APPENDIX

District court order granting motion to stay execution pending a competence hearing (Jan. 11, 2021) ................1a

Declaration of Katherine Porterfield, Ph.D. (Jan. 8, 2021) (filed by applicant) .......................................22a

Declaration of George W. Woods, Jr., M.D. (Jan. 8, 2021) (filed by applicant) .......................................26a

Declaration of Christina A. Pietz, Ph.D., A.B.P.P. (Jan. 10, 2021) (filed by respondents) ....................36a

List of materials reviewed by Christina A. Pietz, Ph.D., A.B.P.P. (Jan. 10, 2021) (filed by respondents) ............40a

Declaration of Dr. Leslie Wheat (Jan. 10, 2021) (filed by respondents) ....................................42a

Exhibit F to Applicants' Opposition to Respondent's Petition for Habeas Corpus and Motion for Stay — Rule 1006 summary excerpts of jail calls from Lisa Montgomery (Jan. 10, 2021) ...........................................49a

Declaration of Camille Kempke (Jan. 10, 2021) (filed by applicant) .......................................65a

Declaration of John M. Shields, Ph.D., ABPP (Jan. 11, 2021) (filed by applicant) .......................67a

District court order staying the execution of Lisa Marie Montgomery (Jan. 12, 2021) ................................77a

District court order denying emergency motion for stay (Jan. 12, 2021) ...........................................79a

Court of appeals order vacating district court's stay of execution (Jan. 12, 2021) .................................81a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY,<br><br>Petitioner,<br><br>v.<br><br>WARDEN OF USP TERRE HAUTE, IN, et al.<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 2:21-cv-00020-JPH-DLP |

**ORDER GRANTING MOTION TO STAY EXECUTION PENDING A COMPETENCE HEARING**

Petitioner Lisa Montgomery is scheduled to be executed tomorrow, January 12, 2021, at the United States Penitentiary in Terre Haute, Indiana (USP – Terre Haute). Ms. Montgomery has filed a petition for writ of habeas corpus pursuant to 18 U.S.C. § 2241, alleging that she is incompetent to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), and a motion to stay execution. Dkt. 1; dkt. 12. For the reasons that follow, the motion to stay is **GRANTED**.

## I. INTRODUCTION

In 2007, a jury convicted Ms. Montgomery of kidnapping resulting in death in violation of 18 U.S.C. § 1201(a)(1). After hearing additional evidence at the sentencing phase of the trial, the jury found that the government had proven aggravating factors that warranted imposition of the death penalty, including that Ms. Montgomery committed the offense in an especially heinous or depraved manner. Ms. Montgomery raised her mental state as a defense at trial and as a

basis for relief in post-conviction proceedings. The verdict and sentence imposed were upheld both on appeal and during post-conviction relief proceedings.

In this case, Ms. Montgomery does not further challenge the validity of the conviction or sentence imposed. Rather, the sole issue presented is whether the government may lawfully execute Ms. Montgomery in her current mental state. Ms. Montgomery's counsel contend that executing her would be unconstitutional because her current mental state makes her unable to understand why the government seeks to execute her. They ask the Court to stay the execution so that the Court can hold a hearing and make findings about Ms. Montgomery's current mental condition based on a fully developed record.

In support of her motion to stay, Ms. Montgomery presents evidence from three expert witnesses who have each either treated Ms. Montgomery or interviewed her on multiple occasions. They all discuss Ms. Montgomery's history of mental illness, the specific diagnoses and corresponding treatments, and their discussions with Ms. Montgomery's counsel regarding her recent behavior. They all conclude that Ms. Montgomery's perception of reality is distorted and that she is currently unable to rationally understand the government's rationale for her execution. Based on this evidence, the Court finds that Ms. Montgomery has made a strong showing that she will be able to make the threshold showing of insanity that requires a hearing.

## II. BACKGROUND

### A. Ms. Montgomery's Crime and Procedural Background

The following is a summary of Ms. Montgomery's crime, adapted from the Eighth Circuit's factual recitation on direct appeal. *United States v. Montgomery*, 635 F.3d 1074, 1079–80 (8th Cir. 2011).

Ms. Montgomery met Bobbie Jo Stinnett at a dog show in April 2004. Ms. Montgomery learned through an online message board dedicated to breeding rat terriers that Ms. Stinnett was pregnant. Despite undergoing a sterilization procedure more than a decade earlier, Ms. Montgomery began telling friends and family in the spring of 2004 that she was pregnant.

On December 15, 2004, Ms. Montgomery, using an alias, contacted Ms. Stinnett, expressing interest in purchasing a puppy from Ms. Stinnett. Ms. Montgomery went to Ms. Stinnett's house, where she strangled her and, using a kitchen knife, cut and removed Ms. Stinnett's baby girl. Ms. Stinnett was eight months pregnant at the time of her murder.

Ms. Montgomery called her husband, who was unaware of her sterilization, and told him that she had gone into labor while Christmas shopping and had given birth at a women's clinic. They took the baby home. The following day, law enforcement officials went to their home to speak with Ms. Montgomery. She initially told officers that she had given birth at home, but upon further questioning at the sheriff's office confessed to killing Ms. Stinnett, removing the fetus from Ms. Stinnett's womb, and abducting the child. The baby, who was in good health, was returned to her father.

Ms. Montgomery was charged in the United States District Court for the Western District of Missouri with kidnapping resulting in death in violation of 18 U.S.C. § 1201(a)(1). *Id.* at 1081. Ms. Montgomery asserted the defense of insanity. *Id.* at 1082. Defense experts alleged that Ms. Montgomery suffered from depression, borderline personality disorder, post-traumatic stress disorder (PTSD), and pseudocyesis, a condition in which a woman falsely believes she is pregnant, associated with objective physical signs of pregnancy. *Id.* In October 2007, a jury rejected the insanity defense, convicted Ms. Montgomery of first-degree murder, and sentenced her to death.

Ms. Montgomery's conviction and sentence were affirmed on direct appeal. *Id.* at 1099. The Supreme Court declined review. *Montgomery v. United States*, 565 U.S. 1263 (2012).

In March 2012, Ms. Montgomery moved to vacate her conviction and sentence pursuant to 28 U.S.C. § 2255. *United States v. Montgomery*, No. 4:12-cv-8001-GAF (W.D. Mo.). On March 3, 2017, the district court denied relief and denied a certificate of appealability on all claims. *Id.*, dkt. 212. The Eighth Circuit denied leave to appeal, *Montgomery v. United States*, No. 17-1716 (8th Cir. Jan. 25, 2019), and the Supreme Court denied certiorari, *Montgomery v. United States*, 140 S. Ct. 2820 (May 26, 2020) and *Montgomery v. United States*, 141 S. Ct. 199 (Mem) (Aug. 3, 2020) (denying rehearing).

On October 16, 2020, the government set Ms. Montgomery's execution date for December 8, 2020. *United States v. Montgomery*, No. 5:05-cr-6002, dkt. 444 (W.D. Mo.). On November 19, 2020, the District Court for the District

of Columbia stayed the execution until at least January 1, 2021. *Montgomery v. Barr*, No. 20-cv-3261, 2020 WL 6799140, at *11 (D.D.C. Nov. 19, 2020). On November 23, 2020, the government set a new execution date of January 12, 2021. *United States v. Montgomery*, No. 5:05-cr-6002, dkt. 445 (W.D. Mo.). In December, the District Court for the District of Columbia held that the new date was unlawfully set. *Montgomery v. Rosen*, 20-cv-3261, 2020 WL 7695994 (D.D.C. Dec. 24, 2020). But the District of Columbia Court of Appeals summarily reversed that order on January 1, 2021, *Montgomery v. Rosen*, No. 20-5379 (D.C. Cir. Jan. 1, 2021), so the January 12, 2021 execution date remains in effect.

Ms. Montgomery's counsel filed the petition in this case days ago, on Friday January 8, 2021, and filed a corresponding motion to stay the next day. Pursuant to the briefing schedule entered by the Court on the evening of January 8, the government filed a response on January 10 and Ms. Montgomery's counsel filed a reply today.

### B. Ms. Montgomery's History of Trauma and Mental Illness

While Ms. Montgomery's current mental state is the issue in this case, her past trauma and diagnoses are relevant because her clinical history informs the experts' opinions regarding her current mental state.

Ms. Montgomery's childhood trauma was extreme and "consistent with torture." Dkt. 11-12 (Woods Decl. 2020). Her mother and stepfather were physically and emotionally abusive. Dkt. 11-5 at 42–43 (Porterfield Decl. 2016). Her mother found humor in the fact that Ms. Montgomery's first words as a

toddler were, "[d]on't spank me." *Id.* Her stepfather sexually assaulted her on a weekly basis for years. *Id.* at 43; *see also Montgomery*, 635 F.3d at 1080. Her mother's emotional abuse included sadistic acts such as taping Ms. Montgomery's mouth shut with duct tape for speaking and beating the family dog to death in front of Ms. Montgomery and her siblings. *Id.* at 43–44.

The prison psychiatrist who treated Ms. Montgomery in the three years preceding her trial diagnosed her with depression, bipolar disorder, and PTSD. Dkt. 11-10 at 2, 14–15. At trial, medical experts from both sides agreed that Ms. Montgomery suffered from depression, borderline personality disorder, and PTSD. *Montgomery*, 635 F.3d at 1082. One of Ms. Montgomery's experts, Dr. Logan, characterized Ms. Montgomery's illness as depressive disorder which "at times included psychotic features such as hallucinations." Dkt. 11-6 at 80 (Logan Report).

After her trial, Ms. Montgomery was placed at the Federal Medical Center, Carswell ("FMC Carswell"), a federal prison in Texas for female inmates with special mental health needs. Dr. Camille Kempke, Ms. Montgomery's treating psychiatrist at FMC Carswell between 2008 and 2010, witnessed Ms. Montgomery in "an acute dissociative psychotic state" at least twice. Dkt. 16-1 at ¶ 2–3. *Id.*

Two psychological experts hired by Ms. Montgomery's team in support of her § 2255 proceedings recounted the key role dissociation plays in Ms. Montgomery's mental functioning and provided declarations in support of the motion to stay in this action. Dr. Katherine Porterfield, who examined

Ms. Montgomery in 2016, is a clinical psychologist who has worked with survivors of torture and trauma for more than two decades. Dkt. 11-12 at 2 (Porterfield Decl. 2020); dkt. 11-5 at 39 (Porterfield Decl. 2016). In her opinion, Ms. Montgomery suffers from complex post-traumatic stress disorder[1] (CPTSD), complex partial seizures and brain impairment, depression, and bipolar disorder. Dkt. 11-12 at 2. Ms. Montgomery's "CPTSD is characterized by severe dissociative symptoms." *Id.* As Dr. Porterfield explained, "[d]issociation is a process of the human nervous system in which neurochemical reactions to excessive stress lead to alterations in consciousness and perceptions of senses, the environment, and the self. Dissociation represents a lowering of consciousness, *sometimes to the point of actual rupture of consciousness and awareness*." *Id.* at 2–3 (emphasis added).

Dr. Porterfield described the dissociative symptoms prevalent in Ms. Montgomery's functioning as follows: (1) confused thought process—"frequently confused thinking that indicated questions about the reality of certain events and perceptions in her past"; (2) disengagement—feeling "out of it" or as if she was in her own world and would forget what day it was or how she got places; (3) depersonalization—feeling detached from her own body or like she

[1] CPTSD is not a condition that is recognized by the Diagnostic and Statistical Manual of Mental Disorders. According to Dr. Porterfield, it is a "diagnostic category proposed for inclusion in the World Health Organization International Classification of Diseases, 11th version, and arrived at by consensus among a panel of international trauma experts." Dkt. 11-5 at 48. Because dissociative symptoms are included in the criteria for PTSD—which experts on both sides agree Ms. Montgomery has—the Court pays more attention to the symptoms described by Ms. Montgomery's experts rather than the diagnostic label of CPTSD or PTSD.

does not belong in her body; (4) derealization—feeling her surroundings are not familiar in some cases, not real; (5) identity dissociation—feeling like she has different people inside herself or like there are people inside who are talking to her; (6) memory disturbance—experiencing blank spells or loss of time; and (7) emotional constriction—having restricted or limited emotional experience. Dkt. 11-5 at 48–54.

Dr. George Woods, a physician with a specialty in neuropsychiatric consultations, conducted clinical evaluations of Ms. Montgomery, which included interviews and assessments of Ms. Montgomery's neurological status, in January and February 2013 and July and August 2016. Dkt. 11-6 at 1; dkt. 11-12 at 34. He observed that Ms. Montgomery has cerebellar[2] dysfunction and other brain impairments. Dkt. 11-6 at 5. Ms. Montgomery's symptoms consistent with impairment of the cerebellum include "distractibility, hyperactivity, impulsiveness, disinhibition, anxiety, irritability, ruminative and obsessive behaviors, dysphoria, and depression, tactile defensiveness and sensory overload, apathy, and childlike behavior." *Id.* Dr. Woods also diagnosed Ms. Montgomery with Bipolar I Disorder, Most Recent Episode Depressed, Severe with Psychotic Features." *Id.* at 19. Ms. Montgomery's brain impairments, exposure to extreme trauma, mood disorder, and psychosis "interact synergistically" preventing her from being able to act "rationally and logically." *Id.* at 24.

---

[2] As Dr. Woods explained, "The cerebellum is a region of the brain that plays an important role in motor control and some cognitive functions such as attention and language and in regulating fear and pleasure." *Id.*

According to Dr. Woods, prior to the announcement of her execution date, the symptoms of Ms. Montgomery's illnesses had largely been controlled at FMC Carswell, due to three interactive factors: "1) a highly structured and predictable environment; 2) a stable community wherein she is largely surrounded by supportive female companions and where her exposure to the threat of sexual violence is greatly reduced; and 3) careful titration and monitoring of her regime of antipsychotic medications." Dkt. 11-12 at 35. The impact of her medication, in particular Risperdal,[3] an antipsychotic medication, when combined with a supportive community allowed her to function more successfully but did not resolve her underlying conditions. *Id.* at 40.

**C. Ms. Montgomery's Current Mental Condition**

On October 16, 2020, the warden read Ms. Montgomery her execution warrant and she was removed from her community and activities and placed in a suicide cell. Dkt. 11-12 at 40–41. Dr. Woods believes that this disruption to her routine and the stress of learning of her impending execution have resulted in a resurgence of her symptoms. *Id.* at 35, 39.

Ms. Montgomery's attorneys have reported the following symptoms or behaviors:

- auditory hallucinations with self-attacking content (hearing her abusive mother's voice);

[3] Upon her arrival at FMC Carswell, Ms. Montgomery's medication regiment was modified "from a commonly used combination of mood stabilizer and anti-depressant to Risperdal, a medication used for its antipsychotic properties." Dkt. 11-6 at 18 (Woods Decl. 2013).

- sleep disturbances and nightmares of past sexual violence that are so disturbing she is unable to recount them;
- disruption in bodily functions related to elimination due to her perception of male guards' observation of her;
- distorted sense of reality (uncertainty about whether the infant she kidnapped is really her child; being unsure of what is real without access to her most trusted friend to confirm reality);
- religious delusions/hallucinations (believing God spoke with her through connect-the-dot puzzles, finding messages in a feather, seeing the moon in a location she found uncanny);
- gaps in consciousness of time passing due to periods of dissociating (staring blankly for prolonged periods without awareness, writing letters and then forgetting doing so);
- alterations in perception of the external world (feeling outside of herself as if she is "existing in a house in her mind");
- inappropriate affect, irritability, and emotional description; and
- distorted perceptions of reality evincing paranoia (believing a male psychologist stated to her, "Don't you just want to say 'fuck the government and kill yourself?'").

Dkt. 11-2 at 3–4; dkt. 16-1. Dr. Porterfield, Dr. Woods, and Dr. Kempke all testify that these behaviors indicate current psychosis. 11-12 at 3–4 (Dr. Porterfield: "manifestations of dissociation, disturbed thinking and likely psychosis"); *id.* at 39 (Dr. Woods: "a reemergence of psychotic symptomology" indicating that Ms. Montgomery has "lost contact with reality"); Dkt. 16-1 (Dr. Kempke: observations "indicate that Mrs. Montgomery is psychotic").

Based on reported observations, review of past materials, review of BOP medical records, and, in Dr. Kempke's case, her past observation of Ms. Montgomery experiencing psychosis, all three experts opine that Ms. Montgomery is presently unable to rationally understand the government's

rationale for her execution as required by *Ford*. Dkt. 11-12 at 4 (Dr. Porterfield), 41 (Dr. Woods); dkt. 16-1 at ¶ 17 (Dr. Kempke).

Neither Dr. Porterfield nor Dr. Woods has conducted an in-person evaluation of Ms. Montgomery since 2016 on account of the COVID-19 pandemic. Dkt. 11-12 at 3, 34. Both doctors acknowledge that an evaluation could be conducted by video. *Id.* at 4–5, 42. They express concern that their ability to detect Ms. Montgomery's psychiatric symptoms would be hindered by a video evaluation, especially since Ms. Montgomery's dissociative symptoms can be subtle and "often appear as absences, blank responses, silence, difficulty focusing, fatigue, attentional lapses and distractibility." *Id.* at 4–5, 42. Dr. Porterfield also expressed concern that "a remote evaluation of Mrs. Montgomery risks triggering her and leaving her in a compromised state that this evaluator would be unable to detect and properly address." *Id.* at 5.

