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SUBMISSION TO THE 3RD UNITED STATES UNIVERSAL PERIODIC REVIEW THE DUI HUA FOUNDATION

Dui Hua (对话, meaning “dialogue” in Chinese) is a nonprofit humanitarian organization that seeks clemency and better treatment for at-risk detainees through the promotion of universally recognized human rights in a well-informed, mutually respectful dialogue with China. Focusing on political and religious prisoners, juvenile justice, women in prison, and issues in criminal justice, our work rests on the premise that positive change is realized through constructive relationships and exchange. The Dui Hua Foundation’s activities include advocacy, expert exchanges, research, publications, and community engagement. The Dui Hua Foundation is a 501-C3 organization registered in the United States, with offices in San Francisco and Hong Kong. It was founded in 1999. It has been in Special Consultative Status with the Economic and Social Council [ECOSOC] of the United Nations since 2005.

1. The Dui Hua Foundation provides this submission for the 3rd Universal Periodic Review of the human rights record of the United States. The submission focuses on the U.S. Attorney General's announced intention to proceed with the first federal executions in more than 16 years.

Achievements

2. The death penalty in the United States received significant attention during the 1st and 2nd Universal Periodic Reviews of the United States that took place in 2010 and 2015, respectively. In its National Report in advance of the 2nd UPR, the United States noted that "the number of states that have the death penalty, the number of persons executed each year, and the size of the population on death row have continued to decline since our last report."ⁱ The Working Group Report from the 2nd UPR indicates that more than three dozen member states formally encouraged the continuation of these trends and recommended that the United States take steps to further reduce its use of capital punishment.
3. In the period since the 2nd UPR these trends have continued. Despite a slight year-on-year increase in annual executions from 2016 to 2018 (20, 23 and 25 respectively), the number of executions in every year of the present UPR cycle remains below that of every year in the previous cycle, continuing the broad decline in executions nationwide. Since the last UPR cycle capital punishment has been struck down by courts in two states (Delaware, 2016; Washington State, 2018), repealed by the legislature in one state (New Hampshire, 2019) and subjected to moratoria in two states (Pennsylvania, 2015; California, 2019). The death penalty is now abolished or under moratorium in exactly half of all states.ⁱⁱ
4. In its 2015 National Report the United States noted that "[t]he federal government has carried out no executions since our last UPR; in fact, it has not executed an inmate since 2003 and only three since 1963."ⁱⁱⁱ Member states also praised the U.S. federal government's "ad hoc" moratorium^{iv} and called for the institution of a formal federal moratorium.^v The federal government has not performed any executions during the current review period. However, recent statements by the President and the Attorney General raise concerns that federal executions will soon resume.

Areas of Concern

5. On July 25, 2019 Attorney General William Barr announced that the Department of Justice plans to resume federal executions. At Barr's direction the Bureau of Prisons scheduled execution dates in December 2019 and January 2020 for five of the roughly sixty condemned individuals currently held in federal prison. Barr also directed the Bureau of Prisons to adopt a proposed Addendum to the Federal Execution Protocol. The Addendum abandons the three-drug mixture previously used in federal executions in favor of a single sedative: pentobarbital.^{vi}
6. The decision to move forward with federal executions is flawed both in principle and implementation. In principle, the decision runs contrary to both the global and the national trends away from the use of the death penalty. Support for the death penalty continues to decline in the United States, and after nearly two decades since the last

federal execution, a recent Gallup poll indicates that a majority of citizens now think that the death penalty is already imposed at “about the right amount” or “too often.”^{vii}

