



Cornell Law School
Cornell Center on the Death Penalty Worldwide



CLINICAL PROGRAM



United States of America

Stakeholder Report for the United Nations Universal Periodic Review:

The Death Penalty

Submitted by The Advocates for Human Rights,

a non-governmental organization in special consultative status

The Cornell Center on the Death Penalty Worldwide

**The International Human Rights Law Clinic at the American University Washington
College of Law**

and

The World Coalition Against the Death Penalty

**for the 50th Session of the Working Group on the Universal Periodic Review
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

Cornell Center on the Death Penalty Worldwide (CCDPW) provides transparent data on death penalty laws and practices around the world, publishes reports and manuals on issues of practical relevance to lawyers, judges, and policymakers, trains lawyers in best practices, and engages in targeted advocacy and litigation. The Center has gained a reputation for providing comparative legal analysis of the application of the death penalty, as well as for its one-of-a-kind Makwanyane Institute for capital defenders. Our Alice Project, which is the first global project to focus on women facing capital punishment, examines the role of gender in death penalty cases. By representing women before national and international tribunals, organizing judicial trainings, and through data collection and analysis, we are exposing the connection between gender-based discrimination and capital sentencing.

The International Human Rights Law Clinic (IHRLC) is one of twelve law clinics within the Clinical Program at the American University Washington College of Law. IHRLC represents foreign nationals and INGOs to defend human rights in a broad range of settings, including regional and international bodies, U.S. federal and state courts, and immigration court. The IHRLC contribution in this stakeholder report is a collaborative effort between our partners at the Federal

Public Defenders Office, Capital Habeas Unit in Columbus, Ohio, and student attorneys Katelyn Donaldson, Natalie Shultz, Yadiel Solis Garcia, and Jessica Swonger, supervised by Professor Anita Sinha.

The World Coalition Against the Death Penalty is a membership-based global network committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition. The World Coalition Against the Death Penalty is committed to making visible gender and intersectional discrimination at work in capital punishment as well as to strengthen the protection of women and gender and sexual minorities facing the death penalty.

EXECUTIVE SUMMARY

1. This report addresses the United States' compliance with its human rights obligations with regard to the death penalty and provides several suggested recommendations to address death penalty issues in the United States. The report addresses application of the death penalty to crimes that are not the "most serious," constraints on the use of the death penalty under domestic law, failure to accommodate persons with disabilities when they come into conflict with the law, gender bias in capital cases, racial discrimination, and execution methods that amount to cruel, inhuman, or degrading punishment.

I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Acceptance of international norms; Ratification of & accession to international instruments

Status of Implementation: Not Accepted, Not Implemented

2. In its third-cycle Universal Periodic Review in 2020, the United States received four recommendations to ratify or consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights,¹ and noted each of them.² The Addendum stated that the Federal Executive Branch does not have the authority to ratify treaties,³ but observed that President Biden supported legislative abolishing the use of the death penalty.⁴ The United States has not made any progress toward ratification of the Second Optional Protocol.

Death Penalty

Status of Implementation: Partially Accepted, Partially and Temporarily Implemented

3. The United States received 27 recommendations to abolish or work toward abolition of the death penalty.⁵ Of those recommendations, the United States accepted 11 in part, including recommendations to continue efforts toward abolition, to consider the possibility of abolishing the death penalty, to consider establishing a moratorium on the death penalty, and to establish a moratorium on the death penalty at the federal level.⁶
4. As of 2025, 27 states, the federal government, and the U.S. Military maintain the death penalty. Since the third-cycle UPR, states have carried out 78 executions.⁷ As of March 5, 2025, five prisoners have already been executed in four states in 2025, with at least 39 additional state executions scheduled through 2028.⁸
5. Since the third-cycle UPR, the states of Virginia (2021) and Washington (2023) have abolished the death penalty.⁹ In 2022, the nationwide death row population fell below 2,400 for the first time since 1990.¹⁰ As of January 1, 2025, there were 2,092 people either on death row or facing continuing jeopardy of execution in ongoing capital proceedings.¹¹
6. While the federal government and military retain the death penalty, reliance on the death penalty at the federal level has vacillated depending on the administration in power.¹² The Biden Administration (2021-2025) moved to curtail the federal death penalty, implementing a moratorium on federal executions, and commuting the sentences of 37 of

out of 40 individuals on federal death row to life imprisonment.¹³ The Trump Administrations (2017-2021, 20 Jan. 2025-present), however, have prioritized expansion of capital punishment.¹⁴ All 13 federal executions in the last two decades occurred within the final six months of President Trump's first term in office.¹⁵

7. On January 20, 2025, President Trump signed Executive Order 14164, seeking to expand federal and state use of capital punishment.¹⁶ The Executive Order instructs the Justice Department to (1) "pursue the death penalty for all crimes of a severity demanding its use," (2) "take all necessary and lawful action" to ensure states with capital punishment have sufficient resources needed for lethal injection executions, and (3) direct federal prosecutors to assist local prosecutors in pursuing the death penalty at the state level for the 37 individuals who received federal commutations.¹⁷
8. The Executive Order also (4) strongly encouraged federal prosecutors to seek the death penalty for drug-related offenses and other "crimes committed by cartels, transnational criminal organizations, and aliens who traverse [the United States'] borders and remain in the United States without legal status."¹⁸
9. The Justice Department effectuated this Executive Order by publishing two memoranda on 5 February 2025, directing all employees to act accordingly and reinstating sentencing guidelines that Trump had implemented in his first term.¹⁹
10. The Executive Order further directs the U.S. Attorney General to seek to overrule any U.S. Supreme Court precedent that limits federal and state authority to impose capital punishment. Such precedents generally require (i) that penalties be proportionate to the crimes committed, and (ii) that capital punishment not be arbitrarily imposed.²⁰ It also accuses judges and lawmakers of "subverting the law" if they obstructed or failed to implement death sentences.²¹
11. The Executive Order's attempt to expand the application of the death penalty at the federal level to include drug-related offenses and other crimes by transnational criminal organizations, as well as offenses by persons in the United States without legal status, would heighten the arbitrary application of the death penalty by sweeping up conduct that does not entail an intentional killing and by targeting individuals based on nationality or citizenship status.²² This expansion exacerbates well-documented fair trial and due process issues that plague the use of the death penalty in the United States, including racial and gender bias, ineffective legal assistance, reliance on dubious forensic evidence, and official misconduct.²³
12. Under the Biden Administration, the federal government implemented recommendations to establish a moratorium on executions at the federal level.²⁴ On June 25, 2021, Attorney General Merrick Garland announced a moratorium on federal executions while the Justice Department conducted a review of its death penalty-related policies and procedures.²⁵ This moratorium did not prohibit federal prosecutors from pursuing capital cases,²⁶ and on 5 February 2025, Attorney General Pam Bondi lifted the moratorium.²⁷