The government disputes Dr. Woods and Dr. Porterfield's conclusion.[4] According to Dr. Christina Pietz, a forensic psychologist contracted by the U.S. Attorney's Office for the Western District of Missouri in anticipation of possible *Ford* litigation, "no professional evaluating competency should rely solely on [counsel-provided] information and historical clinical evaluations in making a determination as to current competency" because "competency (or incompetency) is a present-tense issue." Dkt. 13-3 at ¶ 16. Accordingly, Dr. Porterfield and Dr. Woods's "opinions as to current competency do not

[4] Dr. Kempke's declaration was filed with Ms. Montgomery's reply brief so the government did not have the opportunity to respond to it.

appear to have been based on sufficient, current facts or data to conform to any known professional standards for evaluating competency." *Id.* at ¶¶ 16–18. Dr. Pietz also notes that during the COVID-19 pandemic, she has conducted several mental competency evaluations remotely that she believes comports with professional standards. *Id.* at ¶ 9. Dr. Pietz opines that there is no "evidence that Mrs. Montgomery is suffering from a major mental illness that would impair her ability to comprehend her legal situation or interact with her attorneys." *Id.* at ¶ 12. Unlike Ms. Montgomery's experts, Dr. Pietz has never evaluated Ms. Montgomery in person. *Id.* at ¶ 8.

The government has also presented evidence contradicting Ms. Montgomery's allegation of present incompetency, including summary excerpts of BOP medical records, excerpts of transcripts of jail calls of Ms. Montgomery talking with family members and friends, and declarations by Dr. Pietz and Dr. Leslie Wheat, a BOP psychologist who serves as the Regional Psychology Services Administrator for the South Central Region. Dkts. 13-3; 13-4; 13-5; 13-6.

The government argues that the BOP medical records reflect a comprehension of her legal situation and impending execution. Dkt. 13-4 at ¶ 10 (summarizing interactions with BOP clinicians). Those records indicate that Ms. Montgomery reported feeling "great," positive, and hopeful about the future after her first execution date was vacated; reported sleeping poorly due to concern about the execution; and described not being forthcoming with BOP psychologists about her feelings on advice of her attorneys. *Id.*

In phone calls with relatives between August 6, 2020, and January 2, 2021, Ms. Montgomery discussed issues related to her crime and upcoming execution, including recalling the anniversary of her crime, discussing the possibility of her upcoming execution including plans for cremation, the delay of her execution due to her attorneys contracting COVID-19, and discussing her petition for clemency and other ongoing legal challenges. Dkt. 13-6.

## III. APPLICABLE LAW

### A. Standard for Stay of Execution

In deciding whether to stay an execution, the Court must consider: "(1) whether the stay applicant has made a strong showing that [s]he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009). "The first two factors . . . are the most critical." *Id.* Before entering a stay, the Court must also consider "the extent to which the inmate has delayed unnecessarily in bringing the claim." *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).

### B. Standards for Claim of Incompetence

Under *Ford v. Wainwright*, 477 U.S. 399 (1986), and its progeny, "[t]he Eighth Amendment . . . prohibits the execution of a prisoner whose mental illness prevents [her] from 'rationally understanding' why the State seeks to impose that punishment." *Madison v. Alabama*, 139 S. Ct. 718, 722 (2019) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 959 (2007)). "A prisoner's awareness of the State's

rationale for an execution is not the same as a rational understanding of it. *Ford* does not foreclose inquiry into the latter." *Panetti*, 551 U.S. at 959. While doctors and other experts can help a judge understand the prisoner's cognitive defects, "the sole inquiry for the court remains whether the prisoner can rationally understand the reasons for his death sentence." *Madison*, 139 S. Ct. at 728.

Under *Ford*, Ms. Montgomery's burden is to make a substantial showing that her "mental illness prevents [her] from 'rational[ly] understanding' why the [government] seeks to [execute her]." *Madison*, 139 S. Ct. at 722 (quoting *Panetti*, 551 U.S. at 959). The question is whether her "concept of reality is so impaired that [she] cannot grasp the execution's meaning and purpose or the link between [her] crime and its punishment." *Id.* (quotation marks and citation omitted). The "standard focuses on whether a mental disorder has had a particular *effect*: an inability to rationally understand why the [government] is seeking execution." *Madison*, 139 S. Ct. at 728 (emphasis original). "As *Ford* and *Panetti* recognize, a delusional disorder can be of such severity—can 'so impair the prisoner's concept of reality'—that someone in its thrall will be unable 'to come to grips with' the punishment's meaning." *Madison*, 139 S. Ct. at 729 (quoting *Panetti*, 551 U.S. at 958). If Ms. Montgomery makes a "'substantial threshold showing of insanity' the protection afforded by procedural due process includes a 'fair hearing' in accord with fundamental fairness." *Panetti*, 551 U.S. at 949 (quoting *Ford*, 477 U.S. at 426, 424).

## IV. DISCUSSION

### A. Likelihood of Success on the Merits

Counsel argue that executing Ms. Montgomery without first providing the "fair hearing" required by *Ford* would violate her right to due process under the Fifth Amendment. To succeed on the Fifth Amendment claim, counsel must make a "'substantial threshold showing of insanity.'" *Panetti*, 551 U.S. at 950 (quoting *Ford*, 477 U.S. at 426). Counsel have made the required substantial threshold showing and, in doing so, demonstrated a strong likelihood of success on the Fifth Amendment claim.

Three experts—including Dr. Kempke, a retired BOP psychiatrist who treated Ms. Montgomery while she was in custody—have concluded that Ms. Montgomery's current mental state is so divorced from reality that she cannot rationally understand the government's rationale for her execution. Dkt. 16-1, at p. 2, ¶ 17 (Dr. Kempke); dkt. 11-2 at 4, ¶ 6 (Dr. Porterfield); *id.* at 41 (Dr. Woods).

The Court finds the experts' declarations reliable and sufficient to make the required threshold showing. The experts each relied on a combination of the relevant scientific literature, past direct observations of Ms. Montgomery, and descriptions of Ms. Montgomery's current behavior relayed by counsel. While the *Panetti* standard concerns the consequence, not the diagnoses of mental illness, *Madison*, 139 S. Ct. at 728, Ms. Montgomery's past conduct and diagnoses are relevant to assessing her current condition. *See Ferguson v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 1315, 1320 (11th Cir. 2013) ("[T]he history of [the petitioner's]

mental condition, the opinions of experts regarding it, and judicial decisions about it over the years are all relevant to a discussion of his present mental condition."). As discussed above, Dr. Woods has found that Ms. Montgomery has physical brain impairments, dkt. 11-6 at 5, and has diagnosed her with "Bipolar I Disorder, Most Recent Episode Depressed, Severe with Psychotic Features." *Id.* at 19. Dr. Porterfield found that Ms. Montgomery suffers from complex post-traumatic stress disorder (CPTSD), complex partial seizures and brain impairment, depression, and bipolar disorder. Dkt. 11-12 at 2. The prison psychiatrist who treated Ms. Montgomery in the three years preceding her trial diagnosed her with depression, bipolar disorder, and PTSD. Dkt. 11-10 at 2, 14−15. Ms. Montgomery's current behaviors are considered in this context.

Those current behaviors include, among other things, Ms. Montgomery

- experiencing auditory hallucinations;
- being unsure what is real;
- believing that a male psychologist stated to her, "Don't you just want to say 'fuck the government and kill yourself?'";
- expressing uncertainty about whether the infant she kidnapped is really her child;
- stating that God spoke with her through connect-the-dot puzzles;
- experiencing lapses of time, as evidenced by her staring blankly for prolonged periods; and
- reporting experiences of "feeling outside herself—as if watching from a distance."

*See* dkt. 11-2 at 3–4; dkt. 16-1.

While treating Ms. Montgomery in the past, Dr. Kempke personally observed her "in an acute dissociative psychotic state at least two times." Dkt. 16-1 at 1, ¶ 7. Dr. Kempke explains that many of Ms. Montgomery's behaviors indicate that she is again experiencing psychotic dissociation. *Id.* at 2, ¶¶ 14–17. Given Dr. Kempke's past direct observations of Ms. Montgomery experiencing a dissociative psychotic state, her opinions about Ms. Montgomery's current competencies are especially probative.

Dr. Kempke's conclusions are supported by those of Dr. Woods and Dr. Porterfield, both of whom have diagnosed Ms. Montgomery in the past. Dr. Woods opines that Ms. Montgomery's "grasp of reality has always been tenuous" and that her current symptoms indicate that she "is further disconnected from reality." Dkt. 11-12 at 41. Likewise, Dr. Porterfield opines that based on Ms. Montgomery's current behavior, in the context of past interactions, Ms. Montgomery's "concept of reality is [] impaired." *Id.* at 4, ¶ 6.

The respondent argues that none of Ms. Montgomery's experts' conclusions are reliable because they have not interviewed Ms. Montgomery in her current condition. But experts may rely on the statements of laypeople in forming opinions about Ms. Montgomery's mental state. *See, e.g.*, *United States v. Brownlee*, 744 F.3d 479, 481–82 (7th Cir. 2014) ("[A]n expert witness is permitted to rely on any evidence, whether it would be admissible or inadmissible if offered by a lay witness, that experts in the witness's area of expertise customarily rely on."). Indeed, each expert acknowledged that a direct interview would be useful for diagnosis, but that the descriptions of Ms. Montgomery's

current behavior, when coupled with their past treatment or evaluations, was sufficient to allow them to reach an opinion to a reasonable degree of scientific (or medical) certainty. Dkt. 11-12 at 4, ¶ 6; *id.* at 41; dkt. 16-1 at 2, ¶ 17.

The Court finds these experts' declarations satisfy the required preliminary showing that Ms. Montgomery's current mental state would bar her execution. *Ford* did not set a precise standard for competency, *Panetti*, 551 U.S. at 957, and the concept of "rational understanding" is hard to define. *Id.* at 959. While there similarly are no set criteria describing what constitutes a "substantial threshold showing," the record before the Court contains ample evidence that Ms. Montgomery's current mental state is so divorced from reality that she cannot rationally understand the government's rationale for her execution. Dkt. 16-1, at 2, ¶ 17 (Dr. Kempke); dkt. 11-2 at 4, ¶ 6 (Dr. Porterfield); *id.* at 41 (Dr. Woods). *See Panetti*, 551 U.S. at 950 (finding that petitioner had made substantial threshold showing); *see id.* at 970 (Thomas, J., dissenting) (noting that the majority found the "threshold showing" satisfied with one unsworn, one-page letter from a doctor and another one-page declaration from a law professor, both relying on the petitioner's past medical history).

The government presents relevant contrary evidence, including transcripts of Ms. Montgomery's recent phone conversations and reports from BOP staff observations. While this evidence certainly shows that Ms. Montgomery understands that she is supposed to be executed soon, it does not demonstrate that she rationally understands the "meaning and purpose of the punishment." *Madison,* 139 S. Ct. at 727. Moreover, "[a]s *Ford* and *Panetti* recognize, a

delusional disorder can be of such severity—can 'so impair the prisoner's concept of reality'—that someone in its thrall will be unable 'to come to grips with' the punishment's meaning." *Madison*, 139 S. Ct. at 729.

**B. Irreparable Injury**

Ms. Montgomery would be irreparably injured if the government executes her when she is not competent to be executed.

**C. Balancing Harms, Public Interest, and Equitable Concerns**

"'Both the [government] and the victims of crime have an important interest in the timely enforcement of a sentence.'" *Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). It is also in the public interest to ensure that the government does not execute a prisoner who due to her mental condition "cannot appreciate the meaning of a community's judgment." *Madison,* 139 S. Ct. at 727. "[I]f the Constitution renders the fact or timing of his execution contingent upon establishment of a further fact, then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being." *Panetti*, 551 U.S. at 948–49. A hearing has not been held to determine Ms. Montgomery's competence. Because Ms. Montgomery has made "a substantial threshold showing of insanity," she is entitled to a fair hearing. *Ford*, 477 U.S. at 426.

The government's primary equitable argument is that counsel should have filed this claim and motion for stay sooner. Indeed, "last-minute filings that are frivolous and designed to delay executions can be dismissed in the regular course." *Panetti*, 551 U.S. at 946. But counsel's filing is not frivolous. As

discussed elsewhere in this order, Ms. Montgomery has been diagnosed with physical brain impairments and multiple mental illnesses, and three experts are of the opinion that, based on conduct and symptoms reported to them by counsel, Ms. Montgomery's perception of reality is currently distorted and impaired.

Additionally, the timing is not unreasonable given Ms. Montgomery's deterioration, this case's procedural history and what's at stake. Ms. Montgomery's condition began to devolve when the government first announced her execution date. But within a month, the execution was stayed. Counsel believed, and the District of Columbia District Court agreed, that the January 12 execution date was unlawful. Not until January 1, 2021, was the January 12 execution date relatively set in stone, and counsel filed this petition one week later. It is also worth noting that a brief stay of execution was initially granted to provide counsel time to recover from debilitating COVID-19 symptoms that included extreme fatigue, impaired thinking and judgment, and inability to concentrate. *See Montgomery v. Barr*, No. 20-3261 (D.D.C. Nov. 19, 2020), 2020 WL 6799140 at *7.

While the Court is mindful about the possibility of strategic litigation, neither that possibility or the delay outweigh the need for the stay when counsel has made a threshold showing that Ms. Montgomery is presently incompetent to be executed. *Madison,* 139 S. Ct. at 727 ("Similarly, *Ford* and *Panetti* stated that it 'offends humanity' to execute a person so wracked by mental illness that he cannot comprehend the 'meaning and purpose of the punishment.'").

## V. CONCLUSION

Ms. Montgomery's motion to stay execution, dkt. [12], is **GRANTED** to allow the Court to conduct a hearing to determine Ms. Montgomery's competence to be executed. The Court will set a time and date for the hearing in a separate order in due course.

**SO ORDERED.**

Date: 1/11/2021

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

Brian Patrick Casey
U.S. ATTORNEY'S OFFICE
brian.casey@usdoj.gov

Amy D. Harwell
FEDERAL PUBLIC DEFENDER TNM
amy_harwell@fd.org

Kelley J. Henry
FEDERAL PUBLIC DEFENDER TNM
kelley_henry@fd.org

Lisa Nouri
lisanouri_atty@hotmail.com

**DECLARATION OF KATHERINE PORTERFIELD, Ph.D.**

I, KATHERINE PORTERFIELD, declare as follows:

1. I am a clinical psychologist, licensed to practice in the State of New York. I received my Ph.D. in clinical psychology from the University of Michigan in 1998. My pre-doctoral and postdoctoral training included extensive training in the evaluation and diagnosis of mental disorders. My curriculum vitae which fairly and accurately summarizes my education and experience is attached to this Declaration.

2. Counsel for Lisa Montgomery has asked me to address her current psychological condition, specifically her rational understanding of her planned execution. My opinion, which is based on information obtained from Mrs. Montgomery's attorneys about their daily communication with her, as well as my previous evaluation of Mrs. Montgomery over four days and eighteen hours of face to face interviewing in 2016, and extensive review of Mrs. Montgomery's biopsychosocial history through records and witness interviews, is that as a result of her severe mental illness Mrs. Montgomery is currently unable to rationally understand the basis for her execution. My opinion is also based on my knowledge and experience as a psychologist who has worked with survivors of torture and other trauma for more than two decades, and the United States Supreme Court opinion in *Madison v. Alabama*, 139 S.Ct. 718 (2019).

3. I first evaluated Mrs. Montgomery in 2016. My evaluation and conclusions with respect to Mrs. Montgomery's mental illness are detailed in my April 22, 2016 report and my October 10, 2016 supplemental report. I have also submitted two declarations with respect to my concerns that Mrs. Montgomery's conditions of incarceration were likely to result in a deterioration of her mental health and functioning. Those declarations are dated November 9, 2020 and November 23, 2020. I reaffirm the truthfulness and accuracy of those previous declarations and incorporate them into this declaration by reference.

4. Mrs. Montgomery suffers from complex post-traumatic stress disorder (CPTSD), complex partial seizures and brain impairment, depression, and bipolar disorder. Her CPTSD is characterized by severe dissociative symptoms. In my report dated April 22, 2016, I stated, regarding Mrs. Montgomery's dissociative symptoms:

> "The most pronounced manifestation of Lisa Montgomery's extensive trauma history is her dissociative symptomatology and manner of managing stress. Dissociation is a process of the human nervous system in which neurochemical reactions to excessive stress lead to alterations in consciousness and

> perceptions of senses, the environment, and the self. Dissociation represents a lowering of consciousness, sometimes to the point of actual rupture of consciousness and awareness (Lanius, Paulsen & Corrigan, 2014). Clinical models of dissociation demonstrate how humans, like animals, when under severe threat, will sometimes experience the release of neurochemicals that are anesthetic in nature and that therefore lower the organism's experience of pain and fear. When humans experience this peritraumatic ("during the trauma") dissociation however, they are often left with residual difficulties after the trauma, such as amnesia, fragmentation of memory, and other disturbances. If the individual suffers multiple traumatic events that lead to frequent and lengthy periods of peritraumatic dissociation, the after effects will likely be more pervasive and more severe. These can include altered states of consciousness that linger after the traumatic events, such as time distortions, cognitive confusion, bodily symptoms (depersonalization and derealization) and emotional numbing. (Frewen and Lanius, 2014). Dissociative symptoms can reach the level of psychosis, as when an individual suffers hallucinatory phenomena, such as voices talking at him or her in an attacking manner."

