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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 CONTINUE

Mr. Chad Daybell, by and through his undersigned attorney, respectfully submits the following Motion to Continue due to the substantial amount of trial investigation and preparation still outstanding. Any conviction and sentence resulting from a trial beginning in April 2023 will be unconstitutionally imposed and, therefore, vulnerable to reversal on direct or collateral review. In making this Motion, Mr. Daybell relies on his right to be free from cruel and unusual punishment, his right to due process, his right to a fair trial, his right to counsel, his right to present a defense, his right to confront witnesses, his right to a fair and reliable sentencing determination, and other rights safeguarded by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United

States Constitution, Article I, Sections 6, 7, 8, and 13 of the Idaho State Constitution, and the corresponding Idaho statutes.[1] In support of this Motion, Mr. Daybell also submits two additional filings, *ex parte* and under seal:[2] (1) an affidavit describing the mitigation investigation's progress, red flags that require further investigation, and time estimates for the mitigation work in this case; and (2) a supplement that details professional obligations that have arisen based on initial, confidential defense team investigations, as well as the constitutional consequences for failure to conduct a complete investigation into the particular mitigating issues in this case.

SUMMARY

On May 25, 2021, Mr. Daybell was indicted and charged with capital murder. On September 27, 2022, Mr. Daybell moved to continue the trial date that was then scheduled to begin in January 2023. On October 28, 2022, the Court granted the continuance. On December 16, 2022, the Court issued a Notice of Trial Setting, Pre-Trial Conference, and Scheduling Order Governing further Proceedings, which scheduled Mr. Daybell for a jury trial to begin on April 3, 2023.[3]

Mr. Daybell's defense team cannot reasonably be prepared for a capital trial in April 2023 for the same reasons that Mr. Daybell's team could not be ready for a capital trial in January 2023. While the defense team continues to make progress in building necessary relationships, conducting constitutionally mandated investigations, and identifying areas for further exploration and the

[1] Mr. Daybell fully incorporates the contents of his previously filed Motion to Continue the Trial Date to Enforce Mr. Daybell's Constitutional Rights (filed Sep. 27, 2022).

[2] Mr. Daybell is entitled to maintain the privileged and confidential nature of the defense investigation, and therefore is filing detailed information about the ongoing investigation *ex parte* and under seal.

[3] On December 27, 2022, the Court issued an Amended Notice of Trial Setting, Pre-Trial Conference, and Scheduling Order Governing further Proceedings, but this Amended Order did not alter the trial setting.

involvement of specialized experts, the mitigation investigation remains in its beginning stages. Additionally, the State has not yet satisfied all its discovery obligations in this case. The state most recently (December 28, received January 2, 2023) provided additional discovery that is and was necessary to prepare and complete at least two of the defense witnesses expert reports.[4]

It would be impossible to complete a constitutionally adequate mitigation investigation by an April trial date, even if the entire team were working round-the-clock on this case alone, which is not realistic given the defense team's other professional obligations. By extension, it is likewise impossible that the defense could identify, hire, and consult with the appropriate and necessary sentencing experts prior to the current trial date, as the investigation must be more fully complete before the defense can even determine which types of experts are necessary in this case, much less provide those experts with the necessary life history records to obtain accurate diagnoses. Moreover, until these investigations are completed—including record collection, interviewing necessary witnesses, and retaining all necessary experts—defense counsel cannot even negotiate effectively, as the fruits of these preceding investigations are likely to inform and materially impact the substance of negotiations.

For these reasons, the lack of a continuance would violate Mr. Daybell's right to individualized sentencing, right to be free from cruel and unusual punishment, right to due process, right to a fair trial, right to the effective assistance of counsel, right to present a complete defense, right to a fair and reliable sentencing determination, and other rights safeguarded by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 6, 7, 8, and 13 of the Idaho State Constitution. Because the State has previously expressed

[4] Mr. Daybell incorporates the substance of his Specific Request for Discovery (filed on December 13, 2022).

a desire for a trial date after April 2023, and therefore a delay will accommodate the State's prior request, Mr. Daybell requests a trial date no earlier than April 2024.