7. The proposed implementation of federal executions raises human rights concerns as well. The most recent method of federal execution—lethal injection with a three-drug formula—received constitutional challenges in federal court as a violation of the Eighth Amendment prohibition on cruel and unusual punishment. While a single-drug formula has been upheld as constitutional in some states, reports of executions using the single-drug pentobarbital indicate that in some cases it has produced an excruciating burning sensation when administered. This issue appears to be linked to the provenance of the drug, which remains in question.^{viii}
8. The selection of individuals scheduled for execution also raises troubling procedural questions about the entire process. The five people who have been given dates for execution are not the individuals who have been on federal death row the longest, although they are among the 23 prisoners with exhausted appeals. The Bureau of Prisons has not explained why these five individuals were selected for execution. A common thread in all five cases is that the victims are children, which could suggest case selection calculated to receive a high level of public support for the decision. It is also noteworthy that all these crimes could also have been prosecuted under state law. The decision to pursue federal capital convictions against these defendants represents a discretionary policy choice on the part of federal prosecutors under the Department of Justice, but there is no transparency about the decision.
9. In addition to the Department of Justice’s announcement of plans to resume executions, the current administration has also made numerous public statements advocating the expansion of the use of capital punishment. For example, President Donald Trump has repeatedly called for the death penalty for drug dealers,^{ix} a policy he has said was inspired by China.^x The decision as to whether to pursue capital punishment ultimately resides with the Attorney General. Following Trump’s statement, former Attorney General Jeff Sessions released a memo encouraging federal prosecutors to pursue capital punishment in drug cases where permitted by federal law, including non-homicide “drug kingpin” cases.^{xi} While capital punishment for non-homicide drug kingpin crime is allowed under federal statute, no defendant has ever been sentenced to death under the statute, so its legality is untested.^{xii} Existing caselaw suggests that capital punishment for a non-homicide drug crime is unconstitutional under the Eighth Amendment.^{xiii}

Recommendations

10. a) The Department of Justice should rescind its order to resume executions and cancel the five currently scheduled executions;
- b) The Bureau of Prisons should halt efforts to implement the Addendum to the Federal Execution Protocol *and* respond to all requests for information about the sourcing and supply of any lethal injection compounds obtained to date;
- c) The Office of the President should cease calls for executions in non-homicide drug cases and the Attorney General should retract the March 21, 2018 Department of Justice memo encouraging capital prosecution in federal drug cases.

ⁱ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, United States of America, A/HRC/WG.6/22/USA/1, para 51.

ⁱⁱ See Death Penalty Information Center state by state data, available at <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state>.

ⁱⁱⁱ A/HRC/WG.6/22/USA/1, para 51.

^{iv} Human Rights Council, Report of the Working Group on the Universal Periodic Review,* United States of America, A/HRC/30/12, see e.g. Slovakia at para 55.

^v A/HRC/30/12, see e.g. Lithuania at para 176.170, Luxemburg at para 176.171; Nepal at para 176.72; France at para 176.175; Germany at 176.183; New Zealand at para 176.186; Italy at para 176.189; Holy See at para 176.191, Uzbekistan at para 176.192; Norway at para 176.193.

^{vi} Federal Government to Resume Capital Punishment After Nearly Two Decade Lapse, Department of Justice Office of Public Affairs, July 25, 2019, available at <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>.

^{vii} See “New Low of 49% in U.S. Say Death Penalty Applied Fairly,” Gallup, October 22, 2018, available at <https://news.gallup.com/poll/243794/new-low-say-death-penalty-applied-fairly.aspx>.

^{viii} See The U.S. House of Representatives Committee on Oversight and Reform press release, August 14, 2019, available at <https://oversight.house.gov/news/press-releases/oversight-subcommittee-investigates-trump-administration-s-decision-to-resume>.

^{ix} See Trump pushes death penalty for some drug dealers, CNN, March 19, 2018, available at <https://www.cnn.com/2018/03/19/politics/opioid-policy-trump-new-hampshire/index.html>.

^x See “Donald Trump again calls for drug dealers to be executed . . . and says he got idea from China’s President Xi Jinping,” *The South China Morning Post*, March 11, 2018, available at <https://www.scmp.com/news/world/united-states-canada/article/2136694/donald-trump-again-calls-drug-dealers-be-executed>.

^{xi} Attorney General Sessions Issues Memo to U.S. Attorneys on the Use of Capital Punishment in Drug-Related Prosecutions, Department of Justice Office of Public Affairs, March 21, 2018, available at <https://www.justice.gov/opa/pr/attorney-general-sessions-issues-memo-us-attorneys-use-capital-punishment-drug-related>.

^{xii} Federal Capital Offenses: An Overview of Substantive and Procedural Law, Congressional Research Service, February 25, 2016, available at https://www.everycrsreport.com/files/20160225_R42095_d57af985c9c0afb049d66787fc2ae22c5912f591.pdf at 32.

^{xiii} See *Kennedy v. Louisiana*, 554 U.S. 407 (2008); U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (1993) at (I)(3).