Prohibition of torture and cruel, inhuman or degrading treatment

Status of Implementation: Not Accepted, Temporarily Implemented

13. The United States did not support Finland's third-cycle UPR recommendation to carefully review the federal government's new execution protocol.²⁸
14. All 27 states that retain the death penalty have adopted lethal injection as the exclusive or primary means of execution.²⁹ As a matter of human dignity and basic human rights, persons facing the death penalty ought not also face as a result of the method of execution treatment amounting to torture and cruel, inhuman, or degrading treatment.
15. On 15 January 2025, the Justice Department's Office of Legal Policy (under the outgoing Biden Administration) released a memorandum reviewing federal execution protocols and available evidence about executions carried out by state authorities. The memorandum concluded that "there remains significant uncertainty about whether the use of pentobarbital as a single-drug lethal injection causes unnecessary pain and suffering. In the face of such uncertainty, the Department should err on the side of humane treatment and avoidance of unnecessary pain and suffering, and therefore halt the use of pentobarbital unless and until that uncertainty is resolved."³⁰
16. Specifically, the use of pentobarbital in executions carries risks of improper anesthetization followed by the experience of flash (acute) pulmonary edema, a condition in which fluid accumulates in the lungs causing pain and difficulty breathing.³¹ The combination of improper anesthetization and pulmonary edema create a sensation that experts liken to being suffocated, drowned, or waterboarded.³²
17. On 5 February 2025, Attorney General Bondi rescinded the memorandum of 15 January and reinstated the 2019 pentobarbital single-drug execution protocol that the first Trump Administration had used to carry out 13 executions.³³
18. Problems with lethal injection methods are well documented. Due in part to concerns about lethal injection in South Carolina, Brad Sigman, who was under sentence of death there, recently opted for death by firing squad—a decision his attorney called "an impossible choice."³⁴ South Carolina carried out the execution on 7 March 2025.³⁵ Under South Carolina law, the default method of execution is electrocution, but persons facing execution may instead elect for death "by firing squad or lethal injection, if it is available at the time of election."³⁶ Mr. Sigman had also requested postponement of his execution due to a lack of available information on the state's lethal injection protocol, because state secrecy laws prohibit release of information on the lethal injection drugs' creation, quality, and reliability, even to the person who is to be executed.³⁷ A second person, Mikal Mahdi, has elected execution by firing squad, scheduled for 11 April.³⁸
19. On 25 January 2024, Alabama carried out an execution by nitrogen gas, the first such execution in U.S. history.³⁹ State authorities had asserted that the method would result in "unconsciousness in seconds," and after the execution described the execution as "textbook,"⁴⁰ but witnesses reported that the person shook and writhed for at least four

minutes, and he continued to breathe heavily for another few minutes.⁴¹ In September 2024, Alabama authorities carried out a second execution by nitrogen gas,⁴² prompting UN experts to express concern that the method of execution may amount to cruel, inhuman or degrading treatment, or even torture.⁴³ Despite these concerns, Alabama carried out its third nitrogen gas execution in November 2024.⁴⁴

Gender-based violence; Violence against women; Discrimination against women

Status of Implementation: Accepted, Partially / Temporarily Implemented

20. In the third-cycle UPR, the United States supported Georgia's recommendation to vigorously continue measures directed at the elimination of violence against women and girls,⁴⁵ and Kenya's recommendation to take the necessary measures to eliminate all forms of gender discrimination.⁴⁶
21. As of 27 February 2024, according to data gathered by the Cornell Center on the Death Penalty Worldwide, there were 44 ciswomen, six transwomen, and one transman on death rows in the United States.
22. In criminal legal systems in the United States, women and gender minorities/gender diverse people facing the death penalty experience (1) dismissal of and disregard for their relevant experiences surviving gender-based violence, (2) weaponization of gender-based stereotypes, and (3) the perpetuation of intersectional gender biases in the contexts of their criminalization, patriarchy, and racism. These oppressive, deeply rooted, and intersecting injustices result in gender-based, racial, and economic discrimination, violate the right to a fair trial, and shape the ways in which women and gender minorities/gender diverse people are sentenced to death.
23. Since the third-cycle UPR, the conditions facing women and gender minorities/gender diverse people facing the death penalty have legally worsened. On 20 January 2025, the day of his second inauguration, President Trump signed an executive order to expand application of the death penalty, described in greater detail in paragraphs 7-10 above, and also signed an executive order weaponizing the language of women's rights in attacking and undermining the existence and safety of gender-diverse communities.⁴⁷
24. These new federal policies on gender and the death penalty, along with Trump's other xenophobic, anti-Muslim, and anti-affirmative action executive orders,⁴⁸ further entrench discrimination and undermine the administration of justice.
25. The absence of diverse perspectives within criminal legal systems in the United States prevents a comprehensive understanding of the factors that lead women to commit crimes, particularly crimes related to survival from abuse or coercion.
26. On 13 January 2021, just days before Trump left office and against widespread public efforts to save her life, federal authorities executed Lisa Montgomery. On 3 January 2023, the state of Missouri killed Amber McLaughlin, who had been tried as a legally recognized man under the name Scott McLaughlin.

27. There are no women now on federal death row, but the current administration's policies and priorities have alarmed the human rights community regarding application of the death penalty, gender-biased criminalization, and racism.
28. There were numerous reasons why authorities should not have executed Lisa Montgomery, not least of which include the facts that she was born with permanent brain damage, survived a life of torture, was diagnosed with severe psycho-social disability, and was a victim of incest, child prostitution, and rape.⁴⁹ When she was a child, her stepfather sexually assaulted her and repeatedly raped her, and her mother beat her. Her family pressured her to marry her stepbrother, who perpetuated the abuse.⁵⁰ During this incestuous and abusive marriage, she gave birth to four children and was then sterilized against her will.⁵¹ She lived in dire poverty and authorities threatened to strip her of custody of her children.⁵² It is this context that gave rise to the incident of her arrest, involving the killing of a pregnant woman, taking her baby, and pretending the baby was her own child.⁵³
29. Along with Lisa Montgomery's legal team, "more than 1000 current and former prosecutors, anti-violence advocates, anti-trafficking organizations, advocates for abused and neglected children, and mental health advocates [had asked] the President to stop Lisa's execution."⁵⁴ Lisa Montgomery's nightmarish experiences of gender-based violence are not atypical—they reflect a consistent practice of criminal legal systems throughout the country sentencing survivors of gender-based violence to death.

The Prevalence of Gender-Based Violence in the Lives of Death Sentenced Women

30. Research published in 2023 by Cornell Law School Professor Sandra Babcock, Faculty Director of the Cornell Center on the Death Penalty Worldwide, and consultant Nathalie Greenfield, established for the first time the pervasive abuse and gender-based violence that women on death row have survived. Most women on death row in the United States are survivors of child abuse and 96% of women on death row in the United States experienced gender-based violence before they were incarcerated.⁵⁵ They have experienced sexual, physical, and/or psychological violence.⁵⁶
31. For women of color, the reality of gender-based violence as a pathway to death row is even more prevalent.⁵⁷ "All but one of the Black women currently on death row in the United States endured multiple and repeated forms of GBV before their incarceration; most also experienced abuse as a child. Further, every single Latina, Native, and Asian woman currently on death row experienced multiple incidents of GBV, and this population almost uniformly experienced child abuse."⁵⁸
32. These findings suggest that gender-based violence functions as a pathway for women to their death sentences, "yet by the time they are charged with capital crimes, they are no longer viewed as 'victims' or 'survivors.' Instead, their experiences of violence are papered over in a system that views them solely as perpetrators. By neglecting to consider the impact of GBV, courts risk punishing women for actions that are the direct consequence of their trauma. Given the high prevalence of GBV, it is imperative that defense lawyers, prosecutors, and judges understand the causes and effects of GBV, as well as its relevance to the crimes for which women are capitally charged and sentenced."⁵⁹