I. The Mitigation Investigation Is in Its Beginning Stages and the State Has Not Satisfied All Its Discovery Obligations.

As detailed in the *ex parte* supplement to this Motion, the mitigation investigation is far from complete in this case. A mitigation specialist did not start working on this case until August 2022. As detailed in Mr. Daybell's previously filed Motion to Continue,[5] the mitigation investigation includes gathering every record generated about Mr. Daybell during the course of his life in addition to records of family members three generations back. It additionally includes interviewing immediate and extended family, friends, neighbors, teachers, church personnel, employers, colleagues, and others who have known Mr. Daybell during his life. Importantly, it also requires that the interviews be completed in a way that allows the mitigation specialist to establish rapport with the various witnesses due to the sensitive nature of many subjects, often meaning repeated in-person and one-on-one visits with the interviewee. As the mitigation investigation continues, and new information is learned, the mitigation specialist must then circle back to witnesses to confirm previously unknown information and continue to request records from previously unknown sources. The process is not complete until records and interviews do not lead to any new information. The prevailing professional guidelines for capital defense teams are clear that this extremely time-intensive process cannot be rushed, and several dozen death verdict reversals—from courts that will be reviewing this case in the event of conviction--demonstrate

[5] *See* Motion to Continue the Trial Date to Enforce Mr. Daybell's Constitutional Rights, sec. III.

that a complete life history investigation before trial is a *constitutionally indispensable* part of any death penalty trial.[6]

Moreover, the State has not satisfied all its discovery obligations in this case. Per the Amended Scheduling Order currently in place, the State has until the Pre-Trial Conference on February 23, 2023, to provide the remaining discovery—less than 40 days before a complex, capital trial is set to begin. Additionally, while the Court has presently scheduled 4 more hearings for motions in this case, the last hearing is scheduled for March 9, 2023. Because the Court has mandated that motions be filed 14 days prior to the day designated for hearing, Mr. Daybell would need to file all motions by February 23, 2023, in order to comport with the current schedule. In other words, on the exact same day that the State is obligated to turn over any remaining discovery, Mr. Daybell is obligated to file his final motions in this case. That timeline does not permit a review of all evidence, consultation with appropriate experts, independent examinations, and consideration of potential legal claims and challenges. Among the outstanding discovery, the State has recently explained that certain items have not yet been obtained and have not yet been provided to defense counsel. *See* Response to Specific Request for Discovery (filed Dec. 28, 2022) (including Response Nos. 32, 34). The State has also objected to countless of Mr. Daybell's specific discovery requests, and further litigation on this issue is likely to be necessary.

Because the mitigation investigation has only recently begun and because the State has not fulfilled its fundamental discovery obligations, the defense team cannot reasonably be prepared for an April 2023 trial date.

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[6] *See id.*

II. Because the Mitigation Investigation Has Only Recently Begun, Mr. Daybell's Constitutional Rights Would Be Violated by an April 2023 Trial.[7]

Both the right to due process and the right to be free from cruel and unusual punishment require that a capital sentencing proceeding permit individualized consideration of a defendant's life history, circumstances, and individual characteristics. *Woodson v. North Carolina*, 428 U.S. 280 (1976) (holding that consideration of the character of the defendant is "a constitutionally indispensable part of the process of inflicting the penalty of death"); *Roberts v. Louisiana,* 428 U.S. 325 (1976) (holding that mandatory death sentencing statutes are unconstitutional because they do not permit sentencers to make individualized determination or assess degree of culpability); *Parker v. Dugger*, 498 U.S. 308 (1991) (holding that the petitioner was deprived of his Due Process and Eighth Amendment rights to individualized sentencing where the appellate court failed to consider all mitigating evidence); *Zant v Stephens*, 462 U.S. 862, 878-79 (1983) ("What is important at the selection stage is an individualized determination on the basis of the character of the individual and the circumstances of the crime") (citations omitted). An emphatic statement of this constitutional requirement is found in *Enmund v. Florida*, where the Supreme Court explained that "we insist on 'individualized consideration as a constitutional requirement in imposing the death sentence,' which means that we must focus on 'relevant facets of the character and record of the individual offender." 458 U.S. 782, 798 (1982) (citations omitted). These constitutional protections are unique to defendants in cases in which the prosecution is seeking the death penalty.