Specifically, Mrs. Montgomery's dissociative symptoms are characterized by: confused thought processes, disengagement, depersonalization, derealization, identity confusion, memory disturbance, and emotional constriction. The symptoms that Mrs. Montgomery has demonstrated in the past are severe and they can be highly impairing for her. For example, her depersonalization can lead her to feel that she is not present in her body, an experience that is highly destabilizing for people who suffer it. Her thought processes can become confused, leading her to be unsure about time and the basic circumstances in which she finds herself. Derealization can lead her to feel that her environment is unreal or distorted in some way. Her emotional constriction can lead her to become detached from her circumstances, unable to gauge or express what she is feeling. Disengagement can lead her to disconnect from people and no longer communicate her actual feelings, thoughts or plans. In the past, these symptoms have led Mrs. Montgomery to become highly disorganized and, at times, suicidal.

5. Her attorneys have been in regular telephone contact with Mrs. Montgomery, but have been unable to visit with her in person since November 2, 2020. I have been unable to evaluate Mrs. Montgomery in person because of the travel restrictions caused by the current global pandemic. Mrs. Montgomery's attorneys have regularly reported to me after their contacts with her. They have described a deteriorating mental condition

characterized by symptoms consistent with her diagnoses. Specifically, they have described thoughts and behaviors that are manifestations of dissociation, disturbed thinking and likely psychosis. Among the reported symptoms are: auditory hallucinations with self-attacking content (hearing her abusive mother's voice), sleep disturbances and nightmares of past sexual violence, disruption in bodily functions related to elimination due to her perception of male observation, distorted sense of reality (uncertainty about whether the infant she kidnapped is really her child), religious delusions (believing that God is speaking to her through connect-the-dot puzzles), gaps in consciousness of time passing due to periods of being in a dissociative state, derealization (alterations in perception of the external world), inappropriate affect, irritability, and emotional constriction. Recently, Mrs. Montgomery described an interaction with a male psychologist who is not on her regular service in which she says he stated to her, "Don't you just want to say 'fuck the government and kill yourself?'" I find it highly unlikely that a trained clinician would make such a statement to any patient, let alone a patient at acute risk for suicide and with a history of suicide attempts. Mrs. Montgomery repeatedly focused on this statement being made to her, to a degree that suggests distorted perceptions of what the staff members may be intending and that is indicative of incipient paranoia. All of her symptoms are indicators that Mrs. Montgomery's psychological functioning is highly impaired.

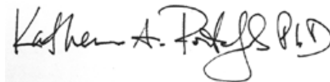
6. It is my professional opinion that I would be able to conduct a more thorough evaluation of Mrs. Montgomery during an in-person meeting but I am unable to travel because of the pandemic. Nevertheless, I am confident to a reasonable degree of psychological certainty that Mrs. Montgomery suffers mental diseases and defects and cannot now rationally form an understanding of the government's rationale for her execution. Her concept of reality is so impaired that she cannot grasp the execution's meaning and purpose or the link between crime and its punishment.

7. Were I able to travel I could conduct a more thorough in-person evaluation. An in-person evaluation would be conducted in a way that minimizes the likelihood of doing harm to Mrs. Montgomery or worsening her mental state. Because her dissociative symptoms are easily triggered, an examination of her functioning must proceed carefully so that, if dissociation occurs, Mrs. Montgomery can be carefully monitored and assisted in regaining an integrated, organized mental state. This requires rapport with Mrs. Montgomery, basic trust, and the clinical ability to recognize and address dissociative symptoms in the moment. If the evaluation were taking place on the phone or by video call, this kind of assessment and intervention would not be possible. This is because dissociative symptoms are difficult to detect when a patient is not physically present with a clinician and these symptoms

are difficult to address when not in the room with a patient. Specifically, dissociative symptoms often appear as absences, blank responses, silence, difficulty focusing, fatigue, attentional lapses and distractibility. These symptoms are very difficult to detect without being present with a patient and able to assess eye contact, verbal and physical communication and reactions. Thus, a remote evaluation of Mrs. Montgomery risks triggering her and leaving her in a compromised state that this evaluator would be unable to detect and properly address.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct to the best of my information and belief.

Dated this 8th Day of January, 2021.



# DECLARATION OF GEORGE W. WOODS, JR., M.D.

I, George W. Woods, Jr., M.D., hereby declare the following:

## Qualifications

I am a physician licensed to practice in California, Louisiana, Michigan, Missouri, New York, Tennessee, Washington State, and Wyoming, with offices in San Francisco and Oakland, California. My clinical subspecialties are neuropsychiatry and Consultation Liaison Psychiatry, which is the study of psychiatric manifestations of medical diseases, and the assessment of neurodevelopmental disorders. In my clinical practice, I assess and treat persons with a variety of medical problems with psychiatric manifestations, including people with neurological disorders that manifest with psychiatric symptoms. I also have a civil and forensic practice.

I taught Clinical Aspects of Forensic Psychiatry and Introduction to Geriatric Psychiatry at Morehouse School of Medicine, Atlanta, Georgia from 2002 through 2016. I have been a lecturer at Berkeley Law – University of California, teaching Mental Health and the Law for 7 years.

I was appointed Medical Expert to the San Francisco District Attorney Post Conviction Unit Innocence Commission in 2020. I was President of the International Academy of Law and Mental Health from 2015 through 2017. I was recently reelected for a second 2-year term, starting in 2021.After completing my first 2-year term, I was asked to remain as Secretary General to help complete the association with the Institute of Ethics, Medicine, and Public Health at the Sorbonne, Paris, France.

I am a Life Fellow of the American Psychiatric Association, a member the American Psychological Association, the International Neuropsychological Society, and the American Association on Intellectual and Developmental Disabilities. I was the recipient of the 2018 Distinguished Alumnus for the University of Utah Medical Center, the first psychiatrist so honored. I also received the Historical Prize from the University of Milan in 2019.

I have written about the forensic assessment of neurodevelopmental disorders, race and cognition, cognitive impairment in the elderly, fetal alcohol spectrum disorder, trauma, and financial deception in elderly populations, among other topics. I have been qualified and have testified as an expert in numerous civil and criminal cases in state and federal courts. A copy of my *curriculum vitae* is attached hereto.

## Referral Questions

In 2013 at the request of counsel for Lisa Montgomery, I conducted a neuropsychiatric evaluation of Mrs. Montgomery, taking into account the complex

historical, developmental, psycho-social, and psychiatric data accumulated during the course of Mrs. Montgomery's case. At that time, I addressed questions regarding Mrs. Montgomery's capacity to appreciate the wrongfulness of her conduct or to conform her conduct to the requirements of law at the time of her crime, discussed how Mrs. Montgomery's neurobehavioral history was an important component of her social history, and discussed how Mrs. Montgomery's impairments and medications affect her ability to rationally assist her counsel prior to and during the trial as well as how her impairments and medications informed her demeanor at trial. My findings with regard to these referral questions are contained in my 2013 declaration and 2016 addendum.

Counsel have asked that I, now, respond to the following questions based on my clinical observations of Mrs. Montgomery and my knowledge of her life history, brain damage, and reported current level of functioning:

- **Based on your knowledge of Mrs. Montgomery's history as well as the reports of counsel regarding her current symptomology, is Mrs. Montgomery able to form a rational understanding of the State's rationale for her execution as required by *Ford v. Wainwright*, 477 U.S. 399 (1986)?**

- **How would an in-person evaluation of Mrs. Montgomery further inform or refine your opinions?**

**Interviews and Summary of Materials Reviewed**

I previously met with Mrs. Montgomery in a private interview room at the BOP Carswell Medical Facility in Fort Worth on January 17, 2013, February 8, 2013, July 19, 2016 and August 31, 2016. My initial evaluation included clinical interviews, an assessment of her neurological status, and review of her biopsychosocial history and case related materials. I have not conducted additional clinical evaluation because of the strictures of the current COVID pandemic: I am 73 years of age and am considered at high risk of COVID-19 infection and at a much-heightened risk of complications from infection. I also have several underlying conditions in addition to my age which require me to be extra vigilant including that I am currently in treatment for prostate cancer which necessitates on-going immunosuppressant therapy. My doctor has ordered me not to travel due to my health concerns (regardless of the pandemic) for at least 4 months, depending upon potential effects of hormonal, antiandrogen, and immunotherapy.

In answering the current referral questions, I, again, reviewed extensive documents relating to Mrs. Montgomery's childhood, adolescence, and adulthood. These documents included diagnostic data in medical and psychiatric records, the biopsychosocial history, psychiatric, psychological, and neuropsychological assessments—including the up-to-date BOP mental health records, her medication

regimen, and other relevant materials. I also considered the reports of Mrs. Montgomery's counsel as to her current functioning. These are the kinds of sources of information relied upon by members of my profession in reaching an accurate assessment and providing answers to referral questions.

**Clinical Formulation**

Mrs. Montgomery has significant neurologic deficits, including but not limited to cerebellar dysfunction, an important control mechanism of executive function, her ability to effectively weigh, deliberate, understand context, and respond to social cues. She also has mild atrophic changes in her brain and symptoms of motor dysfunction. These conditions do not ameliorate, though they may worsen, especially in new, novel, and stressful circumstances. Mrs. Montgomery also suffers from a severe affective mood disorder with psychosis. She demonstrates pervasive and enduring consequences of surviving intentional trauma so severe that it meets the World Health Organization criteria for torture, as well as meeting criteria for complex posttraumatic stress disorder and disorders of extreme stress (Briere & Spinazzola, 2005; van der Kolk, Roth, Pelcovitz, Sunday, & Spinazzola, 2005). These disorders interact synergistically and account for Mrs. Montgomery's vulnerable mood lability; history of loss of contact with reality; impaired working memory; judgment and insight; affective dysregulaton; defective goal formation; and confusion.

Over time, Mrs. Montgomery's psychotic symptomology has been held at bay due to three interactive factors present in the conditions of her confinement within the BOP Federal Medical Center at Carswell: 1) a highly structured and predictable environment; 2) a stable community wherein she is largely surrounded by supportive female companions and where her exposure to the threat of sexual violence is greatly reduced; and 3) careful titration and monitoring of her regime of antipsychotic medications. Despite the management of her symptoms, her underlying conditions persist and—particularly as her environment changes—appear to have overcome the therapeutic effect of antipsychotic medication in the face of extreme stress. Psychiatric medication is not curative. Rather, psychiatric medication is one arrow in the quiver of possible abatement of symptoms. A person's historical vulnerability as well as the effectiveness of their environmental support are paramount in allowing medications to exert any modicum of control.

- Brain Impairments compromise Mrs. Montgomery's perception of reality.

Mrs. Montgomery's brain is compromised structurally and functionally. My clinical observations are supported by the reports of Drs. Gur and Nadkarni, as well as the neuropsychological data produced by Dr. Fucetola, which I have reviewed. Mrs. Montgomery demonstrates behaviors and symptoms associated with functional impairment of the cerebellum.[1] Schmahman et al have

[1] Impaired cerebellar function is well recognized because of exposure to

documented the role of the cerebellum in controlling executive skills. Although initially considered a part of the brain controlling balance, with purely motor functions, the last 22 years have demonstrated the cerebellum to be a major cognitive mechanism for the control of nuanced executive functioning skills, particularly decision making, affective control, understanding context, and effective deliberation. Mrs. Montgomery's cerebellum has been found to be quantitatively and qualitatively impaired, providing significant vulnerability to her cognitive capacity.

Imaging of her brain reflects an overall loss of brain volume as well as a particular loss of tissue around the midline of her brain.[2] *See Gur Report*. Other structures that appear diminished are the basal forebrain, particularly the frontal right side of the frontal/parietal lobes and the superior parietal lobe. PET scans show her brain is hypermetabolic, particularly in the amygdala.[3] *Id.*

Mrs. Montgomery's brain impairment is a condition that cannot improve. Though additional trauma, injury, or aging may further compromise its functioning, the brain does not "repair" or heal from such losses. The portions of Mrs. Montgomery's brain that are impaired are early brain structures, which are fully developed early in a child's life. This is particularly seen in the hypermetabolic functioning of her amygdala—the center of the body's fear and stress responses

---

alcohol. By all accounts, Mrs. Montgomery's mother drank excessively and frequently during her pregnancy. *Biopsychosocial, p.35*

[2] Mrs. Montgomery also has a history of head trauma. While her brain was still forming, Mrs. Montgomery sustained repeated head injuries during her stepfather's frequent sexual assaults during her teenaged years. Mrs. Montgomery's mother and stepfather subjected her to repeated blows on her head with their bare hands, fists, and objects during her childhood. Additionally, Mrs. Montgomery's half-brother reported that he threw a size D battery at her that struck her "square in the back of the head. She went down like a crushed rag doll." *Biopsychosocial p. 92*. She was taken to the emergency room for treatment. *Id.* Later, she suffered multiple motor vehicle accidents in which she hit her head, including more than one where she was unrestrained and hit her head on the windshield, on two occasions she suffered headache and impaired memory. *Fucetola Report.*

[3] As discussed, below, hyperactivation of the amygdala is consistent with both compensatory activation because of brain loss and consistent with chronic post-traumatic stress disorder. Further, it appears that in addition to the insult in utero, and the history of head injuries, Mrs. Montgomery's brain was genetically predisposed to functional deterioration. in new, novel, and stressful circumstances. Medical, pediatric, psychiatric, and education records and descriptions by first degree and extended family members—on both sides of her family—document a lengthy history of genetic vulnerability to psychiatric and neurologic impairment and functional degradation secondary to Mrs. Montgomery's genetic/neurological foundation.

that is also pivotal in the workings of memory. Erosion or sheering of brain tissue occurred, resulting in a loss of brain volume, particularly in midline of her brain and in the parietal region—which is critical for the processing of sensory information and accurate perceptions of reality. While imaging reveals the quantifiable, structural defects, Mrs. Montgomery's behaviors reflect these brain losses, including her impulsivity and vulnerability to cognitive deterioration and psychotic disorganization.

Mrs. Montgomery's functioning has maintained a baseline in prison despite her brain condition, in large part to the simplification of the demands of daily life created by the structure of the prison environment. Without the requirements to work in the public sector, care for her children, or provide for her necessities, Mrs. Montgomery has eventually, with significant reinforcement and initial titration of both environment and medication, been able to achieve minimal daily functioning —including being able to perform a prison job (doing laundry, floors, emptying trash cans), and to participate in prison activities (educational and recreation classes, pod-games, craft activities). However, the ameliorative effect of this structure has been vitiated by removing her from her pod and placing her on suicide watch without access to her coping mechanisms (music, hand-crafts, etc.). Further, the stress inherent in her impending execution, combined with the added stress of anticipation of her transport to another facility, appears to have exposed her brain's vulnerability, causing a recurrence of well-documented psychosis and impaired decision-making functioning.

- Complex Post Traumatic Stress Disorder disrupts Mrs. Montgomery's integration of consciousness, self-perception, memory, and actions

Mrs. Montgomery was subjected to chronic, repetitive, and extreme sexual violence, emotional cruelty, and life-threatening physical assault as a child at the hands of those who should have protected her from harm.[4] She has historically exhibited the behaviors and symptoms, including psychosis, learned helplessness, anticipatory anxiety, and dissociation: symptoms of those sufferers of severe sexual and emotional abuse in childhood who subsequently develop complex post-traumatic stress disorder. Because Mrs. Montgomery also suffers from a mood disorder, her symptoms are both part of her bipolar disorder and her impaired brain function, yet are also trauma based. Ultimately it is unnecessary to tease apart the etiology of her psychosis: it is the psychosis itself that is at issue in her competency to be executed.

[4] My interview of Mrs. Montgomery confirmed much of the most traumatic information regarding direct physical and sexual harm to her that is contained in the Biopsychosocial evaluation. While I rely on the BPS for historical context and supporting documentation, my clinical impressions are based on my interview of Mrs. Montgomery and further supported by the work of Dr. Katherine Porterfield, psychologist specializing in victims of torture. *Porterfield Report*.

Historically, Mrs. Montgomery has experienced repeated, discreet episodes of psychotic symptomatology such as visual, tactile, and auditory hallucinations. She has also experienced sustained, chronic loss of contact with reality that is more severe than dissociation associated with post-traumatic stress disorder and is more aligned with the severe impediment associated with Traumatic Psychosis. The Diagnostic and Statistical Manural-5th Edition(DSM5) supports the psychosis secondary to extreme trauma. She has extreme perceptual distortions wherein she is unable to determine if she is experiencing "real" events and situations or if her experiences are unreal and not occurring. This inability to recognize reality affects her judgment and insight and has, at times, denied her a rational understanding of events around her. She is more vulnerable to this impairment in rational understanding due to her cognitive deficits.

Mrs. Montgomery also experiences well documented symptoms of trauma, including re-experiencing the trauma, avoidance and emotional numbing, and hyper-arousal. She has flashbacks and intrusive memories in which traumatic events are happening all over again, even when she is awake. She re-experiences physical sensations associated with maltreatment such as choking and being unable to breathe or cry. She becomes distressed when she is exposed to cues that symbolize the trauma, such as her fear of men and emotions associated with the trauma like lack of trust. She consciously and unconsciously avoids any thoughts, conversations, and activities that arouse recollections of the trauma. She is often socially withdrawn and detached from events around her. She compulsively relies on hand crafts such as tatting to ward off intrusive thoughts. She is unable to recall important aspects of trauma she survived, consistent with her deficits in amygdala functioning.