33. Research published in 2024 by Professor Sandra Babcock, Nathalie Greenfield, and Kathryn Adamson has also established that gender biases permeate the ways in which women are criminalized and sentenced to die. This research has revealed four common experiences of gender-injustice in the lives of women on death row: “motherhood, exposure to gender-based violence, disability, and lack of convictions for prior acts of violence.”⁶⁰ The data reveal that 85% of women sentenced to death were mothers at the time of the arrest, 96% were exposed to gender-based violence, over 80% had intellectual or psycho-social disabilities, over 90% had no prior violent convictions, and 71% had no prior convictions at all.⁶¹
34. The gender biases of courtroom actors play a critical role in how women are sentenced to die. Due to the deeply embedded nature of patriarchy, while it is possible that women too can carry gender biases, notably, it is statistically men who condemn women to die; women’s capital cases are prosecuted, defended, and adjudicated primarily by men. All-male defense teams represented 69% of the women on death row, men prosecuted 96% of the women on death row, and male judges presided over 80% of the capital trials of women.⁶²
35. The gender biases of legal system actors in the capital trials of women also shape the legal system’s disregard for experiences or evidence of gender-based violence. As Babcock and Greenfield have written, “in case after case, we observed that attorneys failed to present the ways in which violence has curtailed women’s choices, compromised their mental health, and led them to make ill-fated decisions. Perhaps one explanation is that capital defense lawyers—most of whom are male—rarely receive specialized training in the defense of women clients. Consequently, many do not know how to speak to a woman about her sexual history, intimate relationships, and experiences of violence. Defense attorneys’ ability to delve into these topics may be constrained by discomfort, ignorance, or bias. Moreover, because GBV in U.S. society is normalized, defense counsel may minimize the impact of women’s experiences of sexual or physical violence.”⁶³ Furthermore, when defense attorneys did raise gender-based violence, they did not do so in depth.⁶⁴
36. Even the gender and racial composition of juries contributes to sentences of death. Jurors in capital cases must be “death qualified,” meaning they must be willing to consider all sentencing options, including the death penalty.⁶⁵ And because women are more likely than men to oppose the death penalty, fewer women typically serve on juries in capital trials.⁶⁶ One recent study of jury selection in capital trials found that African American jurors, particularly women, were excluded from capital juries at higher rates than white males, and “regardless of race, women were excluded from juries at higher rate[s] than men.”⁶⁷
37. As highlighted in recent scholarship by Professor Sandra Babcock, three main pervasive stereotypes influence the judicial treatment of women in capital cases: hypersexuality, poor motherhood, and manipulateness.⁶⁸
38. The “hypersexual woman” trope portrays women as immoral and blameworthy due to their

sexual behavior. To discredit women defendants, prosecutors often highlight irrelevant details about women's sexual histories, such as their clothing or the number of partners they have had.⁶⁹ For example, in Brenda Andrew's case, Oklahoma prosecutors emphasized her affairs and displayed her underwear in court, arguing that a grieving widow would not wear such items.

39. The "bad mother" stereotype ties a woman's moral worth to her parenting. Prosecutors use anecdotes of poor parenting to argue for harsher sentences, even when irrelevant to the crime.⁷⁰ In Kerry Dalton's case, the state of California highlighted her perceived failures as a mother to justify the death penalty. The case of Melissa Lucio illustrates how the 'bad mother' stereotype can influence not only judicial proceedings but also police investigations. Following the tragic death of Ms. Lucio's two-year-old daughter, police aggressively interrogated Ms. Lucio, disproportionately focusing on her perceived failings as a mother rather than the forensic and eyewitness evidence suggesting the death resulted from an accidental fall. Authorities interpreted her calm demeanor during questioning as a lack of remorse, reinforcing the stereotype that a 'good mother' should display visible grief in a specific manner.⁷¹
40. The "manipulative schemer" stereotype paints women as deceitful and morally corrupt. This narrative undermines women's credibility and increases their perceived blameworthiness.⁷²

The Brenda Andrew Case: An Emblematic Turning Point

41. At Brenda Andrew's 2004 trial for the murder of her husband, prosecutors evoked gendered stereotypes to portray her as an unfit mother and immoral woman. They called witnesses to testify about her "provocative" clothing and her past sexual relationships, questioning "whether a good mother would dress or behave" the way she had.⁷³
42. In his closing argument to the jury, the prosecutor dramatically opened a suitcase, displaying Ms. Andrew's underwear, including intimate items, questioning the sincerity of her grief. This stunt aimed to dehumanize and discredit her, focusing on her personal life rather than the facts of the case.⁷⁴
43. On 21 January 2025, the U.S. Supreme Court reversed the lower court's decision in Ms. Andrew's case, recognizing that the introduction of such prejudicial, gendered evidence violated Ms. Andrew's due process rights under the Fourteenth Amendment. The Court emphasized that evidence so unduly prejudicial could render a trial fundamentally unfair.⁷⁵
44. This ruling⁷⁶ marks a historic precedent, as it is the first time the Supreme Court explicitly acknowledged that gender-based prejudices—such as attacking a woman's abilities as a mother or her private sex life—can violate constitutional rights.⁷⁷
45. This case illustrates the ways in which deeply ingrained gender stereotypes can shape capital trials, influencing both prosecution strategy and juror perceptions. It also highlights the urgent need for systemic reforms to prevent actors in criminal legal systems from leveraging such biases to subvert justice.⁷⁸

46. As mentioned in paragraph 10 above, Trump has directed the Attorney General to bring legal challenges against any Supreme Court precedents limiting application of the death penalty.

Persons with disabilities: protection and safety in situations of risk

47. Jurisprudence in the United States narrowly protects people with intellectual disabilities from the death penalty, but such protections do not extend to people with cognitive impairments. In *Gregg v. Georgia*, the Supreme Court upheld the constitutionality of the death penalty under strict conditions,⁷⁹ while *Atkins v. Virginia* later ruled that executing individuals with intellectual disabilities violates the Eighth Amendment's prohibition against cruel and unusual punishment.⁸⁰ Subsequent decisions, such as *Hall v. Florida* and *Moore v. Texas*, refined these standards, recognizing the limitations of IQ tests and the importance of assessing adaptive functioning when determining whether a person is constitutionally eligible for the death penalty.⁸¹ Despite these guidelines, state statutes that establish IQ score cutoffs fail to protect many people with cognitive impairments.⁸² This inconsistency allows courts to sentence to death people with conditions like Fetal Alcohol Spectrum Disorder (FASD)—conditions that entail cognitive impairments that manifest in ways that are similar to intellectual disabilities but that do not always meet strict clinical criteria.⁸³ Many people with FASD have cognitive and adaptive behavioral deficits that diminish their culpability, similar to people with intellectual disabilities.⁸⁴ The distinction between these populations in capital cases therefore raises serious equal protection and due process concerns.⁸⁵
48. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of Persons with Disabilities classify the execution of individuals with severe psycho-social or intellectual disabilities as cruel, inhuman, or degrading punishment, violating the rights to life and dignity.⁸⁶
49. Even though the Supreme Court has recognized that executing people with intellectual disabilities violates the prohibition against cruel and unusual punishment, approximately 85% of the people who were on federal death row as of 2020 had at least one serious mental impairment.⁸⁷
50. State laws also fail to protect people with cognitive impairments from the death penalty. For example, Carl Lindsey has languished on Ohio's death row. Prenatal alcohol exposure—likely exacerbated by abuse and substance use—is the primary cause of Mr. Lindsey's cognitive impairments. Yet neither state authorities nor defense counsel investigated his brain impairments, and the court did not learn of them before sentencing him to death in 1997. The court sentenced him to death as if he had full cognitive capacity. In 2019, post-conviction counsel enlisted an expert who diagnosed Mr. Lindsey with FASD, a disorder associated with decision-making, executive functioning, and adaptive behavioral deficiencies.⁸⁸ Mr. Lindsey's attorneys have presented this mitigating evidence on his behalf to state and federal courts for many years, but courts have repeatedly denied these efforts to vacate Mr. Lindsey's death sentence.⁸⁹
51. Moreover, the absence of a uniform definition of intellectual disability greatly increases

the risk that courts will apply *Atkins* arbitrarily.⁹⁰

Racial discrimination

Status of Implementation: Partially Accepted, Partially / Temporarily Implemented