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[7] For a more complete and detailed explanation of Mr. Daybell's constitutional rights that would be violated by an April 2023 trial date, see Section II of his previously filed Motion to Continue the Trial Date to Enforce Mr. Daybell's Constitutional Rights.

Moreover, the U.S. Supreme Court has been abundantly clear that capital juries must be given the opportunity to consider *all* evidence that may weigh against a death sentence. *See, e.g., Lockett v. Ohio*, 438 U.S. 586 (1978) (holding that the sentencer may not be precluded from considering, as a mitigating factor, any aspect of the defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death); *Bell v. Ohio*, 438 U.S. 637 (1978) (reversing the death sentence because the state's capital sentencing statute precluded consideration of facts and circumstances proffered as mitigating circumstances); *Green v. Georgia*, 442 U.S. 95 (1979) (holding that exclusion of evidence at the sentencing phase, even when based upon Georgia's hearsay rule, was unconstitutional); *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (holding that it was constitutional error for the sentencing court to conclude that it could not consider the defendant's turbulent family history as a mitigating factor in deciding punishment); *Skipper v. South Carolina*, 476 U.S. 1 (1986) (holding that exclusion of evidence that defendant had adjusted well to incarceration between arrest and trial violated *Lockett v. Ohio*); *Penry v. Lynaugh*, 492 U.S. 302 (1989) (vacating a death sentence because the trial court's instructions to the jury did not allow the jury to consider evidence of the defendant's mental intellectual disability and childhood abuse as a mitigating factor); *Penry v. Johnson*, 532 U.S. 782 (2001) (holding that Texas' three-question sentencing format did not adequately allow the jury to consider mitigating evidence of intellectual disability); *Tennard v. Dretke*, 542 U.S. 274, 287 (2004) ("Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value. Thus, a State cannot bar the consideration of ... evidence if the sentencer could reasonably find that it warrants a sentence less than death.") (internal citations and quotations omitted).

Because anything at all from a defendant's life can be mitigating, individualized sentencing requires the presentation of mitigating evidence that is properly investigated, documented, and presented with the help of appropriate experts. Indeed, the work of identifying and obtaining mitigating evidence is so essential in capital cases that "the reasonableness of counsel's investigatory and preparatory work at the penalty phase should be examined in a different, more exacting manner than other parts of the trial." *See Frierson v. Woodford*, 463 F.3d 982, 993 (9th Cir. 2006). In other words, while a capital defense team must satisfy heightened constitutional demands at all stages of trial, *see Caldwell v. Mississippi*, 472 U.S. 320, 329 n.2 (1985), those demands reach their apex regarding the mitigation investigation, since that investigation will inform all other parts of trial, *see Frierson*, 463 F.3d at 989 (stressing the "imperative to cast a wide net for all relevant mitigating evidence").

Indeed, without a substantially completed mitigation investigation, defense counsel cannot even prepare adequately for the merits phase of a trial since an integrated defense—one that is consistent with mitigation themes and presents a coherent message throughout trial—is of the utmost importance in preparing for even the merits phase of a capital trial. *See* ABA Guidelines, 31 HOFSTRA L. REV. at 1047 ("Counsel should seek a [defense] theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies"); *id.* at 1059 ("During the investigation of the case, counsel should begin to develop a theme that can be presented consistently through both the first and second phases of the trial"). For example, counsel cannot effectively put on a "he didn't do it" defense and subsequently a "he is sorry he did it" theme in mitigation. *See* Andrea Lyon, *Defending the Death Penalty Case: What Makes Death Different?*, 42 MERCER L. REV. 695, 708 (1990). This mismatch of defenses would violate not only the reasonable standard of care that is required in capital defense, but would also make a death

sentence significantly more likely. *See, e.g.*, Scott E. Sundby, *The Capital Jury and Absolution*, 38 CORNELL L. REV. 1557, 1575 (1998) ("Juries in denial defense cases imposed death sentences twice as often as they imposed life sentences, while juries in admission defense cases chose a life verdict over a death sentence by a two-to-three ratio."). To comply with prevailing professional norms, defense counsel must be able to prepare an integrated defense that holds the State to its burden during the merits phase while remaining consistent with themes that may be presented at sentencing:

> Consistency is crucial because . . . counsel risks losing credibility by making an unconvincing argument in the first phase that the defendant did not commit the crime, then attempting to show in the penalty phase why the client committed the crime. First phase defenses that seek to reduce the client's culpability for the crime (e.g., by negating intent) rather than to deny involvement altogether are more likely to be consistent with mitigating evidence of mental illness, retardation, domination by a co-defendant, substance abuse, or trauma.

ABA Guidelines, 31 HOFSTRA L. REV. at 1059.

As explained in the *ex parte* affidavit submitted alongside this Motion, a constitutionally adequate mitigation investigation will require thousands of hours of work in this case. It is extraordinarily comprehensive and time-consuming, but it is what the Constitution demands when the government seeks to extinguish human life. When a jury is denied relevant mitigating evidence, either because counsel independently fails to conduct a complete investigation or because the court denies defense counsel adequate time or resources to conduct such an investigation, the defendant's rights under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, as well as Article I, Sections 6, 7, 8, and 13 of the Idaho State Constitution, are violated and any resulting death sentence cannot stand.

a. Red Flags Require Further Investigation.

In almost all capital cases, as the mitigation investigation develops, "red flags" become apparent; *i.e.*, indications that a particular mitigating circumstance or theme may be present in the defendant's life history. When a capital defense team discovers a red flag, it cannot be ignored, as to do so would be to "abandon the[] investigation at an unreasonable juncture." *Wiggins v. Smith*, 539 U.S. 510, 527-28 (2003).

For example, in *Rompilla v. Beard*, 545 U.S. 374 (2005), the U.S. Supreme Court found trial counsel ineffective for failing to follow up on "red flags" in school, medical, and prison records that pointed to the need for further mental health testing. *Id.* at 391. The Court further found that counsel had a duty follow up on the findings in those records and obtain additional records, including juvenile records. *Id.* at 391-93. As a result of the incomplete mitigation investigation, the three mental health experts retained by trial counsel concluded, erroneously, that Mr. Rompilla was anti-social and did not suffer from any mental disease. *Id.* at 391-92. A thorough investigation, conducted after Mr. Rompilla was convicted and sentenced to death, produced evidence establishing that he actually suffered from Fetal Alcohol Syndrome, borderline intellectual disability, and possibly schizophrenia and posttraumatic stress disorder. *Id.* His death sentence was thus overturned. *Id.* at 393.

Similarly, in *Porter v. McCollum*, 558 U.S. 30 (2009), the Supreme Court found that trial counsel was ineffective for failing to follow up on "pertinent avenues for investigation of which he should have been aware." *Id.* at 40. The Court noted that even though the defendant had been found competent to stand trial, these evaluations "collectively reported Porter's very few years of regular school, his military service and wounds sustained in combat, and his father's 'over-discipline.'" *Id.* Trial counsel was constitutionally obligated to follow up on this information, notwithstanding counsel's description of Porter as "fatalistic and uncooperative." *Id.* Their failure

to do so was constitutionally ineffective and required reversal of the defendant's death sentence. *Id.*; *see also Sears v. Upton*, 561 U.S. 945 (2010) (finding defense counsel constitutionally ineffective because, despite presenting "*some* mitigation evidence during Sears' penalty phase," counsel failed to investigate and uncover significant mitigating evidence of cognitive impairment, drug and alcohol abuse, mental health issues, and childhood difficulties).

b. The Defense Team Cannot Make Informed and Strategic Decisions about Expert Assistance until the Life Investigation History Is Substantially Complete.