Annex I

U.S. Federal Death Row Inmates Scheduled to be Executed under proposed Addendum to the Federal Execution Protocol as of July 2019

Source: <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>

- 1) **Daniel Lewis Lee**, a member of a white supremacist group, murdered a family of three, including an eight-year-old girl. After robbing and shooting the victims with a stun gun, Lee covered their heads with plastic bags, sealed the bags with duct tape, weighed down each victim with rocks, and threw the family of three into the Illinois Bayou. On May 4, 1999, a jury in the U.S. District Court for the Eastern District of Arkansas found Lee guilty of numerous offenses, including three counts of murder in aid of racketeering, and he was sentenced to death. Lee's execution is scheduled to occur on Dec. 9, 2019.
- 2) **Lezmond Mitchell**, the only Native American on death row, stabbed to death a 63-year-old grandmother and forced her nine-year-old granddaughter to sit beside her lifeless body for a 30 to 40-mile drive. Mitchell then slit the girl's throat twice, crushed her head with 20-pound rocks, and severed and buried both victims' heads and hands. On May 8, 2003, a jury in the U.S. District Court for the District of Arizona found Mitchell guilty of numerous offenses, including first degree murder, felony murder, and carjacking resulting in murder, and he was sentenced to death. Mitchell's execution is scheduled to occur on Dec. 11, 2019.
- 3) **Wesley Ira Purkey** violently raped and murdered a 16-year-old girl, and then dismembered, burned, and dumped the young girl's body in a septic pond. He also was convicted in state court for using a claw hammer to bludgeon to death an 80-year-old woman who suffered from polio and walked with a cane. On Nov. 5, 2003, a jury in the U.S. District Court for the Western District of Missouri found Purkey guilty of kidnapping a child resulting in the child's death, and he was sentenced to death. Purkey's execution is scheduled to occur on Dec. 13, 2019.
- 4) **Alfred Bourgeois** physically and emotionally tortured, sexually molested, and then beat to death his two-and-a-half-year-old daughter. On March 16, 2004, a jury in the U.S. District Court for the Southern District of Texas found Bourgeois guilty of multiple offenses, including murder, and he was sentenced to death. Bourgeois' execution is scheduled to occur on Jan. 13, 2020.
- 5) **Dustin Lee Honken** shot and killed five people—two men who planned to testify against him and a single, working mother and her ten-year-old and six-year-old daughters. On Oct. 14, 2004, a jury in the U.S. District Court for the Northern District of Iowa found Honken guilty of numerous offenses, including five counts of murder during the course of a continuing criminal enterprise, and he was sentenced to death. Honken's execution is scheduled to occur on Jan. 15, 2020.

Annex II

LIST OF 62 USA FEDERAL DEATH ROW PRISONERS SEPT 2019

Source: <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/list-of-federal-death-row-prisoners>

States printed in **bold** have abolished death penalty

NAME	RACE/ETHNICITY	STATE WHERE CRIME TOOK PLACE	YEAR OF SENTENCE	OFFENCE
Agofsky, Shannon	White	TX	2004	Convicted and sentenced to death for the killing of a prisoner in a federal prison.
Allen, Billie Jerome	Black	MO	1998	Convicted and sentenced to death for his involvement in an armed bank robbery during which a bank guard was killed. (Co-defendant of Norris Holder.)
[Aquat, Azibo+]	Black	CT	2012	Convicted and sentenced to death for planning and participating in the deaths of alleged rival in the drug business and her two cohabitants. Death sentence overturned and awaiting re-sentencing proceedings.
Barnette, Marcivicci Aquilia	Black	NC	1998	Convicted and sentenced to death for the killing of his ex-girlfriend, as well as another man in a carjacking.

Barrett, Kenneth Eugene	White	OK	2005	Convicted and sentenced to death for the fatal shooting of a state police officer who was serving a 'no-knock' warrant on his house for suspicion of drug activity.
Basham, Brandon	White	SC	2004	Convicted and sentenced to death for the kidnapping and death of a woman following an escape from prison. (Co-defendant of Chadrick Fulks)
Battle, Anthony	Black	GA	1997	Convicted and sentenced to death for the killing of a prison guard.
Bernard, Brandon	Black	TX	2000	Convicted and sentenced to death for his involvement in the carjacking and killing of a married couple visiting Texas. (Co-defendant of Christopher Vialva)
Bolden, Robert	Black	MO	2006	Convicted and sentenced to death for the killing of a bank security guard during an aborted robbery attempt in St. Louis.
Bourgeois, Alfred	Black	TX	2004	Convicted and sentenced to death for abuse leading to the death of his daughter at a military base.