The hallmark and core symptom of the extreme trauma Mrs. Montgomery survived is her loss of contact with reality. Her symptoms are much more consistent with torture, and the necessary emotional and cognitive protection a loss of contact with reality provides to those being tortured. She experiences "a disruption in the integration of consciousness, self-perception, memory, and actions." *Istanbul Protocol*, paragraph 244. Such cognitive dissociation is also defined as: "The exclusion from consciousness and the inaccessibility of voluntary recall of mental events, singly, or in clusters, of varying degrees of complexity, such as memories, sensation, feelings or attitudes." Spiegel et al, *Dissociation: Culture, Mind, Body*; American Psychiatric Press, 1994, page 60.

Medication masked many of Mrs. Montgomery's more superficial symptoms of common trauma, but prior to an appropriate medication regimen first initiated at the Federal Medical Center at Carswell (BOP) after her trial, she was irritable and experienced outbursts of anger, she was unable to concentrate, she was hypervigilant, she suffered generalized anxiety, and she demonstrated physiological signs of distress (shortness of breath, sweating, dry mouth, dizziness, and gastrointestinal distress). Mrs. Montgomery has improved while taking antipsychotic medications. She described the effect of this potent medication as

organizing, allowing her to complete tasks and to recall more effectively. She is better able to maintain a reality base. This pharmacologic response is a good indication of antipsychotic response, rendering her more constantly in touch with reality.

Despite Risperdal's success in controlling Mrs. Montgomery's psychotic symptomology while she was in a supportive environment, medication alone cannot be expected to prevent flashbacks, re-experiencing, dissociation, and psychosis in the face of new-and ultimate- trauma, that which she feared for so many years, starting so young. Where Mrs. Montgomery's close association with the women of her pod previously provided support and helped her stay grounded in reality, the loss of that community withdraws the most important additional layer of support, an environment she could trust to be stable, consistent, and caring. From the BOP records of her current conditions of confinement, it is apparent that Mrs. Montgomery is now encountering many of the components of her prior torture, that is, isolation, loss of bodily autonomy, exposure to constant surveillance, and threat of impending death. In the face of such existential stress, medication, alone, does not prevent her from being recapitulated into psychosis.

Given these conditions, Mrs. Montgomery's lawyers unsurprisingly report a reemergence of psychotic symptomology since Mrs. Montgomery's placement on death watch. Mrs. Montgomery has admitted to auditory hallucinations, specifically repeatedly hearing her dead mother's voice. She is having nightmares she cannot recount because they are too terrifying. She endorses extreme dissociative symptomology: multiple episodes of lapses of time, feeling outside herself, and the sensation of existing in a house in her mind like the one to which she went while being raped as a teenager. She believes she has received messages from God in a dot-to-dot drawing that she was provided by the BOP. Finally, Mrs. Montgomery appears to have lost contact with reality, believing that the BOP psychologist, specifically a Dr. Opesso, suggested that she should kill herself in order to "fuck with the government." Mrs. Montgomery's claim is not supported by Dr. Opesso's clinical notes and certainly is inconsistent with any acceptable clinical practice.

- Affective Mood Disorder further compromises Mrs. Montgomery's rationality

The course of Ms. Montgomery's behavior and symptomology also meets criteria for Bipolar I Disorder, Most Recent Episode Depressed, Severe with Psychotic Features. She has demonstrated mood lability, impulsive judgment, disinhibition, depressive episodes, persecutory delusions, irritability, agitation, euphoria during manic and hypo manic episodes, and visual and auditory hallucinations. As stated, above, she has such a strong propensity for loss of reality, it is her baseline state. Though she carried the diagnosis of bipolar disorder throughout much of her incarceration, the BOP determined that this condition "resolved" on August 14, 2014, following the successful resection of her thyroid. Treatment on mood stabilizers such as Levo-Thyroxine, Amytriptiline (technically used for cardiac stabilization, yet it is a

Tricylic antidepressant), and Mirtazepine, was much less successful than on the atypical antipsychotic Risperdal. Mrs. Montgomery's failed antidepressant trial support a diagnosis of Bipolar Disorder. Antidepressants are known to initiate the "manic switch," an elevation of mood with irritability, impaired judgment, and other hypomanic and manic symptoms. Her Thyroid disease and treatment, rather than ameliorating her Bipolar Disorder, as discussed in her 2017 BOP records, actually supports a diagnosis of Bipolar Disorder. Thyroid dysfunction is common in mood disorders and L-thyroxine, a thyroid replacement hormone, is used in the stabilization of mood disorders, especially Bipolar Disorder.

As with the expected effect of her brain impairments and her trauma history, Mrs. Montgomery's symptoms of cognitive impairment and mental illness have resurfaced with the withdrawal of therapeutic supports and in the face of extreme stress.

## Conclusions

Mrs. Montgomery has a long-standing history of serious brain impairments, exposure to extreme trauma consistent with torture, affective mood disorder, and psychosis. These disorders have interacted synergistically and have historically accounted for Mrs. Montgomery's mood lability; loss of contact with reality, which in its mildest form is dissociation and in its most extreme form is psychosis; and impaired memory, judgment, insight, and cognition. Prior to her incarceration, the interplay and severity of these multiple impairments resulted in her inability to perform basic activities of daily life, to care for herself or her family, and to act rationally and logically. She has dysfunction in her neurological systems, including her motor functioning, significant attentional problems, limbic dysfunction, memory, and visual dysfunction. These symptoms affect her behavior at all times, disrupting her ability to function normally.

Within the prison context, Mrs. Montgomery has found some relief from the most severe symptoms of psychosis. The introduction of the antipsychotic medication, risperidone, in 2009, accounts for some of—but not all—the improvement in her functioning. In addition to finding a medication that addresses some of the symptoms of Mrs. Montgomery's thought disorder, the absence of sexual threat and the presence of a supportive community around Mrs. Montgomery in the admin unit, comprised of a relatively small, set group of women as well as the highly repetitive and unchallenging tasks with which she occupies her time, also have accounted to the greatest degree for her ability to remain largely in contact with reality. The effect of medication and supports on Mrs. Montgomery's function is best conceived as a net providing a safer context that has allowed her to function more successfully, but neither the supportive environment nor the medication has changed her underlying condition.

It is my understanding that Mrs. Montgomery's context changed dramatically on October 16, 2020 with the warden's reading of her execution warrant. The documents

provided by the BOP specify that since that time she has been confined almost exclusively (except for showers and, since December 3, 2020, for 5 hours of outdoor recreation a week) to a suicide cell—cut off from her community as well as from her normal activities (laundry, handicrafts, regular exercise, access to her Mp3 player, etc.). The records reflect a high degree of observation—guards recording her activities on 15-minute interval throughout the day and night, including observation when she showers and toilets. Her sleep has been disrupted, both by the continuous lighting of her cell, and by the withholding of her C-pap machine. Initially her sense of bodily integrity was violated through the withholding of clothing and undergarments.[5] Mrs. Montgomery's environmental support protected her fragile mental state. Medications could not provide the emotional and cognitive underpinnings to maintain her reality-based functioning. Such actions as the involuntary removal of her wedding ring only reinforced the trauma she had suffered, and she is now reexperiencing. Whatever the intended therapeutic or safety purpose of these interventions, their effect on Mrs. Montgomery was to remove the supports that have allowed her to maintain a fragile hold on reality.

Since that time, it appears that Mrs. Montgomery psychotic symptomology has begun to break through. She is experiencing extreme dissociative symptoms as well as hallucinations. Both dissociation and hallucinations undermine perceptions of reality, depriving those who suffer such symptoms of rationality.

**My answers to the referral questions are as follows:**

- **Based on your knowledge of Mrs. Montgomery's history as well as the reports of counsel regarding her current symptomology, is Mrs. Montgomery able to form a rational understanding of the State's rationale for her execution as required by *Ford v. Wainwright*, 477 U.S. 399 (1986)?**

In my professional opinion, which I hold to a reasonable degree of psychiatric certainty, Lisa Montgomery is unable to rationally understand the government's rationale for her execution as required by *Ford v. Wainwright*, 477 U.S. 399 (1986). Mrs. Montgomery's grasp of reality has always been tenuous: medication and the stable, supportive environment of her confinement over the past decade have allowed her to appear psychologically intact, though her baseline perceptions of reality are always distorted due to her brain impairments and trauma history. Mrs. Montgomery's attorney's observations—limited though they are—indicate that Mrs. Montgomery is further disconnected from reality, precluding a "rational understanding" of "the State's rationale for [her] execution." *Panetti v. Quaterman*, 551 U.S. 930, 958-59 (2007).

- **How would an in-person evaluation of Mrs. Montgomery further**

[5] BOP records reflect she was again provided prison-issue clothing on November 23, 2020.

**inform or refine your opinions?**

Mrs. Montgomery's impairments cause symptoms that, by their very nature, are highly individual, based on her history, and require both clinical experience with psychosis and an in-depth understanding of the subject. Some psychosis is florid and readily recognizable even by lay people—however in the past, Mrs. Montgomery's psychosis has been largely marked by negative symptomology rather than more overt manifestations. Mrs. Montgomery's problems with perception frequently manifest as staring, lengthy pauses, and a distant affect. Whether and when her baseline dissociation crosses the line into a true disconnect with reality almost inevitably evades detection by phone and requires a person-to-person clinical interview, where nuanced physical and emotional cues can be recognized, probed, and placed in proper perspective. Zoom interviews are limited in their ability to pick up all but the most obvious psychiatric symptoms. They also do not allow a physical examination, which would be helpful in determining deterioration of executive functioning anatomy. While the symptoms reported by counsel indicate that Mrs. Montgomery has decompensated such that she is experiencing positive symptoms of psychosis (hearing voices and perceiving events not based in reality), an in-person forensic evaluation of Mrs. Montgomery would allow me to present a more complete picture of the ways in which her impairments render her incompetent under *Ford*.

I declare under penalty of perjury that the above is true and correct this 8th day of January, 2021.

George W. Woods, Jr., M.D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY,<br><br>Petitioner,<br><br>v.<br><br>WARDEN OF USP TERRE HAUTE, IN., *et al.*,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 2:21-cv-00020-JPH-DLP |

**DECLARATION OF CHRISTINA A. PIETZ, Ph.D., A.B.P.P.**

1. The statements I make hereinafter are made based only on my review of court filings, the files and records of the BOP, and/or my own personal knowledge. A listing of the files and records I have reviewed is attached hereto.

2. A copy of my CV is attached hereto.

3. I worked as a forensic psychologist for the Federal Bureau of Prisons United States Medical Center for almost twenty-five years. In that capacity, I conducted over 1,000 court-ordered evaluations and testified as an expert witness in federal, state, and military court. These evaluations addressed competency related issues, criminal responsibility, risk assessment, and civil commitment. My job duties also included providing the main source of mental health services to those patients assigned to me including inmate screening, housing status, and classification.

4. Following my retirement from the United States Medical Center, I began working on a contract basis for Burrell Behavioral Health Care. In this capacity, I continue to conduct evaluations addressing competency related issues, criminal responsibility and risk assessment. I have evaluated several individuals alleging to suffer from posttraumatic stress disorder (PTSD). I have also conducted workshops discussing assessment of PTSD in the forensic context, "Assessing Allegations of Trauma in a Forensic Context." I provide mental health treatment to individuals suffering from PTSD.

5. Throughout my career, I have conducted several workshops on testifying in court, the assessment of PTSD using the criteria set out in the Diagnostic and Statistical Manual of Mental Disorders ("DSM-5"), and other forensic topics.

6. I have authored several papers and published a book entitled Violent Offenders: Understanding and Assessment. As an ad hoc reviewer for the Criminal Justice and Behavior Journal, I reviewed several articles. I have also reviewed book proposals for the Oxford Press.

7. I am familiar with professional standards and practices generally accepted in forensic psychology for evaluating criminal responsibility and competency-related issues, including competency to be executed.

8. On November 30, 2020, I was contacted by the United States Attorney's Office for the Western District of Missouri requesting that I review records concerning Lisa Montgomery. I accepted the engagement and reviewed numerous records concerning the case, including legal filings, prior forensic evaluations of Mrs. Montgomery, medical and psychology records (dated January 2007 through January 2021) of Mrs. Montgomery from the Bureau of Prisons, Federal Medical Center Carswell, recent Suicide Watch Log Books, and Visitor Logs, and recordings of seven phone calls Mrs. Montgomery had with family members in August through November, 2020, and recordings of five recent phone calls Mrs. Montgomery had with family members in December 2020 or January 2021.

9. Given the COVID-19 pandemic, numerous forensic psychologists who opine on mental competency are choosing, and in some instances required by facilities, to conduct competency evaluations remotely through interactive videoconferencing. During the COVID-19 pandemic, I have conducted several mental competency evaluations remotely that I believe comport with professional standards, and my opinions have been accepted by attorneys and courts.

10. During the COVID-19 pandemic, I have also conducted several mental competency evaluations on site in state and federal prisons. I am familiar with numerous other forensic psychologists who opine on mental competency who also have conducted competency evaluations on site in state or federal prisons, donning appropriate personal protective equipment.

11. In the majority of my evaluations addressing competency related issues, I have not previously observed or interacted with the evaluated person prior to conducting the evaluation. In the competency to be executed evaluations I have conducted, I

was an independent evaluator that had no previous clinical relationship with the evaluated person and had not previously evaluated the evaluated person. These evaluations have been accepted by courts.

12. Although I have not conducted a clinical evaluation of Mrs. Montgomery's mental state and/or assessed her understanding of her current legal situations, from my review of records I do not see any evidence that Mrs. Montgomery is presently suffering from a major mental illness that would impair her ability to comprehend her legal situation or interact with her attorneys. Moreover, my assessment of Mrs. Montgomery's conversation with her family members suggests that Mrs. Montgomery understands her current legal situation, legal options, that she is going be executed, and that execution means death.

13. Based on the January 2, 2021, phone call I reviewed, Mrs. Montgomery was able to provide a rational, accurate description of the status of her postconviction legal proceedings as of January 2, 2021.

14. Based on records from providers at FMC Carswell familiar with Mrs. Montgomery's clinical presentation, they have consistently documented that she presents no evidence of symptoms of psychosis, *i.e.*, delusions and/or hallucinations. One of these same clinicians, as of January 7, 2021, described her current thought processes as logical and organized.

15. Based on records from providers at FMC Carswell familiar with Mrs. Montgomery's clinical presentation, Mrs. Montgomery appropriately applies legal concepts to her current situation, including clemency, appeals, and remaining legal claims, in detail. Mrs. Montgomery's records reflect an ability to cite and appropriately apply legal concepts to her specific situation which displays a level of comprehension inconsistent with merely reciting legal concepts told to her by other persons, including her attorneys. For example, in a Clinical Intervention – Individual Therapy note dated January 7, 2021, a clinician noted Mrs. Montgomery "indicated she maintains hope her clemency petition or remaining legal arguments will allow her to avoid being executed."

16. Although it is appropriate and consistent with the specialty guidelines for forensic psychology for an evaluator to discuss with attorneys their concerns regarding their client's competency, no professional evaluating competency should rely solely on that information and historical clinical evaluations in making a determination as to current competency. Likewise, although historical information is important, competency (or incompetency) is a present-tense issue.

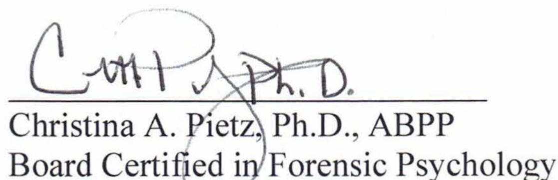
Consequently, when assessing a person's competency, it is imperative that the clinician obtain sufficient facts or data related to the person's current functioning and current competency-related issues. Based on what has been provided in the Petition for Writ of Habeas Corpus filed January 8, 2021 and Amended Petition for Writ of Habeas Corpus filed January 9, 2021 (collectively, the "Petition"), and attached declarations from Dr. Porterfield and Dr. Woods, any opinions as to current competency do not appear to have been based on sufficient, current facts or data to conform to any known professional standards for evaluating competency.

17. Regarding Dr. Porterfield's statements as relayed in the Petition, while Dr. Porterfield's statements are based upon examinations that were conceivably relevant to mitigating issues at trial, as reflected in her declaration attached to the Petition and prior declarations, Dr. Porterfield's opinions do not conform to or reliably apply generally accepted psychological principles or methods to answer any questions regarding Mrs. Montgomery's current competency to be executed, as delineated in *Ford v. Wainwright*.

18. Similarly, regarding Dr. Woods's statements as relayed in the Petition, Dr. Woods's statements, as reflected in his declaration attached to the Petition and prior declarations, do not appear to conform to or reliably apply any generally accepted principles or methods to answer any questions regarding Mrs. Montgomery's current competency to be executed, as delineated in *Ford v. Wainwright*. The Petition, including Dr. Woods's declaration, does not suggest or demonstrate Dr. Woods bases his opinion on sufficient facts or data related to Mrs. Montgomery's current functioning and current competency-related issues, particularly in light of the detailed records from providers at FMC Carswell familiar with Mrs. Montgomery's clinical presentation.

I declare, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 10 day of January, 2021.



