENT AND TRIAL IN FEDERAL DEATH PENALTY CASES BETWEEN 2010-2020

1. I currently serve as a Resource Counsel with the Federal Death Penalty Resource Counsel Project, which assists court-appointed and defender attorneys responsible for the defense of capital cases in the federal courts. Established in 1992 by the Administrative Office of the United States Courts, Defender Services Division, now the Defender Services Office, the Project serves as a national clearinghouse for information concerning federal capital cases. The Project is funded and administered under the Criminal Justice Act by the Defender Services Office of the Administrative Office of the United States Courts.

2. The responsibilities of Federal Resource Counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.[1]

[1] The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May 1998), at 25. http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf. The Subcommittee report "urges the judiciary and counsel to maximize the benefits of the

3. In the course of regularly conducted activities, the Project maintains a comprehensive database of federal death penalty prosecutions and information about these cases. The database is maintained by reviewing dockets, obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, reviewing public records, and by regularly conducted email, telephonic or in-person interviews between Resource Counsel and defense counsel, and consultation with clerk's offices and judge's chambers. This information is regularly updated and is checked for accuracy.

4. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts and the Federal Judicial Center. Declarations based upon the data collected by the Project has been accepted, cited to and relied upon in numerous opinions and

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Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases ...." *Id.* at 36. An update to the Report states: "Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable." See https://www.uscourts.gov/sites/default/files/fdpc2010.pdf. Report to the Committee on Defender Services Judicial Conference of the United States – Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases (September 2010) at 76.

judgments.[2] The data collected by the Project has also been relied upon as basis for analysis in law review journals, training manuals, and other published material.[3] Resource Counsel collect comprehensive, accurate data concerning various practices that have emerged since the federal courts resumed trying capital cases in 1990. This collection of data includes maintaining information concerning district-level practices.

5. The data below reflects the information concerning all authorized cases (i.e., cases in which the government filed a notice of intent to seek the

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[2] See e.g. *United States v. Fell,* 224 F. Supp. 3d 327, 340 (D. Vt. 2016) ("The most striking evidence of arbitrary application of the death sentence provided by Mr. McNally was his review of all cases like the present case in which there were multiple victims"); *United States v. George*, No. 17-201, 2018 U.S. Dist. LEXIS 216649 (E.D. La. Dec. 27, 2018) (citing Federal Death Penalty Resource Counsel declaration for factual finding that "15 months is below the average time between notice and trial in federal capital cases weighs in favor of a finding of reasonableness."); *United States v. Williams*, No. H-03-221-11, 2004 U.S. Dist. LEXIS 33412, at *16-17 (S.D. Tex. Dec. 29, 2004) (relying upon "facts in the Declaration" reflecting statistics concerning to find that the defendant "met his burden under Armstrong that similarly situated defendants of a different race were not being charged with the death penalty and that the Defendant had presented "some evidence" of discriminatory intent. *United States v. Bass*, 536 U.S. 862, 863, 122 S. Ct. 2389, 153 L. Ed. 2d 769 (2002)."); *United States v. Ayala Lopez*, 319 F. Supp. 2d 236, 240 (D.P.R. 2004) (citing declaration of Kevin McNally as basis for holding "we find compelling what other federal district courts have done when faced with the "ever-present risk of prejudice" of joint trials.").

[3] See e.g. Rory Little*, The Federal Death Penalty: History And Some Thoughts About The Department Of Justice's Role*, 26 Fordham Urb. L.J. 347 (1999); Lieutenant Commander Stephen C. Reyes, *Left Out in the Cold: The Case for a Learned Counsel Requirement in the Military,* 2010 Army Law. 5 (2010); Kevin McNally, *Race and the Federal Death Penalty: A Nonexistent Problem Gets Worse,* 53 DePaul L. Rev. 1615 (2004); G. Ben Cohen, Rob Smith, *The Geography of the Federal Death Penalty*, 85 Wash. L. Rev. 425 (2010); Rory Little, *What Federal Prosecutors Really Think: The Puzzle of Statistical Race Disparity Versus Specific Guilt and the Specter of Timothy*

death penalty) that proceeded to trial, while still authorized, from January 1, 2010 to the present. This is the most recent period, and the one for which the Project has the most complete and detailed information. Detailed data on each such cases, on which this declaration is based, is contained in Appendix A.

6. Between 2010 and the current date, there have been 34 defendants who have proceeded to, and completed a trial while authorized. Of those 34 defendants, 13 defendants received a death sentence, 20 defendants received a life sentence, and one defendant was acquitted on the capital charge. This declaration charts the time for the 33 cases that proceeded to penalty verdict.

7. In the 33 cases that proceeded to a penalty phase verdict, the average time from indictment to verdict was 1,382 days. Cases that resulted in a death verdict proceeded to penalty verdict on average 718 days faster than cases that resulted in a life sentence because the jury declined to return a death verdict.