52. In its third-cycle UPR, the United States supported in part recommendations to take effective measures to combat and eliminate racial discrimination.⁹¹
53. In a 2021 report to the Human Rights Committee, the United States stated that it “takes seriously addressing racial discrimination, including in our criminal justice system, and seeks to ensure that the justice system operates fairly and effectively for all.”⁹² As discussed above, the United States continues to fall short of this commitment.
54. Although around one half of all homicide victims are African American, over 75% of all people who have been executed had been sentenced to death for killing white victims.⁹³
55. A comprehensive study by the Death Penalty Information Center puts it bluntly: “Wrongful capital convictions are not race neutral.”⁹⁴ Black people are more likely to be wrongfully convicted and sentenced to death than their white counterparts, and authorities are significantly more likely to engage in official misconduct to secure wrongful convictions of Black defendants (78.8%) than white defendants (58.2%).⁹⁵ False accusations or perjury contributed to wrongful death sentences of 70.7% of Black exonerees, compared with 67.6% of exonerees overall.⁹⁶ Exonerations for Black people on death row took an average of 4.3 years longer than exonerations for their white counterparts.⁹⁷
56. A study by the Equal Justice Initiative (EJI), published in early 2025, found that in dozens of capital trials where the racial makeup of the jury was known, “innocent individuals were condemned to die based on verdicts reached by nondiverse juries. Black jurors were severely underrepresented in, and sometimes completely absent from, the decision-making process in those trials.”⁹⁸
57. Racial bias can influence jury selection. The EJI study highlighted the experiences of Curtis Flowers, a Black man, who stood trial six times on charges of robbing and killing four people in Mississippi. Juries convicted him the first three times, but on appeal, courts repeatedly reversed his convictions, holding that “the prosecutor, Montgomery County District Attorney Doug Evans, had committed prosecutorial misconduct or violated *Batson* by using his peremptory strikes to systematically exclude Black people from serving as jurors. The first trial, in 1997, was decided by an all-white jury. The second and third trials, in 1999 and 2004, were each decided by 12-person juries that included just one Black member,” even though the county was approximately 45% Black at the time.⁹⁹ During the fourth and fifth trials, more racially diverse juries failed to reach a unanimous verdict, resulting in mistrials. After the second mistrial in 2008, authorities arrested one of the Black jurors “for perjury on allegations of lying during jury selection. Those charges were later dropped.”¹⁰⁰ In 2010, a jury including just one Black juror sentenced Mr. Flowers to death, but the Supreme Court in 2019 reversed his conviction, concluding that because DA Evans had struck 41 of 42 Black people in the jury pool, he appeared to flout Supreme

Court precedent prohibiting racially based jury strikes.¹⁰¹ The state Attorney General subsequently recommended dismissal of the charges, noting evidence supporting Mr. Flowers' innocence.¹⁰²

58. In February 2025, in the case of *North Carolina v. Bacote*, a state judge found evidence of significant racial bias in the jury selection in a capital case.¹⁰³ Hasson Bacote challenged his death sentence under the North Carolina Racial Justice Act, a novel state law that has since been repealed.¹⁰⁴ The law allowed people facing the death penalty to submit evidence of racial bias as part of their defense on appeal, and called for petitioners who showed sufficient evidence of racial bias to be resentenced to life without parole.¹⁰⁵ People who brought challenges under the law before it was repealed retained their claims, and their attempts to find justice under the law continue.¹⁰⁶
59. The *Bacote* court found that prosecutors deliberately struck Black jurors from jury service at three times the rate of white jurors.¹⁰⁷ At the time of the ruling, Mr. Bacote had already received a gubernatorial sentence commutation to life without parole. The ruling, however, remains an important precedent for the 100-plus individuals with pending claims under the law and highlights persistent issues of racial bias in criminal legal systems in the United States.¹⁰⁸

II. RECOMMENDATIONS

60. This stakeholder report suggests the following recommendations for the Government of the United States of America:

- Abolish the death penalty and replace it with penalties that are fair, proportionate, and consistent with international human rights standards.
- Ratify the Second Optional Protocol to the ICCPR.
- In the interim:
 - o Establish a *de jure* moratorium on executions at the federal level.
 - o Leverage the Food and Drug Administration's authority to mandate full transparency on lethal injection drugs.
 - o Commission an independent scientific review of lethal injection protocols and whether they may cause unnecessary pain and suffering.
 - o Prohibit the use of pentobarbital for single-drug lethal injections.
 - o Create incentives for states to combat racial bias in their criminal legal systems, especially regarding jury selection in capital cases.
 - o Require all states that retain the death penalty to fully fund a program to provide all defendants in capital cases with qualified legal counsel and adequate funding and staffing to conduct a thorough investigation for both the guilt and penalty phases of trial, and to provide qualified legal assistance to people on death row for any appeals, habeas corpus petitions, or requests for clemency or pardon.

- o On an annual basis, publish comprehensive data about all death sentences and executions since the last disclosure, disaggregated by sex/gender, age, race/ethnicity, nationality, crime of conviction, relationship to any codefendants or victims, and current location.

Regarding people with intellectual disabilities or cognitive impairments who come into conflict with the law

- o Abolish the death penalty for all people with cognitive impairments.
- o Adopt a mandatory, standardized evaluation process for all capital defendants to assess cognitive and adaptive functioning using clinically approved methods.
- o Consistent with medical best practices and Supreme Court precedent, require courts to assess adaptive functioning comprehensively, rather than relying primarily on IQ scores, in determining whether a defendant is exempt from execution under *Atkins v. Virginia*.
- o Increase funding for rehabilitative programs and alternatives to incarceration that consider the specific needs of individuals with cognitive impairments.

Regarding women and gender minorities / gender diverse people who come into conflict with the law

- o Issue a directive to all federal courts and federal and state lawmakers providing guidelines for implementation of the Supreme Court's decision in the Brenda Andrew case, and ensure that the decision is a baseline requirement incorporated into the training of lawyers.
- o Recognize a legally protected class based on intersectionality for women of color who are subjected to the intersection of race- and gender-based discrimination through policing, prosecutorial charging decisions, juror and judge biases, and narratives that weaponize intersectional gender biases to criminalize and condemn women and gender minorities/gender diverse people.
- o Mandate regular trainings for judges, prosecutors, and defense lawyers who handle capital cases on recognizing and addressing intersectional gender stereotypes and gender-based violence.
- o Prioritize protection for survivors of gender-based violence rather than over-prosecution of such survivors as alleged perpetrators.
- o Establish legal protections for survivors of gender-based violence to ensure that prosecutors who may seek to criminalize them recognize that they are primarily victims and survivors.

- o Reduce policing and instead invest financial, educational, legal, and health/wellness resources in the communities most historically ravaged by over-policing, over-charging, and over-incarceration.
- o Establish clear pathways for positions in academia, law schools, and amongst judges for people who represent diverse perspectives and life experiences, particularly regarding race, gender, and economic discrimination.

¹ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States, U.N. Doc. A/HRC/46/15 (15 December 2020), ¶ 26.59, .188, .193, .202.

² Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1, ¶ 11, 22.

³ *Id.* ¶ 2.

⁴ *Id.* ¶ 10.