In line with the heightened reliability requirements in capital cases, capital defendants are entitled to the assistance of necessary experts, based primarily on the rights to "a meaningful opportunity to present a complete defense," *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006), to due process, *Ake v. Oklahoma*, 470 U.S. 68, 70 (1985), and to an individualized sentencing determination, *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). Overall, capital defendants require expert assistance to "present their claims fairly within the adversary system." *See id.* at 77 (quoting *Ross v. Moffitt*, 417 U.S. 600, 612 (1974)). A capital defendant's fundamental constitutional rights are thus violated whenever a capital defendant is denied necessary expert assistance. *See Ake*, 470 U.S. at 70. As put by the ABA Guidelines:

> [T]he defendant's psychological and social history and his emotional and mental health are often of vital importance to the jury's decision at the punishment phase. ... Counsel must compile extensive historical data, as well as obtain a thorough physical and neurological examination. Diagnostic studies, neuropsychological testing, appropriate brain scans, blood tests or genetic studies, and consultation with additional mental health specialists may also be necessary.

31 HOFSTRA L. REV. at 956. Relatedly, an article relied on by the ABA Guidelines states that in every capital case, in order to "ensure thoroughness and acceptable limits of reliability and validity," the following investigations and evaluations must occur:

> 1) the collection of an accurate medical, developmental, psychological and social history, gathered from multiple sources; 2) a thorough physical and neurological examination; 3) a complete psychiatric and mental status examination; 4) diagnostic studies, including psychometrically based approaches to personality assessment, neuropsychological testing, appropriate brain scans, and blood tests or genetic studies; 5) the use of other specific specialists and additional appropriate tests as indicated.

Douglas S. Liebert, Ph.D. & David V. Foster, M.D., *The Mental Health Evaluation in Capital Cases: Standards of Practice*, 15 Am. J. Forensic Psychiatry 43 (1994).

Expert assistance is thus required in part because the scope of permissible mitigating evidence is very broad by constitutional necessity and specialized experts must guide the defense team, and ultimately the jury, in evaluating this broad array of evidence. *See, e.g.*, *Tennard v. Dretke*, 542 U.S. 274, 284 (2004) (rejecting lower court's effort to find "constitutional relevance" limitation in Supreme Court's Eighth Amendment jurisprudence); *Eddings v. Oklahoma*, 455 U.S. 104, 116-17 (1982) (vacating death sentence because sentencer did not recognize that defendant's troubled childhood was a mitigating factor and failed to weigh it in deciding punishment); *Woodson*, 428 U.S. at 304 (explaining that any of the "diverse frailties of humankind" constitute mitigating factors which must be considered as a matter of law in deciding punishment). The ABA Guidelines recognize that, in addition to a psychologist or other member of the defense team trained to identify mental health symptomology, "additional expert assistance specific to the case will almost always be necessary for an effective defense." 31 HOFSTRA L. REV. at 1004.

Moreover, experts are not generic or interchangeable. *See* ABA Guidelines, 31 HOFSTRA L. REV. at 1061 ("Counsel should choose experts who are tailored specifically to the needs of the case, rather than relying on an 'all-purpose' expert who may have insufficient knowledge or experience to testify persuasively."). Even *with* a completed life history investigation, an evaluation by an 'all-purpose' expert or an expert who specializes in something different than the

specific conditions or factors affecting the client may lack either the expertise to identify those conditions or the expertise to effectively communicate the condition and its impacts to the sentencer. *See Pruitt v. Neal*, 788 F.3d 248 (7th Cir. 2015); *see also* Stetler, Russell, *The Mystery of Mitigation: What Jurors Need to Make a Reasoned Moral Response in Capital Sentencing*, 11 U. PENN. J. OF LAW AND SOCIAL CHANGE 237, 259 (2008) ("Mental health experts are neither all-purpose generalists nor interchangeable. They represent many disciplines (e.g., psychiatry, neurology, psychology, neuropsychology, pharmacology, addiction medicine), and they have specialized knowledge and experience based on their research and clinical practices."). Requiring capital defendants to utilize experts without specialized knowledge and training violates their Eighth Amendment right to an individualized sentencing proceeding, which necessarily turns on the jury considering *accurate* mitigation information. *See, e.g., Rompilla*, 545 U.S. at 383 (reversing death sentence in part because three mental health professionals all came to inaccurate conclusions about the defendant's impairments due to an incomplete social history investigation); *Caro v. Calderon*, 165 F.3d 1223, 1226-27 (9th Cir. 1999) (although counsel consulted four experts, including a medical doctor, a psychologist, and a psychiatrist, counsel failed to consult neurologist or toxicologist who could have explained neurological effects of defendant's extensive exposure to pesticides); George Woods, *Neurobehavioral Assessment In Forensic Practice*, International Journal of Law and Psychiatry (2012) (explaining the process of evaluation and why comprehensive mitigation investigation is essential to accurate expert conclusions).