Christina A. Pietz, Ph.D., ABPP
Board Certified in Forensic Psychology

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY,<br><br>Petitioner,<br><br>v.<br><br>WARDEN OF USP TERRE HAUTE, IN., *et al.*,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 2:21-cv-00020-JPH-DLP |

**LIST OF MATERIALS REVIEWED BY CHRISTINA A. PIETZ, PH.D., ABPP IN CONNECTION WITH THE ABOVE-TITLED MATTER**

1. Bureau of Prisons Health Services Records
2. Suicide Watch Chronological Log
3. Declaration of David Kidwell Sr. dated September 3, 2016
4. Transcript of trial March 4 and 7, 1985
5. Female Offender Manual
6. Treatment and Care of Inmates with Mental Illness
7. Program Statement-Suicide Prevention Program
8. Institution Supplement (FMC Carswell)-Suicide Prevention Program
9. Institution Supplement-Operation and Security of the Special Confinement Unit (SCU)
10. Plaintiff's Motion for Preliminary Injunction
11. Memorandum of Law in Support of Preliminary Injunction
12. Declaration of Katherine Porterfield, Ph.D., dated November 9, 2020
13. Declaration of John Joseph Hedberg Patterson dated January 18, 2013
14. Declaration of Jan Vogelsang, M.S.W. dated March 17, 2013
15. Curriculum Vitae, Jan Vogelsang, M.S.W.
16. Declaration of Martin Horn dated November 10, 2020
17. Declaration of Kelley J. Henry dated November 13, 2020
18. Declaration of Julie Gardner dated November 9, 2020
19. Letter authored by Kelley J Henry dated October 23, 2020, addressed to M Carr, Warden
20. Letter authored by M. Carr, Warden addressed to Kelley J. Henry dated November 6, 2020
21. Letter addressed to Mrs. Kacie Inman dated October 21, 2020, authored by Kellie J. Henry and Amy D. Harwell
22. Letter addressed to Katherine Siereveld and Mrs. Kacie Inman dated November 1, 2020, authored by Kelley J. Henry, Amy D. Harwell, and Lisa Nouri
23. Transcript of Proceedings November 7 and 8, 2016
24. Declaration of Robin Nunn dated November 16, 2020

25. Proposed order Granting Preliminary Injunction
26. Forensic report authored by Park Dietz, M.D., M.P.H., Ph.D. dated September 17, 2007
27. Curriculum Vitae, Park Dietz
28. Neuropsychological evaluation authored by Daniel A Martell, Ph.D., dated August 24, 2007
29. Curriculum Vitae, Daniel Martell
30. Summary report completed by Ronald Walker, M.A.
31. Curriculum Vitae, Ronald Walker, M.A.
32. Declaration of Rick Winter dated November 24, 2020
33. Declaration of Michael Carr dated November 20, 2020
34. Declaration of Michael Carr dated December 10, 2020
35. Copy of the complaint
36. Defendant's Response in Opposition to Motion for Preliminary Injunction
37. Plaintiff's Reply In Support Of her Motion For Preliminary Injunction
38. Supplemental Declaration of Katherine Porterfield, Ph.D., executed on November 23, 2020
39. Robert Fucetola, Ph.D. report dated July 2006
40. Robert Fucetola, Ph.D. Curriculum Vitae
41. Ruth Kuncel report dated April 9, 2007
42. Ruth Kuncel Curriculum Vitae
43. William Logan, M.D. report, undated
44. William Logan, M.D. Curriculum Vitae
45. William Logan, M.D., declaration dated March 14, 2013
46. Robin C. Gur reports-April 3, August 23, September 28, October 2, and October 22, 2003, October 11, 2016
47. Siddhartha Nadkami, M.D., report dated September 27, 2013
48. Katherine Porterfield, Ph.D., power point, letter dated 10-10-16, report dated April 22, 2016
49. Katherine Porterfield, Ph.D. resume
50. George Woods declaration dated March 17, 2013
51. George Woods Curriculum Vitae
52. George Woods Addendum dated October 23, 2016
53. Telephone calls made by Mrs. Montgomery to family members on August 6, 13, and 17, September 1, November 2, 10, and 26, December 2, 11, 14, and 17, 2020, and January 2, 2021
54. Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241
55. Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (corrected)
56. Appendix F to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (corrected) - Expert Declarations

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY,<br><br>Petitioner,<br><br>v.<br><br>WARDEN OF USP TERRE HAUTE, IN., *et al.*,<br><br>Respondents. | ) | Case No. 2:21-cv-00020-JPH-DLP |

**DECLARATION OF DR. LESLIE WHEAT**

I, Leslie Wheat, do hereby declare and state as follows:

1. I am currently employed by the Bureau of Prisons (BOP) as the Regional Psychology Services Administrator for the South Central Region, a position I have held since October 11, 2020. I have been employed by the BOP as a psychologist since October 2005.

2. The statements I make hereinafter are made on the basis of my review of the official files and records of the BOP, my own personal knowledge, or on the basis of information acquired by me through the performance of my official duties. I have reviewed Ms. Montgomery's medical and mental health records, but I am not her treating psychologist and have not examined her in person for the purpose of this declaration.

3. I have been advised that in the above referenced case, Lisa Montgomery, Reg. No. 11072-031, has raised issues regarding her mental health status and the treatment she has received for her mental health conditions.

4. Ms. Montgomery has present mental health diagnoses of unspecified personality disorder, unspecified mood [affective] disorder, and posttraumatic stress disorder. Based on her mental health diagnoses, she is presently a mental health care level three inmate. As a care

level three mental health inmate, she receives weekly mental health interventions.

5. Ms. Montgomery is prescribed 20 MG Fluoxetine HCL to be taken once daily for depression, 15 MG Mirtzapine to be taken once daily for mood, and 2 MG Risperidone to be taken once daily for mood. Records indicate she has been compliant with her prescribed medications.

6. On October 16, 2020, after Ms. Montgomery was notified by the FMC Carswell Warden of her scheduled execution date, she was assessed and placed on suicide watch as a precaution based on the gravity of the news of her scheduled execution date, her documented history of prior suicide attempts, impulsivity, and poor/maladaptive coping skills which placed her at significant risk of committing suicide. Since her placement on suicide watch, Ms. Montgomery has been evaluated daily by a licensed psychologist and has had frequent clinical contacts with her treating psychologist.

7. Records indicate that Ms. Montgomery has consistently remained alert and oriented to person, time, place, and situation. Her grooming and hygiene have been generally described as good except when she indicated she declined a shower because she did not want to go through the process of exiting and returning to her room for a shower. Thought processes have been organized and goal-directed and content has been without abnormality or overt delusional content. Providers have consistently noted that there were no signs of psychosis or symptoms of severe mental illness observed when they have conducted the daily suicide watch contacts.

8. On November 9, 2020, Ms. Montgomery indicated to both the psychologist conducting her suicide watch contact and to her treating psychologist that she had been told by her attorney not to talk to Carswell staff, including psychologists. She said her attorney had also told

her not to call her children but she "c[ould]n't do that." Psychology staff noted that Ms. Montgomery seemed to struggle with the decision not to fully engage with psychology and she was encouraged to discuss the situation with her attorney. On November 12, 2020, Ms. Montgomery told the psychologist conducting her suicide watch contact that she did not wish to speak with anyone from psychology because she believed her statements were being written down and would be used against her. Later on November 12, 2020, Ms. Montgomery told her treating psychologist that she would resume participation in individual therapy if her legal situation improved. Records after November 9, 2020, generally indicate that psychologists were able to engage Ms. Montgomery in discussions about property she would like to have added to her authorized property list, DVDs she would like to watch, and obtaining new books and puzzle sheets, but she would generally decline to engage in discussion about her emotions or psychological state. On November 17, 2020, she told her treating psychologist that despite her attorneys' advice not to engage with psychology staff she wanted to speak with him because she felt it would be helpful to process her emotions related to her execution. Thereafter, she generally engaged in some discussion of her emotional and psychological state with her treating psychologist and the psychologists conducting her suicide watch contacts.

9. Records reflect that Ms. Montgomery has engaged in a variety of in cell and out of cell activities that she indicated have been her primary coping skills. Ms. Montgomery has been reading books and the Bible, listening to music, watching DVDs, working on Sudoku and dot-to-to puzzles, making social and legal calls, engaging in in-person and video visits with her family, writing letters and cards to family, and participating in outdoor recreation (except when she indicated the weather was too cold or rainy).

10. Ms. Montgomery has expressed emotions to her suicide watch psychologists that she has primarily attributed to her legal situation and upcoming execution date. On December 25, 2020, Ms. Montgomery reported to the psychologist conducting her suicide watch contact that the night before she had a phone call with some attorneys who had volunteered to work on her case and they told her that her execution date had been vacated. She reported feeling positive and hopeful about the future in light of that news. Ms. Montgomery relayed that she had experienced mild sleep disturbances the previous night because she was "excited" about the news she had received. On December 26, 2020, she reported that she had participated in a "very positive" legal call the day before. On December 28, 2020, Ms. Montgomery reported to the psychologist conducting her suicide watch contact that she could not speak about her legal situation but described "good news" related to her execution date and indicated she believed it was unlikely she would be executed but understood it was still a possibility. She reported that she was limiting her verbal responses with the psychologist because she was "supposed to sit tight" according to her legal team. On December 30, 2020, she reported that she had slept poorly the night before because she was "thinking a lot about what is going to happen" related to her potential execution. She reported she was still optimistic but was becoming worried that she might still be executed. On December 31, 2020, Ms. Montgomery reported to the psychologist conducting her suicide watch contact that she was still optimistic but was distressed by the "small chance" she could be executed. She reported she was looking forward to legal calls that she had scheduled as well as her clemency hearing that was scheduled for January 6, 2021. On January 2, 2021, Ms. Montgomery reported that she had received "bad news" from her attorney the day before and claimed to be reading a book to "escape." She also

acknowledged feeling sad about the news but hopeful that her attorneys would have additional strategies to preserve her life and indicated she was grateful for that and had a continued desire to fight her case. On January 3, 2021, the psychologist conducting the suicide watch contact discussed with her how she did not appear emotional despite the upcoming execution date and she acknowledged that she usually cries at night. She also indicated that she was hopeful and that "anything can change in a week's time." The psychologist noted that she was aware of all of the legal remedies her attorneys were pursuing and that she had a solid grasp of the timeline of events for the upcoming week including legal calls, hearings, and video visits with family. On January 4, 2021, Ms. Montgomery reported to the psychologist conducting her suicide watch contact that she had learned from her legal team that her execution date had been reinstated the past Friday and that she was "sad" and worried about the potential execution and the impact of the scheduled execution and the appeals process on her family. She reported being more tearful since Friday but that she was "okay." She reported that she was doing her best to remain hopeful as her clemency petition and other issues that could delay her execution were still pending. Ms. Montgomery also reported that she anticipated "a lot of up(s) and down(s)" as she was 8 days from her scheduled execution. On January 5, 2021, Ms. Montgomery reported a high level of distress during her suicide watch contact. She noted that she was sad and worried but "at peace" if she was executed. She also initiated a conversation about how she was preparing for her execution including her last meal and who would be at her execution to support her. She stated she was using her remaining days to stay in contact with her legal team and call each of her children. Ms. Montgomery reported crying more as she prepared to be transferred and executed but that she was also hopeful she would

receive clemency or a delay in her execution. The psychologist noted that her affect was flexible and congruent with the topics discussed and was more open when discussing her thoughts and emotions and initiated the conversation about her distress. On January 6, 2021, Ms. Montgomery reported ongoing sadness and worry about her potential execution but also reported numerous supportive interactions during personal and legal calls the day before. She said she had been reminded of how many people were "fighting" for her and that bolstered her hopefulness. She also reported gastrointestinal discomfort that she attributed to stress and anxiety. She reported her clemency hearing was scheduled for that day and that she was hopeful she would receive clemency. The psychologist conducting the suicide watch contact noted that Ms. Montgomery endorsed ongoing psychological and emotional distress, secondary to her scheduled execution. She was tearful but the tearfulness was less than the day before. On January 8, 2021, Ms. Montgomery reported to the psychologist conducting her suicide watch contact that she was experiencing psychological and emotional distress that was more intense than any distress she had experienced since her execution was scheduled. She described difficulty concentrating, gastrointestinal discomfort, sadness, worry, and guilt. She reported there still might be pending issues that would stop her execution, and she was hopeful. Ms. Montgomery was described as tearful throughout the contact and expressed guilt related to her crime and the impact of the sentence on those who care about her. She reported feeling "bad about everything." The psychologist noted that she appeared dysthymic with congruent, tearful affect. Ms. Montgomery described her sleep as poor but consistent with her baseline.

I declare, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed this 10th day of January, 2021.

Leslie Wheat, Ph.D.
Federal Bureau of Prisons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY,<br><br>Petitioner,<br><br>v.<br><br>WARDEN OF USP TERRE HAUTE, IN., *et al.*,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 2:21-cv-00020-JPH-DLP |

# EXHIBIT F - RULE 1006 SUMMARY EXCERPTS OF JAIL CALLS FROM LISA MONTGOMERY

**August 6, 2020**

**Montgomery and her daughter Kayla discuss the Supreme Court's denial of Montgomery's petition for rehearing[1] and the potential consequences of November 2020 general election on the *death penalty*:**

MS. DAVIS: I love you too. All right. Keep your head up. All right?
MS. MONTGOMERY: I am. I am. You tell [your siblings] I'm not giving up yet. Okay?
MS. DAVIS: Okay.
MS. MONTGOMERY: I'll keep fighting.
MS. DAVIS: Okay.
MS. MONTGOMERY: So, there's still things we can do, I think. And, you know, there's clemency so we're working on that too.
MS. DAVIS: Yeah.
MS. MONTGOMERY: And if Biden becomes president, he said -- you heard what he said, he'll abolish the death penalty, so.
MS. DAVIS: Oh, Biden. Oh.

Tr. 20:19 – 21:6 (Aug. 6, 2020).

[1] *Montgomery v. United States*, 141 S. Ct. 199 (Aug. 3, 2020).

**August 13, 2020**

**Montgomery and her daughter Kayla discuss the $100 special assessment she was required to pay as part of her criminal judgment, compared to another female inmate who also received a capital sentence:**

MS. MONTGOMERY: You think [your sister will] have a fine to pay and probation?
MS. DAVIS: Yeah. She'll be on probation. I mean she's obviously -- she's going to have a crap ton of court fees to pay.
MS. MONTGOMERY: Oh, shit, yeah. She's probably going to be paying on them forever.
MS. DAVIS: Uh-huh.
MS. MONTGOMERY: You know I had to pay court fees.
MS. DAVIS: Do what?
MS. MONTGOMERY: I had to pay court fees.
MS. DAVIS: You had to pay court fees?
MS. MONTGOMERY: Yep.
MS. DAVIS: Oh, with all your money?
MS. MONTGOMERY: Yeah.
MS. DAVIS: All that money you make?
MS. MONTGOMERY: Yeah.
MS. DAVIS: How do you --
MS. MONTGOMERY: It's $100. Listen to this. So, it's a $100 per charge. I had one charge.
MS. DAVIS: Oh, yeah. Yeah. Big money.
MS. MONTGOMERY: Yeah. There's people that have five, six, seven charges.
MS. DAVIS: Oh.
MS. MONTGOMERY: I just had one. One big one. But yeah.
MS. DAVIS: Uh-huh.
MS. MONTGOMERY: And so I paid that back the first year I was here. So, what happens is if you, and if you get a fine, well, I didn't get a fine because obviously it was my sentence. I wasn't going to get a fine, although Angie[2] did.
MS. DAVIS: Right.
MS. MONTGOMERY: They got her because her family sent her like $400 and $500 a month.

Tr. 9:24 - 11:6 (Aug. 13, 2020).

---

[2] Angela "Angie" Jane Johnson is another convicted murderer and Carswell inmate who received a capital sentence, though Angie's sentence was later reduced to life. *See also Johnson v. United States*, 860 F. Supp. 2d 663 (N.D. Iowa 2012) (granting Angela Jane Johnson relief from a capital sentence under § 2255).

**Montgomery and her daughter Kayla discuss her criminal proceedings and the legal arguments her attorneys have made, including the firing of one of her former attorneys, Judy Clarke, and the Supreme Court's denial of Montgomery's petition for certiorari and petition for rehearing:**

MS. MONTGOMERY: Well, I keep hoping my attorneys were good at what they did, but I've lost everything. So, I don't know.
MS. DAVIS: Yeah. I don't know. I think they're good. I just think they're fighting a hard battle.
MS. MONTGOMERY: Yeah.
MS. DAVIS: I think if you had had different attorneys to start with it would have gone differently.
MS. MONTGOMERY: It would been a different outcome. Right. Right. If had gotten Judy [Clarke] to begin with.
MS. DAVIS: Yes. I liked her.
MS. MONTGOMERY: But, you know, they're -- yeah. They're saying that it was okay that the judge fired her and replaced her with somebody else.
MS. DAVIS: Which is crazy.
MS. MONTGOMERY: Right. Which everybody that hears that says that can't happen. And it did.
MS. DAVIS: Yeah.
MS. MONTGOMERY: And then, of course, the Supreme Court is saying that it was okay. Right.
MS. DAVIS: Uh-huh.
MS. MONTGOMERY: Because that's what we appealed on.
MS. DAVIS: Yeah.
MS. MONTGOMERY: But yet another court, a lower court in Philadelphia said, no, the guy had a right to his chosen attorney even on the day of trial, even though it was going to delay his trial by three hours. The judge had said, no, he couldn't have his own attorney.
MS. DAVIS: Hum.
MS. MONTGOMERY: So, he won his because he, you know, what he did was he had a court-appointed attorney. He hired an attorney that came in the day of trial and said I need a three-hour delay and I'll be here and I can take over. And the judge said absolutely not. Well, he won his saying that he had a right to have his own attorney.
MS. DAVIS: Yeah.
MS. MONTGOMERY: So, why didn't I have a right to my own attorney, the attorney of my choice? Why didn't I have a right? Well, it wasn't cost --
MS. DAVIS: Because it was court-appointed.
MS. MONTGOMERY: Because she was court-appointed?
MS. DAVIS: I would assume.
MS. MONTGOMERY: Yeah. How does that work, you know?
MS. DAVIS: Yeah. Well, I would assume because -- you're okay. Because it's court-appointed that, you know, the court gets to choose that, unfortunately.
MS. MONTGOMERY: Not necessarily. But, you know, I guess --
MS. DAVIS: See, I don't know enough about it.