Brown, Meier Jason	Black	GA	2003	Convicted and sentenced to death for the fatal stabbing of a postal worker.
Caro, Carlos	Latino	VA	2007	Convicted and sentenced to death for the killing of a prisoner in a federal prison.
Coonce, Wesley	White	MO	2014	Convicted and sentenced to death for the killing of a fellow prisoner in the mental health unit of a federal prison. (Co-defendant of Charles Hall)
Corley, Odell (Nasih Ra'id)	Black	IN	2004	Convicted for actions stemming from an attempted bank robbery committed with several others during which two bank employees were killed.
Cramer, Christopher	White	TX	2018	Convicted and sentenced to death for the killing of a fellow prisoner in a federal prison. (Co-defendant of Ricky Fackrell)

Davis, Len	Black	LA	2005	Police officer convicted and sentenced to death for ordered the killing of a witness for an internal affairs investigation into a police misconduct complaint against him.
Duncan, Joseph	White	ID	2008	Pled guilty and sentenced to death for the kidnapping and sexual abuse of a minor.
Ebron, Joseph	Black	TX	2009	Convicted and sentenced to death for the killing of a prisoner in a federal prison.
Fackrell, Ricky	White	TX	2018	Convicted and sentenced to death for the killing of a fellow prisoner in a federal prison. (Co-defendant of Christopher Cramer)
Fields, Edward	White	OK	2005	Pled guilty to and sentenced to death for the fatal shootings of two campers on federal land.

Fields, Sherman Lamont	Black	TX	2005	Convicted and sentenced to death for the fatal shooting of his former girlfriend after having escaped from a detention center where he was being held pending a federal weapons charge.
Fulks, Chadrick	White	SC	2004	Pled guilty and sentenced to death for the kidnapping and death of a woman following an escape from prison. (Co-defendant of Brandon Basham.)
Gabrion, Marvin	White	MI	2002	Convicted and sentenced to death for killing a woman on federal land.
Garcia, Edgar	Latino	TX	2010	Convicted and sentenced to death for the fatal stabbing of a fellow prisoner while incarcerated in a federal prison. (Co-defendant of Mark Snarr.)
Hager, Thomas	Black	VA	2007	Convicted and sentenced to death for a drug-related killing.

Hall, Charles	White	MO	2014	Convicted and sentenced to death for the killing of a fellow prisoner in the mental health unit of a federal prison. (Co-defendant of Wesley Coonce.)
Hall, Orlando	Black	TX	2007	Convicted and sentenced to death for a drug related kidnapping resulting in death. (Co-defendant of Bruce Webster)
Higgs, Dustin	Black	MD	2000	Convicted and sentenced to death for kidnapping and killing three women on federal land.
Holder, Norris	Black	MO	1998	Convicted and sentenced to death for the fatal shooting of a security guard during a bank robbery. (Co-defendant of Billie Allen.)
Honken, Dustin	White	IA	2004	Convicted and sentenced to death for the killing of two children in a drug related conspiracy in which three others were also killed.
Jackson, Richard Allen	White	NC	2001	Convicted and sentenced to death for the fatal shooting of a woman while on federal property in North Carolina.

Johnson, Corey	Black	VA	1993	Convicted and sentenced to death for his participation in a series of drug-related killings. (Co-defendant of Richard Tipton & James H. Roane, Jr.)
Kadamovas, Jurijus	White	CA	2007	Convicted and sentenced to death for his involvement in the killings and kidnappings-for-ransom of five Russian and Georgian immigrants. (Co-defendant of Iouri Mikhel.)
Lawrence, Daryl	Black	OH	2006	Convicted and sentenced to death for the fatal shooting of a special-duty police officer during an attempted bank robbery.
LeCroy, Jr., William	White	GA	2001	Convicted and sentenced to death for a carjacking resulting in the death of a North Georgia woman.
Lee, Daniel	White	AR	2002	Convicted and sentenced to death for his involvement in the killing of a gun dealer and his family.
Lighty, Kenneth	Black	MD	2005	Convicted and sentenced to death for his involvement in the kidnapping and death of an alleged drug dealer.