To provide effective assistance of counsel, the defense team must carefully select experts tailored to the evidence gathered during the mitigation investigation. However, given the sheer scope of potential mitigation that must be investigated in capital cases, the need for particularized expert assistance will generally be uncovered only after completing a life history investigation.

See generally Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, 36 HOFSTRA L. REV. 677 (2008) (hereinafter "Supplementary Guidelines"); *see also* ABA Guidelines, 31 HOFSTRA L. REV. 1023 ("The mitigation investigation . . . may affect the investigation of first phase defenses . . . [and] decisions about the need for expert evaluations. . ."). Without having completed a life history investigation, counsel cannot make informed and strategic decisions about specialized experts to pursue, in violation of prevailing professional norms and Mr. Daybell's right to the effective assistance of counsel under the Sixth Amendment and Article I, Section 13. *See Frierson*, 463 F.3d at 992 (noting that "strategy presupposes investigation"); *see also, e.g.*, *Caro v. Calderon*, 165 F.3d 1223, 1226-27 (9th Cir. 1999) (holding that counsel was ineffective assistance of counsel where "counsel consulted four experts, including a medical doctor, a psychologist, and a psychiatrist, [but] failed to consult neurologist or toxicologist who could have explained neurological effects of defendant's exposure to pesticides"); *Daniels v. Woodford*, 428 F.3d 1181 (9th Cir. 2005) (finding counsel ineffective and reversing the sentence due to counsel's failure to pursue further mental health experts, instead relying on a psychologist "who was not qualified to testify in a capital case," which resulted in counsel not pursuing viable mental health defenses at trial due to the lack of qualified experts); *Pruitt v. Neal*, 788 F.3d 248 (7th Cir. 2015) (finding counsel ineffective for ignoring 'red flags' of schizophrenia and relying solely on mental health expert who could competently present evidence of intellectual disability, failing to also hire a professional with specific expertise in psychotic disorders); *Stevens v. McBride*, 489 F.3d 883 (7th Cir. 2007) (finding counsel ineffective for failing to present competent mental health evidence in mitigation, instead relying on a doctor who could not testify on subjects central to mitigating factors and who was better-suited to testify for the prosecution); *see also* Stetler, 11 U. PENN. J. OF LAW AND SOCIAL CHANGE at 259 ("It is essential for counsel and the

defense team not only to build a foundation of trust with the client before involving experts in the case, but also to develop an independently corroborated multigenerational social history that will highlight the complexity of the client's life and identify multiple risk factors and mitigation themes.").

Counsel will not know the type or number of experts that are necessary to present Mr. Daybell's life history to the jury until that investigation is complete. After seeking out and hiring the appropriate experts, the experts must then have the necessary time to review the relevant documents, consult with the client and team, direct on any further investigation necessary, and fully form the basis for their opinions and testimony. This work cannot possibly be completed for an April 2023 trial date.

III. Because the State Has Not Satisfied All Its Discovery Obligations, Mr. Daybell's Constitutional Rights Would Be Violated by an April 2023 Trial.[8]

Heightened reliability requirements are placed on all stages of a capital trial, including the merits phase. *Herrera v. Collins*, 506 U.S. 390, 406 n.5 (1993) (explaining that precedent "emphasizes the importance of ensuring the reliability of the guilt determination in capital cases in the first instance."). While preparation for the merits phase of a capital trial cannot be completed until the mitigation investigation has also been completed, it is further hindered by the fact that the State has not yet satisfied all its discovery obligations in this case, and is not even obligated to do so until less than 40 days before trial. This timeline does not permit adequate review of evidence, consultation with appropriate experts, discussion with witnesses, independent examinations, or the development of legal challenges to the admissibility of particular evidence, thereby violating Mr.