MS. MONTGOMERY: She wasn't going to cost the court anything though. She didn't -- she wasn't being paid by the court. Like court-appointed would mean the court was paying her. She was doing it for free.
MS. DAVIS: Oh, she's *pro bono*?
MS. MONTGOMERY: Yes.
MS. DAVIS: Gotcha.
MS. MONTGOMERY: Yeah. Yeah.
MS. DAVIS: Yeah. That's crazy.
MS. MONTGOMERY: So, yeah. Now, you see why we've been like really fighting this, but --
MS. DAVIS: Uh-huh.
MS. MONTGOMERY: Now, I'm sure they got -- I talked to Amy [Harwell] the other day and she, you know, they said they've got more things that they're going to try.
MS. DAVIS: Uh-huh.
MS. MONTGOMERY: But she wants to wait for a legal call.
MS. DAVIS: Yeah.

****

MS. DAVIS: Okay. I was going to say I could always message her. No. She kind of told me a little bit of what they have in mind. But she said they're not sure what approach they're going to take yet. That's why I can't really say a whole lot, but.
MS. MONTGOMERY: Right. Right.
MS. DAVIS: So.
MS. MONTGOMERY: Yeah. We can't talk about it on the phone. But as long as you kind of know what's going on, that's good.
MS. DAVIS: Yes.
MS. MONTGOMERY: And I asked her to call (inaudible).
MS. DAVIS: I do. I talked to her for a good like 30 minutes the other day.
MS. MONTGOMERY: Okay.
MS. DAVIS: Just so I had kind of an idea.
MS. MONTGOMERY: You probably know more than I know.
MS. DAVIS: Sadly. Sadly. I probably do. Kind of.
MS. MONTGOMERY: It's tough to say though. They know that you're important to me and that I want you to be fully aware of what's going on. You and Kevin [Montgomery].
MS. DAVIS: Yeah.
MS. MONTGOMERY: So. Because I know you'll communicate with your brother and your sisters. Now, CJ said he took some --
MS. DAVIS: Yes. And I did.

Tr. 14:2 – 18:3 (Aug. 13, 2020).

**August 27, 2020**

**Montgomery discusses the probability that she will be executed with her father and his partner, Jan:**

MS. MONTGOMERY: I was sad yesterday. They had another execution in the federal system.
JAN: Damn. Damn.
MS. MONTGOMERY: And then they've got another one tomorrow.
JAN: Oh, damn.
MS. MONTGOMERY: Yeah.
JAN: We've got to hurry up and get Biden in. He said right away he's going to stop that.
MS. MONTGOMERY: Yes.
JAN: I just--
MS. MONTGOMERY: They have more scheduled in. Okay. Because I don't know if Dad told you that there was 12 ahead of me, now there's 11 because the one that got killed yesterday.
JAN: Right.
MS. MONTGOMERY: And so after tomorrow there will be ten ahead of me.
JAN: Well, remember you're a female.
MS. MONTGOMERY: I know. That's what everybody tells me.
JAN: (Inaudible) and sick, yeah.
MS. MONTGOMERY: Hopefully he just -- hopefully he doesn't notice me.
JAN: Yeah. Well, you're female and I think that's in your favor. All right. He is not happy with us at all.
MS. MONTGOMERY: Okay.
JAN: I don't blame him. He loves you.
MS. MONTGOMERY: I know he does.
JAN: All right, honey. Take care.
MS. MONTGOMERY: I love you too. Bye.
JAN: Bye-bye.
MR. PATTERSON: Okay. What's up?
MS. MONTGOMERY: Nothing. I was just telling her that they executed a guy yesterday and they're doing another one tomorrow.
MR. PATTERSON: Oh, really.
MS. MONTGOMERY: Yeah.
MR. PATTERSON: Oh.
MS. MONTGOMERY: And two more in a couple weeks, so.
MR. PATTERSON: That's too bad.
MS. MONTGOMERY: That put me -- I don't know if you know where I'm at. There was 12 ahead of me, now there's 11, tomorrow there will be 10.
MR. PATTERSON: Okay.
MS. MONTGOMERY: So,
MR. PATTERSON: Well.
MS. MONTGOMERY: Hopefully they don't two a month. If they do two a month, then I'm screwed, but hopefully they don't.

MR. PATTERSON: Well, yeah.
MS. MONTGOMERY: It still would -- even then it wouldn't be till January. But I'm sure Biden is going to win. Don't you think he's going to win? The polls here in Texas. He's leading here in Texas.
MR. PATTERSON: I know, but [Hillary Clinton] was too.
MS. MONTGOMERY: I know.

Tr. 5:13–7:17 (Aug. 27, 2020).

**September 1, 2020**

**Montgomery discusses with her father her interest "on a personal level" in a book about John Wilkes Booth, based on the hanging of Mary Surratt:**

MS. MONTGOMERY: So, one of the reasons I called was I got the books today in the mail.
MR. PATTERSON: Oh, good.
MS. MONTGOMERY: From Daedalus.
MR. PATTERSON: Uh-huh.
MS. MONTGOMERY: *The Storm*, and John Wilkes Booth and the pictures of Stalin versus Hitler, and the one on World War I. They all look good.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: We were locked in all afternoon and he brought them to my room, so I was like, oh, this is cool.
MR. PATTERSON: Good. I'm glad you like them.
MS. MONTGOMERY: Yeah. Yeah.
MR. PATTERSON: So, did you like them? You don't have to. If you don't like them, please tell me.
MS. MONTGOMERY: I do like them. I glanced through the John Wilkes Booth because I'm interested in that on a personal level because –
MR. PATTERSON: Uh-huh.
MS. MONTGOMERY: -- didn't they hang Mary Surratt because she had a boarding house where he was staying at?
MR. PATTERSON: Yeah.
MS. MONTGOMERY: Yes. And she was like the first federal woman –
MR. PATTERSON: Yeah.
MS. MONTGOMERY: -- to be killed, to get the death penalty?
MR. PATTERSON: Yeah.
MS. MONTGOMERY: Yeah.
MR. PATTERSON: Yeah. And they did it, oh, you know, they did it in a square so everybody could see it.
MS. MONTGOMERY: Right.
MR. PATTERSON: I think they did four of them at the same time and she was one of them.
MS. MONTGOMERY: Yeah. That's what I thought. Well, I'll find out for sure reading it. It seems like I read something about it a long time ago but I don't –

MR. PATTERSON: Yeah.
MS. MONTGOMERY: I don't really remember how that worked.
MR. PATTERSON: Yeah. Well, I know they hung – I know they hung her. I know that for a fact.
MS. MONTGOMERY: Yeah. I knew they hung her. This guy wrote to me and she was – okay. His ancestor was the preacher who went to give her final rights or whatever before she died.
MR. PATTERSON: Oh, yeah. Yeah.
MS. MONTGOMERY: And so it had been passed down in their – and also the bed – the bed that John Wilkes Booth slept on is in his family.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: So.
MR. PATTERSON: Well, he was actually a fairly famous person. That's why he got in there originally.
MS. MONTGOMERY: Yeah. Right. And he knew his way around the theater.

Tr. 5:13 – 7:17 (Sept. 1, 2020).

**November 2, 2020**

**Montgomery and her daughter Kayla discuss a biblical passage concerning prisoners in the shadow of death:**

MS. MONTGOMERY: . . . Oh, wait a minute. So listen to this. So, I had a Bible, right?
MS. DAVIS: Yeah.
MS. MONTGOMERY: And I opened it up the other night just to wherever it opened to and it opened to Psalm 107. So, write this down, 107. And it's not the very beginning of it but maybe a couple of little paragraphs into it.
MS. DAVIS: Yeah.
MS. MONTGOMERY: And it starts talking about prisoners in the shadow of death and how God will free you.
MS. DAVIS: Yeah.
MS. MONTGOMERY: Burst your bonds.
MS. DAVIS: Wow.
MS. MONTGOMERY: Yeah. Isn't that like -- I was like this is so appropriate.

Tr. 15:22-16:11 (Nov. 2, 2020).

**November 10, 2020**

**Montgomery and her father discuss her attorneys contracting COVID-19:**

MS. MONTGOMERY: Have you heard that my attorneys are sick?
MR. PATTERSON: Are they?
MS. MONTGOMERY: Yes.
MR. PATTERSON: I did not.

MS. MONTGOMERY: They had to cancel their visit for two weeks.
MR. PATTERSON: Oh, my goodness.
MS. MONTGOMERY: They got sick coming down here.
MR. PATTERSON: Well, did you get to sit with them?
MS. MONTGOMERY: No. It was no contact, but still.
MR. PATTERSON: Okay. So, was it the same way we meet you?
MS. MONTGOMERY: Yeah.
MR. PATTERSON: Oh, you know --
MS. MONTGOMERY: It was probably through the airlines or something is probably where they got it.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: Or a rental car or whatever. So, that's why we're not worried about here right now.

Tr. 4:3-22 (Nov. 10, 2020).

**Montgomery and her father discuss her ex-husband's recent arrest:**

MS. MONTGOMERY: Did you hear what happened to their dad? Did you hear what happened to their dad?
MR. PATTERSON: I heard. Is he out now or is he still in jail?
MS. MONTGOMERY: Oh, no. He's on a $100,000 bail.
MR. PATTERSON: Well, I know that. I didn't think he could get it, so.
MS. MONTGOMERY: Yeah. They're not bailing him out.
MR. PATTERSON: Yeah. She -- Kayla sent me the arrest thing right after he got arrested.
MS. MONTGOMERY: Karma.

Tr. 7:25-8:10 (Nov. 10, 2020).

**Montgomery and her father discuss the implausibility of her ex-husband's criminal defense and jokes about how she once again has the upper hand over her ex-spouse:**

MS. MONTGOMERY: Carl is saying he's the victim in this. He was enticed.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: A 14-year-old girl. There's no way.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: And they got all kinds of evidence against him, so he's going down for a long time. I think it's – I think it's karma. See what he gets for being so nasty to me.[3]

---

Montgomery married Carl Boman, her step-brother, when she turned eighteen in August 1986. She had her first child in January 1987, and three more in the three years that followed. In 1990, Montgomery underwent the sterilization procedure described above. The procedure was successful, and a pretrial hysterosalpingogram confirmed that the sterilization rendered Montgomery unable to become pregnant. Montgomery claimed that her mother and Boman forced her to undergo the sterilization procedure.

MR. PATTERSON: Yeah. Yeah. Yeah. Well, I always said that, so.
MS. MONTGOMERY: Yeah.
MR. PATTERSON: You know.
MS. MONTGOMERY: And then CJ goes, well, you're back on top, Mom. For the next four weeks I'm back on top.

Tr. 9:17-10:5 (Nov. 10, 2020).

**November 26, 2020**

**Montgomery claims to her daughter Chelsea that did not know what she was doing when she committed her crime, as compared to her ex-spouse's recent criminal charge(s):**

MS. MONTGOMERY: Think [your father is] going to make you feel guilty too?
CHELSEA: Yeah.
MS. MONTGOMERY: Don't feel guilty.
CHELSEA: I was like, no. I can't do that right now. Like I --
MS. MONTGOMERY: Don't feel guilty.
CHELSEA: I don't feel guilty. He did it himself. Like --

---

> In the years following the sterilization procedure, Montgomery claimed that she had four more pregnancies. In 1994, while separated from Boman, Montgomery had an affair and claimed that she was pregnant. Montgomery and Boman later reconciled, and she ceased making the claim. She and Boman divorced in 1998. In 2000, before she and Kevin were married, she told him that she was pregnant and intended to have an abortion. Kevin gave her forty dollars, and the pregnancy was not mentioned again. In 2002, Montgomery told her friends and family that she was pregnant again. Although she said that she was receiving prenatal care from her physician, she would not allow Kevin to attend the appointments. Her physician testified that he had treated Montgomery for ankle pain and a cold, but he did not provide her any prenatal care, despite Montgomery's claims to the contrary. When the alleged due date passed, Montgomery told Kevin that the baby had died and that she had donated its body to science. As described above, Montgomery claimed in spring 2004 that she was pregnant and that she was due in December.
>
> Throughout the fall of 2004, Montgomery was involved in a custody dispute with Boman. He knew that Montgomery was unable to become pregnant and that she was again claiming that she was pregnant. He and his wife sent emails to Montgomery, telling her that they planned to expose her deception and use it against her in the custody proceedings. **Montgomery said that she would prove them wrong.** On December 10, 2004, days before the kidnapping, Boman filed a motion for change of custody of the two minor children who lived with Montgomery.

*United States v. Montgomery*, 635 F.3d 1074, 1081 (8th Cir. 2011) (emphasis added).

MS. MONTGOMERY: Right. I tried never doing that to you guys. Right?
CHELSEA: And he's done it our whole life, so.
MS. MONTGOMERY: I know he has.
CHELSEA: (Inaudible).
MS. MONTGOMERY: I know. And I don't know how to fix that.
CHELSEA: I don't know.
MS. MONTGOMERY: I guess that's why I was so determined, you know, this -- this was not your fault and I would never blame you guys or make you feel responsible for it.
CHELSEA: I know. I don't feel that way with you. I feel different about what you did than what he did.
MS. MONTGOMERY: Yeah. Well.
CHELSEA: I don't blame you, but I definitely blame him.
MS. MONTGOMERY: Yeah. I don't know. I don't – I didn't know what I was doing, you know.
CHELSEA: It's okay. I love you a lot.

Tr. 6:1-7:2 (Nov. 26, 2020).

**December 2, 2020**

**Montgomery and her daughter Chelsea discuss Montgomery throwing a party for herself on the date originally designated for her execution, December 8, 2020:**

MS. MONTGOMERY: I'm going to have a party on Tuesday, a party for myself.
CHELSEA: A party for what?
MS. MONTGOMERY: Because that was my original date.

****

MS. MONTGOMERY: I was just like, we'll just celebrate it because it didn't happen. Okay?
CHELSEA: Right.

Tr. 15:12-24 (Dec. 2, 2020).

**December 11, 2020**

**Montgomery and her daughter Kayla discuss that the government will pay for her cremation in Terre Haute:**

MS. MONTGOMERY: Okay. So, I've talked to Amy [Harwell] and them today and they said that the prison is wanting me to fill out the things for cremation.
MS. DAVIS: Uh-huh.
MS. MONTGOMERY: I guess they're going to pay for it.
MS. DAVIS: Oh, okay.
MS. MONTGOMERY: Okay. Just, you know, in case –

MS. DAVIS: Yeah.
MS. MONTGOMERY: Yeah. So, I was going to let Kevin know that at least that would be something he wouldn't have to worry about.
MS. DAVIS: Yeah.
MS. MONTGOMERY: Or you guys, you know.
MS. DAVIS: Right. That makes sense. But Amy and them would or the prison would?
MS. MONTGOMERY: The prison is going to.
MS. DAVIS: Okay. Okay.
MS. MONTGOMERY: Or the government, whoever. They're going to pay for it. At the funeral home in Terre Haute.
MS. DAVIS: Okay.
MS. MONTGOMERY: So. I think they should pay for it. I mean they're the ones doing it, they should pay for it.
MS. DAVIS: Uh-huh. You know, well, like hopefully it doesn't come to that.
MS. MONTGOMERY: Hopefully it doesn't come to that, you're right.
MS. DAVIS: And you'll just, you know, die of old age and then I'll pay for it then.
MS. MONTGOMERY: I would love – I'd love to die of old age.
MS. DAVIS: Yeah.

Tr. 2:20-3:25 (Dec. 11, 2020).

**December 14, 2020**

**Montgomery and her sister Diane discuss developments in her legal case, providing consent for additional counsel to represent her, and how her online petition in support of clemency received more signatures than male, executed prisoners:**

MS. MONTGOMERY: Yeah. So, I talked to (inaudible).
MS. MATTINGLY: Uh-huh. And?
MS. MONTGOMERY: And a private law firm in D.C. has taken on my case.
MS. MATTINGLY: Awesome.
MS. MONTGOMERY: With the people from Cornell, I believe is --
MS. MATTINGLY: Awesome.
MS. MONTGOMERY: I believe that's what it was because I had to agree to it today.
MS. MATTINGLY: Yeah.
MS. MONTGOMERY: So, that's good.
MS. MATTINGLY: Well, that's awesome. Yeah.
MS. MONTGOMERY: And Kayla told me there was over 125,000 signatures on the petition.
MS. MATTINGLY: I know. Isn't that exciting?
MS. MONTGOMERY: I know. I was like I don't think the guys got that much, did they?
MS. MATTINGLY: I don't think so.
MS. MONTGOMERY: Yeah.

Tr. 6:9-7:3 (Dec. 14, 2020).

**Montgomery and her sister Diane recount the anniversary of her crime:**

MS. MONTGOMERY: You know, this week is hard for me. I don't know if they told you, but it'll be 16 years this week. And so --
MS. MATTINGLY: Yeah, I know. You just know that God has forgiven you.
MS. MONTGOMERY: I know.