McVeigh, 53 DePaul L. Rev. 1591 (2004).

Average Time from Indictment to Penalty Verdict
2010-2020

Outcome	Number of Cases	Average of Days Indictment to Penalty Verdict
Death	13	946
Life	20	1,664
Total	**33**	**1,382**

8. Differences in the length of time between indictment and penalty verdict appear to correlate with race of the victim. Cases involving one or more white victims proceed 270 days faster than cases without any white victims, *i.e.*, cases where the only victim or victims are non-white.

Average Time from Indictment to Penalty Verdict
By Race of Victim 2010-2020

RACE OF VICTIMS	NUMBER	AVERAGE OF DAYS INDICTMENT TO PENALTY VERDICT
NON-WHITE VICTIM(S)	18	1454
ONE OR MORE WHITE VICTIMS	15	1296

9. These differences are magnified when the defendant is Black and the victim is white.

10. The four cases with white victims **and** Black defendants proceeded to trial more than a year faster than any other category: on average 844 days from indictment to penalty verdict compared to the average of 1,454 for cases

involving non-white victims.

11. The above information regarding federal capital cases was collected in the regular course of the business of the Federal Death Penalty Resource Counsel Project, as part of tracking ongoing federal capital cases.

I declare under the penalty of perjury under the laws of the United States of American, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 19th day of January, 2021.

/s/ G. BEN COHEN

G. BEN COHEN

APPENDIX A

#	Defendant	District	Circuit	Outcome	Race of Def	Race of Vic	NOI	Indictment	Date Voir Dire Start	DateGuilt Phase Start	Date - Guilt Verdict	Date Penalty Phase Start	Date Penalty Verdict	Days Indictment to Penalty Verdict	Days Indictment to Start of Voir Dire	Days Indictment to Notice of Intent	Days Notice of Intent to Start of Trial	Days Guilt Verdict to Penalty Phase Start
1	Phillips, Maurice	PA E.D. PA	3rd	Life	B M	B	5/6/2009	9/12/2007	1/4/2010	2/1/2010	4/14/2010	4/19/2010	4/28/2010	959	845	602	243	5
2	Argueta, Antonio	MD D. MD	4th	Life	H M	H	5/8/2007	4/3/2006	1/12/2010	2/2/2010	3/4/2010	3/9/2010	3/24/2010	1451	1380	400	980	5
3	Duong, Anh The	CA N.D. CA	9th	Life	A M	H	5/13/2004	9/26/2001	2/23/2010	6/7/2010	9/22/2010	10/12/2010	12/15/2010	3367	3072	960	2112	20
4	Umana, Alejandro E.	NC W.D. NC	4th	Death	H M	H	9/23/2008	6/23/2008	3/22/2010	4/12/2010	4/19/2010	4/20/2010	4/28/2010	674	637	92	545	1
5	Snarr, Mark	TX E.D. TX	5th	Death	W M	B	2/13/2009	1/21/2009	5/3/2010	5/3/2010	5/7/2010	5/10/2010	5/24/2010	488	467	23	444	3
6	Garcia, Edgar B.	TX E.D. TX	5th	Death	H M	B	2/13/2009	1/21/2009	5/3/2010	5/3/2010	5/7/2010	5/10/2010	5/24/2010	488	467	23	444	3
7	O'Reilly, Timothy	MI E.D. MI	6th	Life	W M	B	11/1/2006	3/3/2005	6/8/2010	7/21/2010	8/3/2010	8/9/2010	8/25/2010	2001	1923	608	1315	6
8	Basciano, Vincent	NY E.D. NY	2nd	Life	W M	W	4/2/2007	1/26/2005	3/2/2011	4/12/2011	5/16/2011	5/23/2011	6/1/2011	2317	2226	796	1430	7
9	Lujan, Larry	NM D. NM	10th	Life	H M	W	7/12/2007	4/27/2005	6/20/2011	7/18/2011	8/9/2011	8/29/2011	10/5/2011	2352	2245	806	1439	20
10	Richardson, Brian	GA N.D. GA	11th	Life	W M	W	12/2/2008	4/15/2008	2/27/2012	3/14/2012	3/22/2012	3/27/2012	4/26/2012	1472	1413	231	1182	5
11	Burgos-Montes, Edison	PR D. PR	1st	Life	H M	W	6/27/2007	1/12/2006	4/16/2012	6/25/2012	8/30/2012	9/10/2012	9/27/2012	2450	2286	531	1755	11
12	Merritt, Robert	PA E.D. PA	3rd	Acquittal	B M	B	3/14/2011	4/8/2009	11/5/2012	2/4/2013	5/13/2013				1307	705	602	
13	Savage, Kaboni	PA E.D. PA	3rd	Death	B M	B	3/14/2011	4/8/2009	11/5/2012	2/4/2013	5/13/2013	5/20/2013	5/31/2013	1514	1307	705	602	7
14	Northington, Steven	PA E.D. PA	3rd	Life	B M	B	3/14/2011	4/8/2009	11/5/2012	2/4/2013	5/13/2013	6/5/2013	6/13/2013	1527	1307	705	602	23
15	Casey, Lashaun	PR D. PR	1st	Life	B M	H	7/17/2007	8/17/2005	2/4/2013	3/1/2013	3/19/2013	4/8/2013	4/11/2013	2794	2728	699	2029	20
16	Jimenez-Bencevi, Xavier	PR D. PR	1st	Life	H M	H	12/7/2012	3/23/2012	4/15/2013	4/24/2013	4/30/2013	5/1/2013	5/7/2013	410	388	259	129	1
17	Salad, Ahmed Muse	VA E.D. VA	4th	Life	B M	W	4/17/2012	3/8/2011	6/4/2013	6/7/2013	7/8/2013	7/16/2013	8/2/2013	878	819	406	413	8
18	Beyle, Abukar Osman	VA E.D. VA	4th	Life	B M	W	4/17/2012	3/8/2011	6/4/2013	6/7/2013	7/8/2013	7/16/2013	8/2/2013	878	819	406	413	8
19	Abrar, Shani Nurani	VA E.D. VA	4th	Life	B M	W	4/17/2012	3/8/2011	6/4/2013	6/7/2013	7/8/2013	7/16/2013	8/2/2013	878	819	406	413	8
20	McCluskey, John C.	NM D. NM	10th	Life	W M	W	1/26/2012	9/29/2010	7/22/2013	8/19/2013	10/7/2013	10/21/2013	12/11/2013	1169	1027	484	543	14
21	Williams, Naeem	HI D. HI	9th	Life	B M	B	9/8/2006	2/15/2006	1/28/2014	3/11/2014	4/24/2014	4/29/2014	6/27/2014	3054	2904	205	2699	5
22	Torrez, Jorge Avila	VA E.D. VA	4th	Death	H M	W	2/9/2012	5/26/2011	3/11/2014	3/31/2014	4/8/2014	4/21/2014	4/24/2014	1064	1020	259	761	13
23	Coonce, Wesley Paul	MO W.D. MO	8th	Death	W M	H	7/22/2011	4/7/2010	4/28/2014	5/1/2014	5/7/2014	5/8/2014	6/2/2014	1517	1482	471	1011	1
24	Hall, Charles Michael	MO W.D. MO	8th	Death	W M	H	7/22/2011	4/7/2010	4/28/2014	5/1/2014	5/7/2014	5/8/2014	6/2/2014	1517	1482	471	1011	1
25	Sanders, Thomas S.	LA W.D. LA	5th	Death	W M	W	8/1/2012	11/18/2010	8/18/2014	9/3/2014	9/8/2014	9/16/2014	9/26/2014	1408	1369	622	747	8
26	Tsarnaev, Dzhokhar	MA D. MA	1st	Death	W M	W	1/30/2014	6/27/2013	1/5/2015	3/4/2015	4/8/2015	4/21/2015	5/15/2015	687	557	217	340	13