⁵ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States, U.N. Doc. A/HRC/46/15 (15 December 2020), ¶ 26.178 Continue efforts towards the abolition of the death penalty (Romania); ¶ 26.179 Establish a moratorium on the death penalty and executions at the federal level and encourage the federated states to do the same (Switzerland); ¶ 26.180 Repeal the decision to resume federal capital punishment and take steps to promote federal- and state-level moratoriums on executions with a view to permanently abolishing the death penalty (Norway); ¶ 26.181 Consider the possibility of abolishing the death penalty in those states that still maintain it, in line with Sustainable Development Goal 16 (Paraguay); ¶ 26.182 Continue efforts towards abolishing the death penalty and halting executions (Austria); ¶ 26.183 Consider establishing a moratorium on the death penalty in States that have not yet abolished it (Chile); ¶ 26.184 Ensure that federal and state authorities impose a moratorium on executions with view to abolishing the death penalty nationwide (Portugal); ¶ 26.185 Impose a moratorium on the death penalty at the federal and state levels aiming at its complete abolition (Rwanda); ¶ 26.186 Impose a moratorium on the death penalty at the federal and state levels aiming at its complete abolition (Slovenia); ¶ 26.187 Impose a moratorium on executions with a view to abolishing the death penalty nationwide (Czechia); ¶ 26.188 Impose a moratorium on executions of death sentences at the federal and state levels and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming the abolition of the death penalty (Slovakia); ¶ 26.189 Impose urgently a moratorium on executions and work towards the complete abolition of the death penalty (New Zealand); ¶ 26.190 Reimpose the federal moratorium on capital punishment, with a view to eventual abolition of the death penalty (Australia); ¶ 26.191 Restore a moratorium on the use of the death penalty at the federal level (Cyprus); ¶ 26.192 Impose a moratorium on executions with a view to abolishing the death penalty nationwide (Iceland); ¶ 26.193 Ratify the Second Option Protocol to the International Covenant on Civil and Political Rights, aiming at the executions as the first step towards the official abolition of the death penalty. Commute the death penalty of the Argentinian citizen Victor Saldano, who has been on death row since 1996 (Argentina); ¶ 26.194 Take steps towards establishing an immediate moratorium on the death penalty, with a view to its complete abolition (Bulgaria); ¶ 26.195 Introduce a federal moratorium on the death penalty aiming at complete abolition (Canada); ¶ 26.196 Establish a moratorium on all pending death sentences as a first step towards the abolition of capital punishment in all states of the country (Spain); ¶ 26.198 Declare a moratorium on executions at the federal level with a view to definitively abolishing the death penalty for all crimes (France); ¶ 26.199 Reinstate a moratorium on the death penalty at the federal and state levels where applicable, aiming at its complete abolition (Germany); ¶ 26.200 Immediately introduce a moratorium on the federal death penalty and cease sentencing juvenile offenders to life without parole (Ireland); ¶ 26.201 Take into consideration the possibility of adopting a moratorium on capital executions at the state and federal levels (Italy); ¶ 26.202 Establish a moratorium on the death penalty with a view to its eventual abolition and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Latvia); ¶ 26.203 Establish immediately an official moratorium on executions and commute all death sentences with a view to abolishing the death penalty (Lichtenstein); ¶ 26.204 Establish a moratorium on the death penalty at the federal level with a view to

complete abolition and take measures to avoid racial bias in capital punishment (Malta); ¶ 26.205 Introduce an immediate moratorium on the application of the death penalty as a step towards its complete abolishment in the future (Lithuania); ¶ 26.206 Introduce a moratorium on the use of the death penalty at the federal level as a first step towards its abolition (Sweden); ¶ 26.208 Take all necessary steps to work towards an immediate moratorium on the execution of the death penalty with a view to complete abolishment, in line with international human rights standards such as the right to life (Netherlands); ¶ 26.210 Consider legislatively abolishing the practice of the death penalty in all states (Cambodia); ¶ 26.211 Consider abolishing the death penalty (Fiji).

⁶ *Id.* ¶ 26.178 (Continue efforts towards the abolition of the death penalty (Romania); ¶ 26.180 Repeal the decision to resume federal capital punishment and take steps to promote federal- and state-level moratoriums on executions with a view to permanently abolishing the death penalty (Norway); ¶ 26.181 Consider the possibility of abolishing the death penalty in those states that still maintain it, in line with Sustainable Development Goal 16 (Paraguay); ¶ 26.182 (Continue efforts towards abolishing the death penalty and halting executions (Austria); ¶ 26.183 (Consider establishing a moratorium on the death penalty in States that have not yet abolished it (Chile); ¶ 26.189 Impose urgently a moratorium on executions and work towards the complete abolition of the death penalty (New Zealand); ¶ 26.210 Consider legislatively abolishing the practice of the death penalty in all states (Cambodia); ¶ 26.211 Consider abolishing the death penalty (Fiji). We note the U.S. accepted Malta's recommendation only as it relates to taking measures to avoid racial bias in capital punishment. *Id.* ¶ 26.204; see Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1 ¶ 10 (hereinafter referred to as the "Addendum").

⁷ *State by State*, DEATH PENALTY INFO. CTR., available at <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (last accessed Mar. 6, 2025); *Execution Database*, DEATH PENALTY INFO. CTR., available at <https://deathpenaltyinfo.org/facts-and-research/data/executions?year=2021&year=2022&year=2023&year=2024> (last accessed Mar. 6, 2025).

⁸ See *Execution Database*, DEATH PENALTY INFO. CTR., available at <https://deathpenaltyinfo.org/facts-and-research/data/executions?year=NaN&year=2025> (last accessed Mar. 6, 2025); *Upcoming Executions*, DEATH PENALTY INFO. CTR. (last updated Mar. 4, 2025), available at <https://deathpenaltyinfo.org/executions/upcoming-executions>. Execution warrants issued in Ohio account for 27 of the 39 upcoming executions. See *Upcoming Executions*, DEATH PENALTY INFO. CTR. (last updated Mar. 4, 2025), available at <https://deathpenaltyinfo.org/executions/upcoming-executions>. Notably, however, Ohio Governor Mike DeWine has indicated that no executions will occur until the state's legislature adopts a new method of execution. See, e.g., Julie Carr Smyth et al., *Ohio Governor: Lethal Injection No Longer Execution Option*, AP (Dec. 8, 2020), <https://apnews.com/article/legislature-ohio-coronavirus-pandemic-mike-dewine-executions-f7f1542613ae6922444d77341d4d3b40>.

⁹ *State by State*, DEATH PENALTY INFO. CTR., available at <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (last accessed Mar. 6, 2025).

¹⁰ *Death Row Overview*, DEATH PENALTY INFO. CTR. (last updated January 1, 2025), available at <https://deathpenaltyinfo.org/death-row/overview?x-craft-preview=831701e36f517898fa2c995d39b64104e8e6101af83d78e05826cdbb99a12b6dzgldbijsmv>.

¹¹ Robert Dunham, *Death Row U.S.A. Winter 2025*, LEGAL DEF. FUND (last updated January 1, 2025), available at <https://www.naacpldf.org/wp-content/uploads/DRUSAWinter2025.pdf>.

¹² See, e.g., Aimee Clesi, *Reflections on the Persistence of the U.S. Federal Death Penalty*, UNI. OF OXFORD, DEATH PENALTY RSCH. UNIT (Feb. 3, 2025), <https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2025/02/reflections-persistence-us-federal-death-penalty>. Compare, e.g., Press Release, *Attorney General Merrick B. Garland Imposes a Moratorium on Federal Executions; Orders Review of Policies and Procedures*, U.S. DEP'T OF JUSTICE (July 1, 2021), <https://www.justice.gov/archives/opa/pr/attorney-general-merrick-b-garland-imposes-moratorium-federal-executions-orders-review>; Deepa Shivaram, *Biden Commutes Sentences of 37 Federal Death Row Prisoners*, NPR (Dec. 24, 2024), <https://www.npr.org/2024/12/23/g-s1-38794/biden-death-row-commutations>; Will Weissert, *Biden Sets Record by Commuting Sentences of Nearly 2,500 People Convicted on Nonviolent Drug Charges*, AP (Jan. 17, 2025), <https://apnews.com/article/biden-commutes-2500-nonviolent-drug-offenders-83174cd0602a0bf5d491aa60184f3568>, with Lee Kovarsky, *The Trump Executions*, 100 TEX. L. REV. 621,

633 (2022) (“The Trump Executions were historically aberrant, landing in federal courts because of outlier political and bureaucratic behavior.”); *id.* at 681.

¹³ See, e.g., Deepa Shivaram, *Biden Commutes Sentences of 37 Federal Death Row Prisoners*, NPR (Dec. 24, 2024), <https://www.npr.org/2024/12/23/g-s1-38794/biden-death-row-commutations>; Alana Wise, *The Justice Department Is Pausing Federal Executions After They Resumed Under Trump*, NPR (July 1, 2021), <https://www.npr.org/2021/07/01/1012366520/the-justice-department-is-pausing-federal-executions-after-they-resumed-under-tr>.