Tr. 10:24-11:4 (Dec. 14, 2020).

**Montgomery and her sister Diane discuss cremation and her last meal:**

MS. MONTGOMERY: Yeah. Because I had to fill out the cremation forms today.
MS. MATTINGLY: Oh, I'm sorry, honey. I know that was hard.
MS. MONTGOMERY: Yeah. Yeah. It was, you know, because then it's like, okay, now I'm really having to sign this thing.
MS. MATTINGLY: Yeah. Well --
MS. MONTGOMERY: But the chaplain is the one that
brought it over and they've been really helpful for me, so.
MS. MATTINGLY: Well, good.
MS. MONTGOMERY: I was glad it was them rather than the warden or somebody like that.
MS. MATTINGLY: Yeah. Well, that was smart that they done that.
MS. MONTGOMERY: Yeah. Yeah. So, we got that all taken care of. I haven't decided my last meal yet because they're supposed to be giving me a list of restaurants.

Tr. 14:12-15:5 (Dec. 14, 2020).

**Montgomery and her sister Diane discuss her calendar counting down until presidential inauguration day:**

MS. MONTGOMERY: That's right. That's right. I'm going to just stay here till -- I made a calendar --
MS. MATTINGLY: Uh-huh.
MS. MONTGOMERY: -- so I can keep track of what day it was and what the weekends were and everything. And so I made my calendar to January 20th.
MS. MATTINGLY: Good for you.
MS. MONTGOMERY: So, that's how positive I'm being.
MS. MATTINGLY: Yeah.
MS. MONTGOMERY: You know, I'm like I'm not going to stop it at January 12th. That's not it. It's January 20th.
MS. MATTINGLY: Right. There you go. Good for you.
MS. MONTGOMERY: So.
MS. MATTINGLY: And then we get Biden in there and we're going to get him to reduce everything. I mean if we can't get --
MS. MONTGOMERY: Yeah. We're getting him --

MS. MATTINGLY: Let's just get another judge to give you a stay until Biden gets in. That's all that we need.
MS. MONTGOMERY: Yeah. Yep. Now, we have another law firm working for us.
MS. MATTINGLY: Yes.
MS. MONTGOMERY: And for --
MS. MATTINGLY: Oh, good.
MS. MONTGOMERY: I mean they're doing it for free.
MS. MATTINGLY: I'm so glad to hear that. Wow. That is so amazing.
MS. MONTGOMERY: Yeah, I know.

Tr. 15:18-16:19 (Dec. 14, 2020).

**December 17, 2020**

**Montgomery acknowledges to her father that she "went off the path for a minute":**

MR. PATTERSON: But know that your kids are more important. Okay? And those grandkids needs to know Grandma –
MS. MONTGOMERY: Right.
MR. PATTERSON: -- because Grandma is a nice person. Okay.
MS. MONTGOMERY: Right.
MR. PATTERSON: Yeah. Well, I believe that, you know. You have -- you are such a good person now. I mean you always were, you just went off the path for a minute.
MS. MONTGOMERY: Yeah, that's true.
Tr. 6:21-7:5 (Dec. 17, 2020).

**Montgomery recounts to her father the anniversary of her incarceration and her crime:**

MR. PATTERSON: You know. I'm sorry you're down today. I wish I could bring you up, but I can't think of any jokes.
MS. MONTGOMERY: I just -- today makes me 16 years of being locked up.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: So, you know that yesterday was like[4] --
MR. PATTERSON: Yeah.
MS. MONTGOMERY: Yeah.
MR. PATTERSON: Yeah. I told you what, you know you hit national news.
MS. MONTGOMERY: Yeah.
MR. PATTERSON: And I jokingly said, oh, that could be my daughter, never believing it was.
MS. MONTGOMERY: Yeah.

---

[4] Montgomery committed her crime on December 16, 2004. United States v. Montgomery, 635 F.3d 1074, 1079 (8th Cir. 2011). She was arrested the next day, December 17. *Id.* at 1080.

Tr. 15:8-22 (Dec. 17, 2020).

**January 2, 2021**

**Montgomery and her father discuss her current imprisonment in Texas and transfer plan:**

MR. PATTERSON: You know, wow. You still in Texas?
MS. MONTGOMERY: No. Am I -- oh, am I still in Texas? Is that what you're asking? Yeah.
MR. PATTERSON: Yes. Okay.
MS. MONTGOMERY: Yeah. They haven't moved me yet.
MR. PATTERSON: Okay.
MS. MONTGOMERY: They probably won't till next week.

Tr. 3:7-13 (Jan. 2, 2021).

**Montgomery and her father discuss the status of her legal appeal to the D.C. Circuit, the remaining claims in district court, and her plan for execution witnesses:**

MS. MONTGOMERY: So, what happened was the government appealed to the circuit court and the circuit court ruled against the judge, who had originally ordered. However, we're going to
appeal to the whole circuit court. That's next.
MR. PATTERSON: Yeah.
MS. MONTGOMERY: Okay. We've got a clemency hearing on Wednesday, so.
MR. PATTERSON: Okay.
MS. MONTGOMERY: Yeah. So, we can --
MR. PATTERSON: Well, I'm praying. I'm praying. I know I got --
MS. MONTGOMERY: And the judge didn't rule on everything. The judge that gave us that ruling, he didn't rule on everything, so there's still more --
MR. PATTERSON: Yeah.
MS. MONTGOMERY: -- in here. I mean I was told it was going to be a roller coaster of a week, so just to hang in here.
MR. PATTERSON: Okay. As you long as you know that, hon.
MS. MONTGOMERY: Okay.
MR. PATTERSON: Okay. Okay. I've kind of figured that out a long time ago how it's going to be.
MS. MONTGOMERY: It's going to be up and down.
MR. PATTERSON: Yeah. Well, I'd had hoped that things would change way back and -- but, yes. I'm -- and I -- I was just --
MS. MONTGOMERY: And the court was just able to rule the way they did, but, you know.
MR. PATTERSON: I just was talking to Tom. And there's -- I don't know how -- I would love to try to be there for you.
MS. MONTGOMERY: Yeah. But you --

MR. PATTERSON: But I just --
MS. MONTGOMERY: But you wouldn't be allowed in.
MR. PATTERSON: I know. And that pisses me off too.
MS. MONTGOMERY: No. It's because I did it for everybody. I couldn't --
MR. PATTERSON: Yeah. But --
MS. MONTGOMERY: I couldn't sit and choose --
MR. PATTERSON: Okay.
MS. MONTGOMERY: -- one person over another.
MR. PATTERSON: Oh, I know, but you always choose me first.
MS. MONTGOMERY: Then I would have had a very upset husband. I would have had very upset kids and I was only going to get to choose like three.
MR. PATTERSON: Well, okay.
MS. MONTGOMERY: And there's five of you guys.
MR. PATTERSON: Me, Kevin and --
MS. MONTGOMERY: No.
MR. PATTERSON: Me, Kevin and Kayla.
MS. MONTGOMERY: No. No. That's not --
MR. PATTERSON: Me, Kevin and your sister.
MS. MONTGOMERY: No. How about --
MR. PATTERSON: Okay.
MS. MONTGOMERY: I would have had -- yeah. I forgot sister too. So, four kids, husband, you and Diane. That's seven people and I could only choose three. I just couldn't do that.
MR. PATTERSON: Well, I don't care about who the other two are.
MS. MONTGOMERY: Well, they did.
MR. PATTERSON: I'm teasing you.
MS. MONTGOMERY: So, just to be fair to everybody it was nobody.

Tr. 8:9-10:21 (Jan. 2, 2021).

**Montgomery and her father discuss final calls with her children and her hope that the President will grant her clemency or a reprieve:**

MR. PATTERSON: Yeah. Well, I don't know. I'm sure you heard it already, but Chelsea seems to be a little better.
MS. MONTGOMERY: Yes. Yes. And I will talk to her this coming week. I've got my days divided up for everybody.
MR. PATTERSON: Okay. Can I say something, and please don't take this wrong, okay?
MS. MONTGOMERY: Yeah.
MR. PATTERSON: I love hearing from you but those kids are more important.
MS. MONTGOMERY: They're all going to get a call, Dad. Don't worry.
MR. PATTERSON: Okay.
MS. MONTGOMERY: I'm calling CJ tomorrow.
MR. PATTERSON: They are --
MS. MONTGOMERY: Desiree on Monday.

MR. PATTERSON: They're all taking -- yeah. Okay. Just please do them before me. Okay?
MS. MONTGOMERY: Yes. They're all getting a call.
MR. PATTERSON: They are -- they're all hurting right now. Okay?
MS. MONTGOMERY: I know.
MR. PATTERSON: Okay. Well, you know, anyhow.
MS. MONTGOMERY: It's not over yet though, Dad.
MR. PATTERSON: I know. And I'm going to come down there and hug you after this is changed.
MS. MONTGOMERY: Oh, I need hugs after all this is done.
MR. PATTERSON: Oh, yeah. Well, I told you me and Mike had planned a trip down there.
MS. MONTGOMERY: Hopefully Trump will grant me clemency or a reprieve.

12:22:14:1 (Jan. 2, 2021).

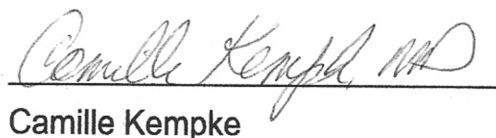
# DECLARATION OF CAMILLE KEMPKE

I, Camille Kempke, M.D., hereby declare the following:

1. I am a Board Certified psychiatrist, currently retired.
2. I served as a psychiatrist at the Carswell Medical Center (Federal Bureau of Prisons) from February 2008 through September 2010.
3. In the course of my employment, I was the treating psychiatrist for Lisa Montgomery. Initially I saw her on the M-3 (mental health segregation) unit and later I treated her after she was housed in the admin unit.
4. When Mrs. Montgomery arrived at Carswell, she carried a bipolar diagnosis. She was medicated with Depakote but was not doing well psychiatrically.
5. She presented as disheveled and unclean. I had a hard time getting her to answer my questions or to come to the door to talk to me.
6. I initially thought that Mrs. Montgomery's presentation was due to depression over her conviction and death sentence, but I later learned that was not the case. After we began appropriately medicating her with antipsychotics, her affect, demeanor, and presentation changed dramatically. The information I later learned about Mrs. Montgomery's social history reinforced my revised assessment: Mrs. Montgomery's presentation was not simply depression, but psychotic depression.
7. I witnessed Mrs. Montgomery in an acute dissociative psychotic state at least two times.
8. When I treated her, her psychosis primarily manifested as crying, withdrawal, not responding to social cues, difficulty with concentration and deliberation, poor understanding of what she read, and hearing voices talking to her from the radio.
9. Mrs. Montgomery's counsel have informed me that she has been moved to death watch following the setting of her execution date.
10. They have described to me Mrs. Montgomery's current conditions of confinement, which are consistent with what I know to be the suicide precautions used at Carswell.
11. Though BOP is currently ensuring that Mrs. Montgomery showers three times a week, it is my understanding that she does so as quickly as possible—generally in under the 2 minute timer in the inmate shower—to avoid a prolonged re-experiencing of the sensation of observation and vulnerability into which showering recapitulates her. According to her lawyers, Mrs. Montgomery endorses that showers always cause her to re-experience her childhood violation. She reports crying in the shower, not because it is a safe place to cry, but rather because the experience in the shower itself is so scary that she cannot withstand it. This is consistent with my observations when she exhibited extreme aversion to showering.
12. Mrs. Montgomery's counsel have described Mrs. Montgomery's current functioning, including that Mrs. Montgomery hears her dead mother's voice and is having nightmares. She cannot describe either the instructions of the auditory hallucinations or the nightmares, because they are too terrifying.

13. Counsel has related that since October 16, 2020, Mrs. Montgomery has experienced lapses of time, including more than one that was commented upon by a guard who observed Mrs. Montgomery sitting staring blankly for a prolonged period. Mrs. Montgomery had not been aware of doing so. Mrs. Montgomery has described other lapses, including reading several pages of a book and realizing she could not remember any of what she read, and writing a letter and then not being able to remember doing it. Mrs. Montgomery reports being unsure of what is real—saying that without access to her most trusted friend, she is unsure of what is happening to her, so she cannot assess whether her perceptions are skewed or not.
14. Per counsel, Mrs. Montgomery reports feeling outside herself—as if watching from a distance, and the sensation of existing in a house in her mind as she did when she was raped as a child. The fact that Mrs. Montgomery is re-experiencing the mental detachment that previously allowed her to survive chronic abuse and gang rape is clinically significant and reflects decompensation and a detachment from reality.
15. Counsel have described that Mrs. Montgomery believes she has received messages from God in a dot-to-dot drawing that she was provided by the BOP. Mrs. Montgomery's counsel have described Mrs. Montgomery finding messages in a feather, a sensation of clouds parting and warmth from the sun, and in seeing the moon in a location she found uncanny. Without more information, it is impossible to know whether these were true hallucinations or delusions of reference. In either case, these indicate that Mrs. Montgomery is psychotic.
16. The difficulties in reality testing described above are similar to those Mrs. Montgomery exhibited before I prescribed Risperdal; this means the beneficial effect of the Risperdal is insufficient to control her symptoms.
17. It is my professional opinion to a reasonable degree of medical certainty that, based on my knowledge of Mrs. Montgomery's history of psychosis and the psychotic symptoms reported by counsel, she is currently unable to rationally understand the government's rationale for her execution.

I declare under penalty of perjury that the foregoing is true and correct.



Camille Kempke

Signed this 10th day of January, 2021.

Declaration of John M. Shields, Ph.D., ABPP

I, John M. Shields, declare as follows:

1. I am a clinical and forensic psychologist, licensed to practice in California, Arizona and New York. I am Board Certified in Forensic Psychology (Diplomate) by the American Board of Professional Psychology [ABPP]. I obtained my Ph.D. in Clinical Psychology from the California School of Professional Psychology in 1992. I am certified as a Clinical Trauma Professional by the International Association of Trauma Professionals and completed certification in Neuropsychological Assessment by the Extension Program of the University of California at Berkeley. My training and experience are in the areas of forensic psychology and neuropsychology.

2. I currently have a clinical practice, specializing in forensic psychology, in San Francisco, California and in New York, NY. I am also currently a consulting neuropsychologist and forensic psychologist with Baker Street Behavioral Health in New Jersey, as well as an Expert Consultant to the United States Air Force. I am on a number of city and county Court panels to provide Court appointed expert services in criminal and juvenile cases.

3. In the course of my practice as a forensic psychologist, and formerly a prison psychologist, I have had occasion to interview and/or evaluate hundreds of individuals, juvenile and adult, who have trauma histories; including diagnoses of post-traumatic stress disorder [PTSD] and complex-PTSD which is suggestive of the most severe trauma histories. I have testified previously as an expert witness in state, federal and military court on trauma.

4. I have previously worked as an evaluator for California Department of State Hospitals, both in the Mentally Disordered Offender and Sexually Violent Predator prograMrs. In those roles, I conducted evaluations of incarcerated individuals; many of whom had histories of severe, complex trauma. I also worked at the California Medical Facility [CMF], a state prison for inmates with significant psychiatric and/or medical conditions who require specialized care during their incarceration. In my role as a psychologist at CMF I conducted treatment and evaluation of inmates, and provided trainings for medical and mental health staff in the area of psychological

evaluation and differential diagnosis. In my private consulting practice, I have conducted more than 2,000 forensic evaluations, including more than 500 competency evaluations. The competence evaluations included both adult and juvenile competence to stand trial assessments. I have testified as an expert witness in state and federal court as an expert witness on more than 150 occasions, including in the area of competence evaluation.

5. I am familiar with the professional standard of care in conducting an evaluation of an individual's competency to be executed under the Supreme Court cases, *Ford v. Wainwright*, 477 U.S. 399 (1986), *Panetti v Quarterman*, 551 U.S. 930 (2007), and *Madison v. Alabama*, 139 S.Ct. 718 (2019). I am also familiar with the legal and psychological standards for assessing competence to be executed, as set out in the professional literature. In 1986, the U.S. Supreme Court ruled that the Eighth Amendment prohibits executing insane defendants [*Ford v. Wainwright*, 477 U.S. 399 (1986)]. Years later, in 2007, the Court clarified that the Eighth Amendment forbids executing those who cannot rationally understand why they are to be executed and noted that psychotic disorders may preclude such an understanding [*Panetti v. Quarterman*, 551 U.S. 930 (2007)]. Most recently, in 2019, the Court ruled that a finding of incompetency to be executed is not associated with any particular diagnosis but rather with a specific consequence, i.e., the defendant's inability to rationally understand the reasons for the imposition of the death sentence [*Madison v. Alabama*, 139 S. Ct 718 (2019)].

6. In *Madison*, Alabama's expert testified that Mr. Madison "was able to accurately discuss his legal appeals and legal theories with his attorneys," and therefore must rationally understand why he was being executed. Similarly, in the present case of Mrs. Montgomery, the government's experts, Drs. Wheat & Pietz, describe in some detail Mrs. Montgomery's ability to discuss her pending execution with attorneys and with mental health professionals. They appear to conclude in a similar manners as the state expert in *Madison*. Dr. Pietz states [para. 12 of her declaration],

   > " . . . from my review of records I do not see any evidence that Mrs. Montgomery is presently suffering from a major mental illness that would impair her ability to comprehend her legal situation or interact with her attorneys. Moreover, my assessment of Mrs. Montgomery's conversation with her family members suggests that Mrs.