[8] For a more complete and detailed explanation of a capital defense team's professional obligations to investigate the merits phase of a trial, see Section III.B. of Mr. Daybell's previously filed Motion to Continue the Trial Date to Enforce Mr. Daybell's Constitutional Rights.

Daybell's due process rights and right to the effective assistance of counsel. *See Powell v. Alabama,* 287 U.S. 45, 59 (1932) ("[A] defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense."); *United States v. Ash*, 413 U.S. 300, 340-41 (1973) ("*Powell* made clear that, in order to preserve the accused's right to a fair trial and to 'effective and substantial' assistance of counsel at the trial, the Sixth Amendment guarantee necessarily encompasses a reasonable period of time before trial during which counsel might prepare the defense.").

Once the State has satisfied its discovery obligations, the defense team must have time to satisfy professional obligations, including:

> [D]efense counsel must independently investigate the circumstances of the crime and all evidence—whether testimonial, forensic, or otherwise—purporting to inculpate the client. To assume the accuracy of whatever information the client may initially offer or the prosecutor may choose or be compelled to disclose is to render ineffective assistance of counsel . . . the defense lawyer's obligation includes not only finding, interviewing, and scrutinizing the backgrounds of potential prosecution witnesses, but also searching for any other potential witnesses who might challenge the prosecution's version of events, and subjecting all forensic evidence to rigorous independent scrutiny. . . In addition to investigating the alleged offense, counsel must also thoroughly investigate all events surrounding the arrest, particularly if the prosecution intends to introduce evidence obtained pursuant to alleged waivers by the defendant (e.g., inculpatory statements or items recovered in searches of the accused's home).

ABA Guidelines, 31 HOFSTRA L. REV. at 926.

Because these tasks cannot be completed prior to an April 2023 trial date, especially because the State has not yet satisfied all its discovery obligations, the Court's current Scheduling Order would violate Mr. Daybell's due process rights, his right to present a complete defense, and his right to the effective assistance of counsel under the Sixth and Fourteenth Amendments to the U.S. Constitution and Article 1, Section 13 of the Idaho Constitution. *See Holmes v. South*

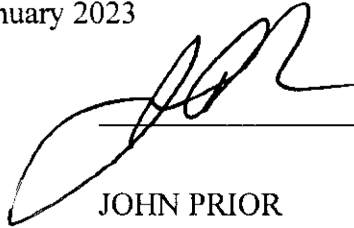
Carolina, 547 U.S. 319, 324 (2006); *Crane v. Kentucky*, 476 U.S. 683, 687 (1986) (noting the existence of a "fundamental constitutional right to a fair opportunity to present a defense"); *California v. Trombetta*, 467 U.S. 479, 485 (1984) ("Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense.").

CONCLUSION

For the reasons set forth in this Motion, the accompanying affidavit and supplement filed *ex parte* and under seal, and Mr. Daybell's previous Motion to Continue, Mr. Daybell respectfully requests that the Court grant a continuance in this case and that trial be scheduled no earlier than April 2024. If Mr. Daybell were forced to proceed with an April 2023 trial date, he would be denied effective assistance of counsel, due process, a fair trial, and an individualized sentencing determination, in violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 6, 7, 8, and 13 of the Idaho State Constitution.

NOTICE IS HEREBY GIVEN that on 19th day of January 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 Continue before the Honorable Judge Steven W. Boyce District Judge at the Fremont County Courthouse in St Anthony, ID.

DATED this 3rd day of January 2023



JOHN PRIOR

Attorney for Defendant

CERTIFICATE OF SERVICE

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 3rd day of January 2023.

JOHN PRIOR

Attorney for Defendant