¹⁴ Shannon Heffernan et al., *Trump’s New Order to Expand the Death Penalty Misses Key Details*, THE MARSHALL PROJECT (Jan. 22, 2025), <https://www.themarshallproject.org/2025/01/22/trump-death-penalty-executive-order>.

¹⁵ See, e.g., Hannah L. Freedman, *The Modern Federal Death Penalty: A Cruel and Unusual Punishment*, 107 CORNELL L. REV. 1689, 1691–93 (2022) (providing a more detailed discussion on the federal death penalty and the recent federal executions); Isaac Arnsdorf, *Inside Trump and Barr’s Last-Minute Killing Spree*, PROPUBLICA, (Dec. 23, 2020) <https://www.propublica.org/article/inside-trump-and-barrs-last-minute-killing-spree>.

¹⁶ Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02012/restoring-the-death-penalty-and-protecting-public-safety>.

¹⁷ *Id.*; see also, Office of the Attorney General, *Restoring a Measure of Justice to the Families of Victims of Commuted Murderers*, U.S. DEP’T OF JUSTICE (Feb. 5, 2025), available at <https://www.justice.gov/ag/media/1388526/dl?inline>.

¹⁸ Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02012/restoring-the-death-penalty-and-protecting-public-safety>; see Office of the Attorney General, *Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions*, U.S. DEP’T OF JUSTICE (Feb. 5, 2025), available at <https://www.justice.gov/ag/media/1388561/dl?inline> (citing 18 U.S.C. § 3591(b)(1) (discussing certain offenses involving extremely large quantities of drugs). Most strikingly, the DOJ’s enforcement memorandum categorizes a “capital crime by an alien illegally present in the United States” as a type of aggravating circumstance that warrants federal prosecutors to seek the death penalty.” *Id.*

¹⁹ Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02012/restoring-the-death-penalty-and-protecting-public-safety>; Office of the Attorney General, *Restoring a Measure of Justice to the Families of Victims of Commuted Murderers*, U.S. DEP’T OF JUSTICE (Feb. 5, 2025), available at <https://www.justice.gov/ag/media/1388526/dl?inline> (encouraging federal attorneys to assist local prosecutors with seeking death sentences for 37 commuted individuals under state law); Office of the Attorney General, Department of Justice, *Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions* (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388561/dl?inline> (citing Office of the Attorney General, *Guidance Regarding Use of Capital Punishment in Drug-Related Prosecutions*, U.S. DEP’T OF JUSTICE (Mar. 20, 2018), available at <https://www.justice.gov/archives/opa/press-release/file/1045036/dl?inline>); Ryan Lucas, *New Attorney General Moves to Align Justice Department with Trump’s Priorities*, NPR (Feb. 5, 2025), <https://www.npr.org/2025/02/05/g-s1-46698/attorney-general-memos-weaponization-trump>.

²⁰ See, e.g., *Coker v. Georgia*, 433 U.S. 584 (1977); *Glossip v. Gross*, 576 U.S. 863 (2015) (Breyer, J., dissenting) (“[T]he finality of death creates a ‘qualitative difference’ between the death penalty and other punishments . . . [t]hat ‘qualitative difference’ creates ‘a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.’”) (citing *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976)); Hannah L. Freedman, *The Modern Federal Death Penalty: A Cruel and Unusual Punishment*, 107 CORNELL L. REV. 1689, 1728 (2022) (discussing the evolution of Supreme Court death penalty-related jurisprudence).

²¹ United States White House, Presidential Actions – Executive Order, *Restoring the Death Penalty and Protecting Public Safety*, January 20, 2025. Available at <https://www.whitehouse.gov/presidential-actions/2025/01/restoring-the-death-penalty-and-protecting-public-safety/>.

²² See, e.g., Hannah L. Freedman, *The Modern Federal Death Penalty: A Cruel and Unusual Punishment*, 107 CORNELL L. REV. 1689, 1730 (2022) (“Thus, a sentence of death violates the Eighth Amendment if it is a product of a process in which the sentencer’s discretion is insufficiently channeled ‘toward nonarbitrary results.’”) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 822 n.7 (1988); Chad Flanders, *What Makes the Death Penalty Arbitrary? (And Does It Matter if It Is?)*, 55 WISC. L. REV. 56 (2019) (discussing the harms arising from intrinsic and extrinsic arbitrariness in death penalty cases).

²³ See John Blume, *Ghosts of Executions Past: A Case Study of Executions in South Carolina in the Pre-Furman Era*, 107 Cornell L. Rev. 1799 (2022).

²⁴ See, e.g., Press Release, *Attorney General Merrick B. Garland Imposes a Moratorium on Federal Executions; Orders Review of Policies and Procedures*, U.S. DEP'T OF JUSTICE (July 1, 2021), <https://www.justice.gov/archives/opa/pr/attorney-general-merrick-b-garland-imposes-moratorium-federal-executions-orders-review>.

²⁵ *Id.*

²⁶ See, e.g., *id.*; Michael Tarm & Alanna Durkin Richer, *What's the Status of the US Death Penalty?*, AP (Mar. 13, 2023), <https://apnews.com/article/death-penalty-federal-executions-saipov-868f1175af273ecf925cc59eaf889278> (“Under Garland, the Justice Department hasn’t sought the death penalty in any new cases. It also has withdrawn requests for capital punishment sought by prior administrations against more than two dozen defendants.”).

²⁷ See Office of the Attorney General, *Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions*, U.S. DEP'T OF JUSTICE (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388561/dl?inline>.

²⁸ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States, U.N. Doc. A/HRC/46/15 (15 December 2020), ¶ 26.197; Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1, ¶ 11.

²⁹ See *Methods of Execution*, DEATH PENALTY INFO. CTR., available at <https://deathpenaltyinfo.org/executions/methods-of-execution> (last accessed Mar. 6, 2025).

³⁰ Office of Legal Policy, *Review of the Federal Execution Protocol Addendum and Manner of Execution Regulations*, U.S. DEP'T OF JUSTICE 3 (Jan. 2025), available at <https://www.justice.gov/archives/ag/media/1384566/dl>.

³¹ Death Penalty Information Center, *Department of Justice Withdraws Federal Execution Protocol and Keeps Moratorium on Executions in Place* (Jan. 16, 2025), <https://deathpenaltyinfo.org/departments-of-justice-withdraws-federal-execution-protocol-and-keeps-moratorium-on-executions-in-place>.

³² Death Penalty Information Center, *NPR Investigation of Lethal-Injection Autopsies Finds Executed Prisoners Experience Sensations of Suffocation and Drowning* (Sept. 25, 2020), <https://deathpenaltyinfo.org/npr-investigation-of-lethal-injection-autopsies-finds-executed-prisoners-experience-sensations-of-suffocation-and-drowning>.

³³ Office of the Attorney General, Department of Justice, *Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions* (Feb. 5, 2025), at 3, <https://www.justice.gov/ag/media/1388561/dl?inline> (citing Office of the Attorney General, *Guidance Regarding Use of Capital Punishment in Drug-Related Prosecutions*, U.S. DEP'T OF JUSTICE (Mar. 20, 2018), available at <https://www.justice.gov/archives/opa/press-release/file/1045036/dl?inline>); Ryan Lucas, *New Attorney General Moves to Align Justice Department with Trump's Priorities*, NPR (Feb. 5, 2025), <https://www.npr.org/2025/02/05/g-s1-46698/attorney-general-memos-weaponization-trump>.

³⁴ Aleksandra Michalska & Jonathan Allen, *South Carolina carries out first firing squad execution in US in 15 years*, Reuters, Mar. 8, 2025, <https://www.reuters.com/world/us/south-carolina-carry-out-first-firing-squad-execution-us-15-years-2025-03-07/>.