Mikhel, Iouri	White	CA	2007	Convicted and sentenced to death for his involvement in the killings and kidnappings-for-ransom of five Russian and Georgian immigrants. (Co-defendant of Jurijus Kadamovas.)
Mikos, Ronald	White	IL	2005	Convicted and sentenced to death for the killing of a federal grand jury witness in a Medicare fraud investigation.+
Mitchell, Lezmond	Native American	AZ	2003	Convicted and sentenced to death for a carjacking resulting in the deaths of two people on an Indian Reservation.
Montgomery, Lisa	White (Female)	MO	2007	Convicted and sentenced to death for killing a woman and seizing her unborn baby.
Nelson, Keith D.	White	MO	2002	Pled guilty and sentenced to death for the kidnap and murder of a girl.
Paul, Jeffrey Williams	White	AR	1997	Convicted and sentenced to death for his involvement in the robbery and killing of a retired National Park employee on federal land.
Purkey, Wesley	White	MO	1998	Convicted and sentenced to death for the kidnapping and death of a Kansas City teenager.

Roane, Jr., James H.	Black	VA	1993	Convicted and sentenced to death for his participation in a series of drug-related killings. (Co-defendant of Corey Johnson & Richard Tipton.)
Robinson, Julius	Black	TX	2002	Convicted and sentenced to death for the killing of two men in drug-related incidents in Ft. Worth.
Rodriguez, Jr., Alfonso	Latino	ND	2006	Convicted and sentenced to death for a kidnapping resulting in the death of a college student.
Roof, Dylann	White	SC	2017	Convicted and sentenced to death for the fatal shooting of nine parishioners in a church in South Carolina.
Runyon, David	Asian	VA	2009	Convicted and sentenced to death for his involvement in the death of a Naval officer in a murder-for-hire plot in Newport News.
Sampson, Gary	White	MA	2017	Pled guilty to the separate carjacking and killing of two men, and sentenced to death for the death of one of the victims.
Sanchez, Jr., Ricardo	Latino	FL	2009	Convicted and sentenced to death for involvement in the drug-related killing of a family, including two children. (Co-defendant of Daniel Troya.)

Sanders, Thomas	White	LA	2014	Convicted and sentenced to death for the kidnapping resulting in death of a 12-year old girl.
Savage, Kabon	Black	PA	2013	Convicted and sentenced to death for his involvement in the killings of 12 people in connection with a drug enterprise.
Snarr, Mark	White	TX	2010	Convicted and sentenced to death for the fatal stabbing of a fellow prisoner while incarcerated in a federal prison. (Co-defendant of Edgar Garcia.)
Taylor, Rejon	Black	TN	2008	Convicted and sentenced to death for the carjacking, kidnapping, and death of a restaurant owner.
Tipton, Richard	Black	VA	1993	Convicted and sentenced to death for his participation in a series of drug-related killings. (Co-defendant of Corey Johnson & James H. Roane, Jr.)
Torrez, Jorge	Latino	VA	2014	Ex-marine convicted and sentenced to death for the killing of a fellow service member.

Troya, Daniel	Latino	FL	2009	Convicted and sentenced to death for involvement in the drug-related killings of a family, including two children. (Co-defendant of Ricardo Sanchez, Jr.)
Tsarnaev, Dzhokhar	White	MA	2015	Convicted for offenses committed in the Boston Marathon bombing and sentenced to death for two of the victims killed.
Umana, Alejandro	Latino	NC	2010	Convicted and sentenced to death for the fatal shooting of two brothers in a North Carolina restaurant.
Vialva, Christopher	Black	TX	2000	Convicted and sentenced to death for his involvement in a carjacking and the deaths of a couple visiting Texas. (Co-defendant of Brandon Bernard.)
Webster, Bruch	Black	TX	1996	Convicted and sentenced to death for a drug-related killing and a rape resulting in death. (Co-defendant of Orlando Hall.) Death sentence vacated on grounds of intellectual disability on June 18, 2019. The ruling is still subject to appeal.