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27	Briseno, Juan	IN N.D. IN	7th	Life	H M	H	3/6/2013	6/2/2011	1/12/2015	2/3/2015	2/27/2015	3/3/2015	3/6/2015	1373	1320	643	677	4
28	Roof, Dylann Storm	SC D. SC	4th	Death	W M	B	5/24/2016	7/22/2015	11/28/2016	12/7/2016	12/15/2016	1/4/2017	1/10/2017	538	495	307	188	20
29	Con-ui, Jessie	PA M.D. PA	3rd	Life	PI M	W	10/2/2014	6/25/2013	4/24/2017	6/5/2017	6/7/2017	6/19/2017	7/10/2017	1476	1399	464	935	12
30	Jones, Ulysses	MO W.D. MO	8th	Life	B M	W	10/4/2012	10/3/2012	9/25/2017	9/28/2017	10/4/2017	10/10/2017	10/16/2017	1839	1818	1	1817	6
31	Cramer, Christopher	TX E.D. TX	5th	Death	W M	W	3/4/2016	3/3/2016	4/2/2018	4/30/2018	5/9/2018	5/10/2018	6/13/2018	832	760	1	759	1
32	Fackrell, Ricky Allen	TX E.D. TX	5th	Death	W M	W	3/4/2016	3/3/2016	4/2/2018	4/30/2018	5/9/2018	5/10/2018	6/13/2018	832	760	1	759	1
33	Christensen, Brendt A.	IL C.D. IL	7th	Life	W M	A	1/19/2018	10/3/2017	6/3/2019	6/12/2019	6/24/2019	7/8/2019	7/18/2019	653	608	108	500	14
34	Council, Brandon Michael	SC D. SC	4th	Death	B M	W	3/21/2018	9/20/2017	9/9/2019	9/17/2019	9/24/2019	9/24/2019	10/3/2019	743	719	182	537	0
	AVERAGE													1382	1299	406	893	8.3