³⁵ Aleksandra Michalska & Jonathan Allen, *South Carolina carries out first firing squad execution in US in 15 years*, Reuters, Mar. 8, 2025, <https://www.reuters.com/world/us/south-carolina-carry-out-first-firing-squad-execution-us-15-years-2025-03-07/>.

³⁶ S.C. Code § 24-3-530.

³⁷ See S.C. Code Ann. § 24-3-580; see also Death Penalty Information Center, *South Carolina Preparing for State's First Firing Squad Execution, Marking First Firing Squad Execution in U.S. in 15 Years* (Mar. 4, 2025), <https://deathpenaltyinfo.org/south-carolina-preparing-for-states-first-firing-squad-execution-marking-first-firing-squad-execution-in-u-s-in-15-years>.

³⁸ *Second South Carolina man chooses to die by firing squad*, Associated Press, Guardian, 28 Mar. 2025, <https://www.theguardian.com/us-news/2025/mar/28/second-south-carolina-firing-squad-execution>; Greg Norman, *Second South Carolina inmate chooses execution by firing squad*, Fox News, Mar. 28, 2025, <https://www.foxnews.com/us/second-south-carolina-inmate-chooses-execution-firing-squad>.

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- ⁴² Sam Cabral, *Alabama carries out second nitrogen gas execution in US*, BBC News, 26 Sept. 2024, <https://www.bbc.com/news/articles/cm246p3npdqo>.
- ⁴³ *United States: Experts call for urgent ban on executions by nitrogen gas in Alabama*, Press Release, UN Office of the High Commissioner for Human Rights, 20 Nov. 2024, <https://www.ohchr.org/en/press-releases/2024/11/united-states-experts-call-urgent-ban-executions-nitrogen-gas-alabama>.
- ⁴⁴ *Alabama carries out nation's 3rd nitrogen gas execution*, Associated Press, NPR News, Nov. 22, 2024, <https://www.npr.org/2024/11/22/nx-s1-5201699/alabama-nitrogen-gas-execution>.
- ⁴⁵ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States, U.N. Doc. A/HRC/46/15 (15 December 2020), ¶ 26.232; Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1, ¶ 6.
- ⁴⁶ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States, U.N. Doc. A/HRC/46/15 (15 December 2020), ¶ 26.143; Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1, ¶ 6.
- ⁴⁷ United States White House, Presidential Actions – Executive Order, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Government*, January 20, 2025. Available at <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.
- ⁴⁸ To best understand the totality of circumstances, a full list of the executive orders issued by the United States White House in 2025 is available here: <https://www.whitehouse.gov/presidential-actions/>.
- ⁴⁹ Cornell Center on the Death Penalty Worldwide, *Lisa Montgomery*, available at <https://dpw.lawschool.cornell.edu/lisa-montgomery-a-victim-of-incest-child-prostitution-and-rape-faces-execution/> (updated January 13, 2021).
- ⁵⁰ *Ibid.*
- ⁵¹ *Ibid.*
- ⁵² *Ibid.*
- ⁵³ *Ibid.*
- ⁵⁴ *Ibid.*
- ⁵⁵ Babcock, Sandra and Greenfield, Nathalie, Gender, Violence, and the Death Penalty (April 10, 2023). California Western International Law Journal, Vol. 53 (2023), Available at SSRN: <https://ssrn.com/abstract=4416558>.
- ⁵⁶ *Ibid.*
- ⁵⁷ The relationship between women on death row and their co-defendants is also revealing about gender injustice, gender-based violence, and the death penalty. Gender based violence also plays a role in the trajectory of women towards death row. From research published in 2024, 30 out of 48 women had a co-defendant (nearly all co-defendants were male), of the co-defendants 19 were intimate partners, nearly all the intimate partner co-defendants were abusive. Babcock, Sandra and Greenfield, Nathalie and Adamson, Kathryn, *Women on Death Row in the*

United States (April 1, 2024). 46 Cardozo Law Review 1 (2024), Available at SSRN: <https://ssrn.com/abstract=4798360>.

⁵⁸ Babcock, Sandra and Greenfield, Nathalie, Gender, Violence, and the Death Penalty (April 10, 2023). California Western International Law Journal, Vol. 53 (2023), Available at SSRN: <https://ssrn.com/abstract=4416558>.

⁵⁹ Ibid.

⁶⁰ Babcock, Sandra and Greenfield, Nathalie and Adamson, Kathryn, Women on Death Row in the United States (April 1, 2024). 46 Cardozo Law Review 1 (2024), Available at SSRN: <https://ssrn.com/abstract=4798360>.

⁶¹ Ibid.

⁶² Ibid.

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⁶⁵ Capital Punishment in Context, *Death Qualification*, accessible at :

<https://capitalpunishmentincontext.org/resources/deathqualification> (last visited Mar.3, 2025).

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⁶⁷ Marina Rubio, *Jury of Your Peers?: How Death Disqualification Kills Diversity Among Jurors*, Race & Social Justice Law Review, Oct. 31, 2022, <https://race-and-social-justice-review.law.miami.edu/jury-of-your-peers-how-death-disqualification-kills-diversity-among-jurors/>.

⁶⁸ Sandra Babcock, Gendered Capital Punishment, 31 Wm. & Mary J. Race, Gender & Soc. Just. (forthcoming 2025).

⁶⁹ Cynthia Calkins & Natalia Feldgun, *Did Sex Shaming Lead to the Death Penalty?*, Am. Psych. Ass'n (2024), cited in Sandra Babcock, Gendered Capital Punishment, 31 Wm. & Mary J. Race, Gender & Soc. Just. (forthcoming 2025), at 12.

⁷⁰ Sandra Babcock, Gendered Capital Punishment, 31 Wm. & Mary J. Race, Gender & Soc. Just. (forthcoming 2025), at 14.

⁷¹ Cornell Center on the Death Penalty Worldwide, *Melissa Lucio*, accessible at:

<https://deathpenaltyworldwide.org/advocacy/melissa-lucio/>.

⁷² Deborah Epstein & Lisa Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. Pa. L. Rev. 399, 425 (2019), cited in Sandra Babcock, Gendered Capital Punishment, 31 Wm. & Mary J. Race, Gender & Soc. Just. (forthcoming 2025), at 16.

⁷³ Leah Roemer, *Supreme Court Rules in Favor of Only Woman on Oklahoma Death Row, Confirming Admission of Prejudicial, Gendered Evidence Can Violate Due Process Rights*, Death Penalty Information Center, January 22, 2025, accessible at: <https://deathpenaltyinfo.org/supreme-court-rules-in-favor-of-only-woman-on-oklahoma-death-row-confirming-admission-of-prejudicial-gendered-evidence-can-violate-due-process-rights>.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ *Andrew v. White*, 604 U. S. ____ (2025) (*per curiam*). Available at https://www.supremecourt.gov/opinions/24pdf/23-6573_m647.pdf (last accessed April 3, 2025).

⁷⁷ Leah Roemer, *Supreme Court Rules in Favor of Only Woman on Oklahoma Death Row, Confirming Admission of Prejudicial, Gendered Evidence Can Violate Due Process Rights*, Death Penalty Information Center, January 22, 2025, accessible at: <https://deathpenaltyinfo.org/supreme-court-rules-in-favor-of-only-woman-on-oklahoma-death-row-confirming-admission-of-prejudicial-gendered-evidence-can-violate-due-process-rights>.

⁷⁸ Ibid.

⁷⁹ *Gregg v. Georgia*, 428 U.S. 153, 183–87, 206–07 (1976) (plurality opinion) (reasoning that the death sentence can be a form of deterrence and retribution in extreme criminal cases).

⁸⁰ *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). Specifically, the Court reasoned that people with intellectual disabilities have diminished culpability because they have “subaverage intellectual functioning” and “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” *Id.* at 318. Therefore, the Court explained that the justifications for the death penalty—deterrence and retribution—are not effective theories of punishment for people with intellectual disabilities. *Id.* at 317–21.

⁸¹ *Hall v. Florida*, 572 U.S. 701, 724 (2014) (establishing that a capital defendant with an IQ score within the range of standard error in the IQ cutoff (70) should be given the opportunity to present additional evidence of their intellectual disability); *Moore v. Texas*, 581 U.S. 1, 15 (2017).

⁸² Jennifer LaPrade & John L. Worrall, *Determining Intellectual Disability in Death Penalty Cases: A State-by-State Analysis*, 3 J. OF CRIM. JUST. AND L. 1, 7–14 (2020). Many states require that a defendant test within a certain IQ range to satisfy the intellectual functioning prong of the intellectual disability definition to be exempt from the death penalty. *See, e.g.*, Ariz. Rev. Stat. § 13-753 (2017) (requiring IQ of 70 or below); Ark. Code Ann. § 5-4-618 (2017) (requiring IQ of 65 or below); Fla. Stat. § 921.137 (2017) (requiring IQ that is two or more standard deviations from the mean IQ score). However, most state statute definitions do not create an IQ score cutoff. *See, e.g.*, Ind. Code § 35-36-9-2 (2017); La. Code Crim. Proc. art. 905.5.1 (2017); Miss. Code § 41-21-61 (2017); Pa. C.S. § 50:4102 (2017). Ohio law generally defines intellectual disability as “a disability characterized by having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.” *State v. Lott*, 779 N.E.2d 1011, 1014 (Ohio 2002). *But see State v. Ford*, 140 N.E.3d 616, 652–53 (Ohio 2019) (citing *Moore*, 581 U.S. at 15). In *Ford*, the Ohio Supreme Court held that, where a capital defendant’s IQ score fell within the intellectual-functioning deficit IQ range, the court must then consider the defendant’s adaptive functioning deficits to determine if they are intellectually disabled and thus ineligible for the death penalty. Therefore, an Ohio defendant cannot be exempted from the death penalty under *Atkins* unless they have an IQ score of around 70 or below when adjusted for the standard error of measurement.

⁸³ Christopher Fanning, *Defining Intellectual Disability: Fetal Alcohol Spectrum Disorders and Capital Punishment*, 38 RUTGERS L. REC. 97, 108 (2010–2011).

⁸⁴ *Atkins v. Virginia*, 536 U.S. 304, 317–21 (2002); U.S. Const. amend. XIV.

⁸⁵ Christopher Fanning, *Defining Intellectual Disability: Fetal Alcohol Spectrum Disorders and Capital Punishment*, 38 RUTGERS L. REC. 97, 108 (2010–2011).

⁸⁶ *See* G.A. Res. 217(III) A, Universal Declaration of Human Rights, arts. 1, 3 (Dec. 10, 1948); G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 14 (Dec. 16, 1966), G.A. Res. 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, (Dec. 10, 1984); G.A. Res. A/RES/61/106, Convention on the Rights of Persons with Disabilities, art.1 (Dec. 12, 2006); G.A. Res. 260 A(III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948); G.A. Res. 2106 (XX), International Covenant on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965), G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination against Women (Dec. 18, 1979), G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989); G.A. Res. 2200A (XXI); *see also* Juan Méndez, *The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment*, 20 HUM. RTS. BRIEF, 2, 3 (2012).

⁸⁷ Robert Dunham, *INSIGHT: Vast Majority on Federal Death Row Have Significant Impairments*, BL (July 8, 2020, 4:01AM), <https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-vast-majority-on-federal-death-row-have-significant-impairments>.

⁸⁸ Francesco Sessa et al., *Understanding the Relationship between Fetal Alcohol Spectrum Disorder (FASD) and Criminal Justice: A Systematic Review*, 10 HEALTHCARE 84, 91 (2022).

⁸⁹ *Lindsey v. Warden*, No. 1:03-CV-702, 2021 WL 3046633, at *8–9 (S.D. Ohio July 20, 2021) (denying post-judgment motion to file a fourth amended petition that included claims pertaining to FASD); *Lindsey v. Jenkins*, No. 21-3745, 2022 WL 20854727, at *1–2 (6th Cir. Dec. 1, 2022) (denying certificate of appealability), *cert. denied*, 144 S. Ct. 333 (2023); *State v. Lindsey*, 2023 WL 3807844, at *1–2 (Ohio Ct. App. June 5, 2023) (denying petition for post-conviction relief); *State v. Lindsey*, 2024 WL 4664173, at *1–2, *9 (Ohio Ct. App. Nov. 4, 2024) (denying petition for post-conviction relief).

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- ⁹⁰ Jennifer LaPrade & John L. Worrall, *Determining Intellectual Disability in Death Penalty Cases: A State-by-State Analysis*, 3 J. of Crim. Just. and L. 1, 18 (2020).
- ⁹¹ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States, U.N. Doc. A/HRC/46/15 (15 December 2020), ¶ 26.112, .113, .115-.119; Report of the Working Group on the Universal Periodic Review, Addendum, (Mar. 4, 2021), U.N. Doc. A/HRC/46/15/Add.1, ¶¶ 6-7.
- ⁹² Human Rights Committee, *Fifth periodic report submitted by the United States under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (Nov. 11, 2021), U.N. Doc. CCPR/C/USA/5, ¶ 17.
- ⁹³ See *Race, Race and the Death Penalty by the Numbers*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/biases-and-vulnerabilities/race/race-and-the-death-penalty-by-the-numbers> (last visited Mar. 7, 2025).
- ⁹⁴ Death Penalty Information Center, *DPIC Special Report: The Innocence Epidemic*, 2021, at 19, <https://dpic-cdn.org/production/documents/pdf/The-Innocence-Epidemic.pdf?dm=1683576587>.
- ⁹⁵ *Id.* at 4, 19.
- ⁹⁶ *Id.* at 4.
- ⁹⁷ *Id.* at 5.
- ⁹⁸ Equal Justice Initiative, *Unreliable Verdicts, Racial Bias and Wrongful Convictions*, Feb. 2025, <https://eji.org/report/unreliable-verdicts/profiles-in-exoneration/>.
- ⁹⁹ *Ibid.*
- ¹⁰⁰ *Ibid.*
- ¹⁰¹ *Ibid.*
- ¹⁰² *Ibid.*
- ¹⁰³ See Press Releases, *North Carolina Judge Finds Racial Bias in Death Penalty in Landmark Case*, ACLU (Feb. 7, 2025), <https://www.aclu.org/press-releases/north-carolina-judge-finds-racial-bias-in-death-penalty-in-landmark-case>.
- ¹⁰⁴ See *North Carolina v. Hasson Bacote*, ACLU OF N.C., <https://www.acluofnorthcarolina.org/en/cases/north-carolina-v-hasson-bacote> (last visited Mar. 7, 2025).
- ¹⁰⁵ See North Carolina Racial Justice Act, ch. 15A, 2009 N.C. Sess. Laws 464, (repealed 2013); *id.* at §2010-2011(a)–(b); §2012(a)(3).
- ¹⁰⁶ See *North Carolina v. Hasson Bacote*, ACLU OF N.C., <https://www.acluofnorthcarolina.org/en/cases/north-carolina-v-hasson-bacote> (last visited Mar. 7, 2025).
- ¹⁰⁷ See, e.g., *id.*; Press Releases, *North Carolina Judge Finds Racial Bias in Death Penalty in Landmark Case*, ACLU (Feb. 7, 2025), <https://www.aclu.org/press-releases/north-carolina-judge-finds-racial-bias-in-death-penalty-in-landmark-case>.
- ¹⁰⁸ See *North Carolina v. Hasson Bacote*, ACLU OF N.C., <https://www.acluofnorthcarolina.org/en/cases/north-carolina-v-hasson-bacote> (last visited Mar. 7, 2025).