> Montgomery understands her current legal situation, legal options, that she is going be executed, and that execution means death."

7. Despite these detailed discussions about her awareness of her pending execution, there is not a scintilla of clinical evidence that she has a rational understanding of *why* she is about to be executed. Drs. Wheat and Pietz do not address whether or not Mrs. Montgomery rationally understands the reasons for the imposition of the death sentence as required by *Madison*.

8. Both Drs. Wheat & Pietz are no doubt experienced psychologists. Both acknowledge that they did not conduct an interview of Mrs. Montgomery, nor did they evaluate her directly. Nonetheless, Dr. Pietz gives an opinion about Mrs. Montgomery regarding criteria she believes to be relevant to the question of Mrs. Montgomery's competence to be executed:

   > " . . . from my review of records I do not see any evidence that Mrs. Montgomery is presently suffering from a major mental illness that would impair her ability to comprehend her legal situation or interact with her attorneys." [Pietz declaration, pg. 3, para. #12]

9. Noted is that nowhere in Dr. Pietz' declaration is an acknowledgement of the limitations on the reliability and validity of opinions rendered when an interview of the subject is not conducted. The American Psychological Association "Ethical Principles of Psychologists and Code of Conduct," sections, 9.01.b-c, states,

   > "(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations.
   > (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)
   >
   > "(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not

warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations."

10. It is my opinion that Sec. 9.01.c above does not apply given that all of the available literature I am aware of indicates that an evaluation of an individual for the purpose of establishing their competence to be executed is both warranted and necessary. Therefore, it is my opinion that Dr. Pietz' declaration should include a discussion of the probable impact of her limited information (lack of an in-person interview/evaluation of Mrs. Montgomery) on the reliability and validity of her opinions.

11. Noted is that the materials available, and which were reviewed by both Drs. Wheat and Pietz include discussion of Mrs. Montgomery's history of head injury, and medical findings indicating brain damage:

> "Mrs. Montgomery's brain is compromised structurally and functionally. My clinical observations are supported by the reports of Drs. Gur and Nadkarni, as well as the neuropsychological data produced by Dr. Fucetola, which I have reviewed. Mrs. Montgomery demonstrates behaviors and symptoms associated with functional impairment of the cerebellum. Schmahman et al have documented the role of the cerebellum in controlling executive skills. Although initially considered a part of the brain controlling balance, with purely motor functions, the last 22 years have demonstrated the cerebellum to be a major cognitive mechanism for the control of nuanced executive functioning skills, particularly decision making, affective control, understanding context, and effective deliberation. Mrs. Montgomery's cerebellum has been found to be quantitatively and qualitatively impaired, providing significant vulnerability to her cognitive capacity.
>
> Imaging of her brain reflects an overall loss of brain volume as well as a particular loss of tissue around the midline of her brain.[1] *See Gur*

[1] Mrs. Montgomery also has a history of head trauma. While her brain was still forming, Mrs. Montgomery sustained repeated head injuries during her stepfather's frequent sexual assaults during her teenaged years. Mrs. Montgomery's mother and

*Report*. Other structures that appear diminished are the basal forebrain, particularly the frontal right side of the frontal/parietal lobes and the superior parietal lobe. PET scans show her brain is hypermetabolic, particularly in the amygdala. Mrs. Montgomery's brain impairment is a condition that cannot improve. Though additional trauma, injury, or aging may further compromise its functioning, the brain does not "repair" or heal from such losses. The portions of Mrs. Montgomery's brain that are impaired are early brain structures, which are fully developed early in a child's life. This is particularly seen in the hypermetabolic functioning of her amygdala—the center of the body's fear and stress responses that is also pivotal in the workings of memory. Erosion or sheering of brain tissue occurred, resulting in a loss of brain volume, particularly in midline of her brain and in the parietal region—which is critical for the processing of sensory information and accurate perceptions of reality. While imaging reveals the quantifiable, structural defects, Mrs. Montgomery's behaviors reflect these brain losses, including her impulsivity and vulnerability to cognitive deterioration and psychotic disorganization.

Mrs. Montgomery's functioning has maintained a baseline in prison despite her brain condition, in large part to the simplification of the demands of daily life created by the structure of the prison environment. Without the requirements to work in the public sector, care for her children, or provide for her necessities, Mrs. Montgomery has eventually, with significant reinforcement and initial titration of both environment and medication, been able to achieve minimal daily functioning —including being able to perform a prison job (doing laundry, floors, emptying trash cans), and to participate in prison activities (educational and recreation classes, pod-games, craft

---

stepfather subjected her to repeated blows on her head with their bare hands, fists, and objects during her childhood. Additionally, Mrs. Montgomery's half-brother reported that he threw a size D battery at her that struck her "square in the back of the head. She went down like a crushed rag doll." *Biopsychosocial p. 92*. She was taken to the emergency room for treatment. *Id.* Later, she suffered multiple motor vehicle accidents in which she hit her head, including more than one where she was unrestrained and hit her head on the windshield, on two occasions she suffered headache and impaired memory. *Fucetola Report*.

activities). However, the ameliorative effect of this structure has been vitiated by removing her from her pod and placing her on suicide watch without access to her coping mechanisms (music, hand-crafts, etc.). Further, the stress inherent in her impending execution, combined with the added stress of anticipation of her transport to another facility, appears to have exposed her brain's vulnerability, causing a recurrence of well-documented psychosis and impaired decision-making functioning." [Declaration of George Woods, MD, pgs. 3-5]

12. Noted is that the Supreme Court of the United States has addressed the issue of brain development and how the immature or "undeveloped" brain warrants special consideration. As Fabian (2010) summarized in part,

> "The U.S. Supreme Court held in *Roper v. Simmons* that the Eighth and Fourteenth Amendments prohibited the punishment of death for Simmons or any juvenile younger than 18 (at the time of the crime). The basis for this finding rests upon neuroscience research which has indicated that the adolescent brain does not mature until early adulthood (American Bar Association, 2004a; Aronson, 2007; Giedd et al., 1999; Gotgay et al., 2004; Gur, 2005; Kwong et al., 1992; Lewis, Yeager, Blake, Bard, & Strenziok, 2004). Structural brain anatomical studies have revealed that various sections of the brain become fully myelinated and pruned at different times, with those brain regions responsible for basic life process and sensory perception maturing earliest (Kambam & Thompson, 2009; Yakovlev & Lecours, 1967).
>
> "The frontal lobes of the brain, and especially the prefrontal cortex, are considered to play a critical role in the "higher order" functions of the brain, that is, abstraction and reasoning; understanding others' reactions; planning; organizing; controlling impulses; emotional regulation; understanding, processing, and communicating information; establishing, changing, and maintaining a mental set; handling sequential behavior; using knowledge to regulate behavior; and exhibiting empathy regarding how behavior affects others. In juveniles, the prefrontal cortex is not completely developed during adolescence (Golden, Jackson, Peterson-Rohne, & Gontkovsky, 1996)

and is the last region of the brain to mature (American Bar Association, 2004b). Subsequently, in adolescents, it is hypothesized that they process emotional information through the amygdala, or as "lower order" responses (emotional center of the brain). The amygdala neural system is impulsive and based on immediate emotional responses and the prospects of an option (Fabian, 2009a)."

13. If in *Roper v. Simmons*, the United States Supreme Court decided that special considerations are warranted regarding execution in the case of an immature or inadequately developed brain [as seen in juveniles], it stands to reason that a similar consideration is warranted in the case of a damaged brain as has been described in the case of Mrs. Montgomery. Even if this is not a legal assertion, such consideration is warranted by any forensic neuropsychologist who reviews Mrs. Montgomery's case. Such an analysis, or even mention of the need for such analysis is missing from both the declarations of Drs. Wheat and Pietz. If this aspect of Mrs. Montgomery's hsiotry wee noted, perhaps the government's consultants would take a more cautious approach to the methodology for evaluating her for execution.

14. The standard of care for this type of forensic evaluation [competence to be executed] requires face to face, in person contact, in order to observe the symptoms and manifestations in behavior of any psychotic illness or effects of a history of serious trauma. It is essential to observe nonverbal behaviors as well as engage a person verbally. Facial movements, such as a quivering lip and subtle eye movements, whether the individual is able to pay attention or is distracted by voices or dissociating as opposed to being distracted by something actually happening in the room. Essentially, a mental health professional doing a forensic evaluation by videoconferencing faces a serious risk of missing important, non-verbal symptoms that weigh on the determination of an individual's competency to be executed.

15. The research on telepsychology clearly points to the significant limitations of trying to conduct evaluations not in person and face to face: difficulty establishing and maintaining rapport, lack of privacy, lack of safety for the inmate, technological limitations, decreased ability to detect symptoms, and lower quality of care (See, Cowan et al, Barriers to Use of Telepsychiatry: Clinicians as Gatekeepers, Mayo Clinic Proceedings, December 2019; 94(12):2510-2523).

16. Since the beginning of the Covid-19 pandemic, professional papers have documented the limits of remote evaluations, even in non-high stakes settings. These limitation include: loss of rapport and clinical intimacy; less information was obtained during the interviews, including mannerisms, facial expressions, physical condition, odors, physical movements; increased difficulties for patients with auditory or visual impairments; efficacy was negatively effected, both by the limits with technology and in how mental health providers describe confidence about their own assessments under these conditions; less privacy was available and it was more difficult to make use of silences as a clinical tool; inability to conduct a full examination, including a physical exam and medical condition and medication monitoring; and the duration of the "visits" was more limited and not as in-depth (Uscher-Pines et al, Suddenly becoming a "Virtual Doctor": Experiences of psychiatrists transitioning to telemedicine during the COVID-19 pandemic, Psychiatric Services 2020, 71(11):1143-50; Chen et al, COVID-19 and telepsychiatry: Early outpatient experiences and implications for the future, General Hospital Psychiatry 2020, 66:89-95).

17. The published professional literature has addressed the evaluation of a defendant's competence to be executed (Park BP, Cipriano T: Competency to be executed and the dynamic nature of mental status in psychotic illness. J Am Acad Psychiatry Law 47:113–5, 2019. Chamblee LE: Time for a legislative change: Florida's stagnant standard governing competency for execution. Fla St U L Rev 31:335–76, 2004. Ebert B: Competency to be executed: a proposed instrument to evaluate an inmate's level of competency in light of the eighth amendment prohibition against the execution of the presently insane. Law & Psychol Rev 25:29–57, 2001.).

    In one such very recent discussion [Updegrove, A. H. & Vaughn, M. S. (2020). Evaluating Competency for Execution after *Madison v. Alabama*, J Am Acad Psychiatry Law 48(4) online, 2020. DOI:10.29158/JAAPL.200003-20.], the issue of in-person evaluation is addressed:

    > "Evaluators should meet with the defendant ***in person*** [emphasis added] for an appropriate length of time when conducting a competency evaluation. What constitutes an appropriate period of time will necessarily vary based on the evaluee's mental state. In

situations where the evaluee is too impaired to meaningfully participate in the interview process, interviews may be brief. Other interviews, however, could last several hours. Because the required threshold for establishing competence for execution is relatively low, a single meeting may be sufficient to evaluate defendants who are cognitively intact and not actively displaying symptoms of mental illness. In other, more complex situations involving defendants exhibiting cognitive decline and active symptoms of mental illness, it may be necessary to meet with the defendant on multiple occasions. The evaluations themselves should take place in "a private, distraction-free area," which may require temporarily moving the defendant off of death row, where noise pollution is prevalent."

18. As stated above, I have conducted hundreds of evaluations related to competence. I know many forensic psychologists at all levels of practice: beginning to Board Certified. I know of no psychologist at any level who would choose to conduct a competence evaluation by telemedicine or over a telephone, if given the choice of how to conduct the evaluation: in person, or by webcam/telemedicine. The reason for such is that psychologists are aware that much is lost when an in-person interview is not conducted. This is so much the case that even the American Psychological Association [APA] included a section in its Ethics Code that addresses the importance of an interview of an evaluation subject. Although the APA does not address in-person vs. telemedicine methods, it does acknowledge that something is lost when an interview of some kind is not conducted. While there is some literature that purports that telemedicine evaluations are "just as good" as in person evaluations, many experienced clinicians know better, and would not choose a telemedicine interview over an in-person interview if given a choice.

19. Due to the current COVID-19 pandemic, I have been forced to conduct telemedicine interviews for the purpose of evaluating competence. It is my personal experience that much information is lost when using such a method. In incarcerated settings there is often noise in and around the interview rooms used for telemedicine interviews. When a subject appears to be distracted, it is difficult to tell what they are responding to; something they actual hear, or to some internal stimuli that may be the product of psychosis. Second, often the position of the camera or microphone in

telemedicine evaluations are not situated for optimal transmission of information. Telemedicine evaluations, in my experience, are not like watching the nightly news where the person on the screen is centered directly in front of you, is looking straight ahead, and has his/her voice amplified optimally. Telemedicine evaluations are of significantly less quality. Third, in my experience it is often impossible to discern subtle symptoms of responses to internal stimuli. Subjects who are actively psychotic and/or dissociating may look away from the camera, or move to being out of view of the camera, either of which obviously limits clinical information in a telemedicine interview. Such information which could be noted during an in-person interview may be indicative of acute psychopathology, which would be of central importance to one evaluating competency of any kind. Certainly in a case where life or death is at issue, the most prudent and professional course of practice would be to conduct a competence evaluation under the most optimal of circumstances: in-person. A telephonic, telemedicine or "webcam" interview is certainly not that.

20. In my professional opinion, a forensic evaluation of competence to be executed should not be conducted remotely, but rather face to face.

I declare under the penalty of perjury and the laws of the United States that the foregoing is true and correct to the best of my information and belief.

Dated this 11th day of January, 2021.

John M. Shield, Ph.D., ABPP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY,<br><br>Petitioner,<br><br>v.<br><br>WARDEN OF USP TERRE HAUTE, IN, et al.<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 2:21-cv-00020-JPH-DLP |

**ORDER STAYING THE EXECUTION OF LISA MARIE MONTGOMERY**

Counsel have demonstrated that a stay of Lisa Marie Montgomery's execution is warranted. It is therefore ordered that respondents Warden of the USP Terre Haute, IN, Michael Carvajal, and Jeffrey Rosen are enjoined from executing Lisa Marie Montgomery until further order of this Court.

**SO ORDERED.**

Date: 1/12/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

Brian Patrick Casey
U.S. ATTORNEY'S OFFICE
brian.casey@usdoj.gov

Amy D. Harwell
FEDERAL PUBLIC DEFENDER TNM
amy_harwell@fd.org

Kelley J. Henry
FEDERAL PUBLIC DEFENDER TNM
kelley_henry@fd.org

Lisa Nouri
lisanouri_atty@hotmail.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

| | | |
|---|---|---|
| LISA MARIE MONTGOMERY, Petitioner, | ) | |
| v. | ) | No. 2:21-cv-00020-JPH-DLP |
| WARDEN OF USP TERRE HAUTE, IN, et al. Respondents. | ) | |

**ORDER DENYING EMERGENCY MOTION FOR STAY**

On January 11, 2021, the Court granted a motion to stay and entered an order staying Lisa Marie Montgomery's execution. Dkts. 17, 22. The government promptly filed a notice of appeal and an emergency motion to stay pending appeal. Dkt. 19. As the government acknowledges, the Court has considered and rejected the arguments presented in their motion to stay. *Id.* at 1. For the reasons discussed in the Court's order granting a stay of execution, the government's emergency motion for stay pending appeal, dkt. [19], is **DENIED**.

**SO ORDERED.**

Date: 1/12/2021

James Patrick Hanlon
James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

Brian Patrick Casey
U.S. ATTORNEY'S OFFICE
brian.casey@usdoj.gov

Amy D. Harwell
FEDERAL PUBLIC DEFENDER TNM
amy_harwell@fd.org

Kelley J. Henry
FEDERAL PUBLIC DEFENDER TNM
kelley_henry@fd.org

Lisa Nouri
lisanouri_atty@hotmail.com

# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

January 12, 2021

**Before**

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1052

LISA MARIE MONTGOMERY,
*Petitioner-Appellee*,

*v.*

T. J. WATSON, Warden, *et al.*,
*Respondents-Appellants*.

Appeal from the
United States District Court for the
Southern District of Indiana,
Terre Haute Division.

No. 2:21-cv-00020-JPH-DLP

James P. Hanlon,
*Judge*.

**O R D E R**

In December 2004 Lisa Marie Montgomery murdered Bobbie Jo Stinnett, who was then eight months pregnant, and cut the baby out of her womb, claiming the child as her own. In 2007 a federal jury in the Western District of Missouri convicted her of kidnapping resulting in death and recommended a sentence of death. The district court imposed the capital sentence. The Eighth Circuit affirmed on direct appeal, *United States v. Montgomery*, 635 F.3d 1074 (8th Cir. 2011), and her petition for postconviction relief under 28 U.S.C. § 2255 failed.

On October 16, 2020, the Department of Justice announced an execution date of December 8, 2020. Montgomery responded with several actions in the District of Columbia and elsewhere seeking to delay the execution. As a result of that litigation, on November 23, 2020, the execution was rescheduled to today at 5 p.m.

On Friday evening, January 8, Montgomery filed a habeas petition pursuant to 28 U.S.C. § 2241 in the Southern District of Indiana, where she is confined. She sought to raise a claim under *Ford v. Wainwright*, 477 U.S. 399 (1986), that because of mental illness, she lacks a rational understanding of the government's reason for executing her. For support the petition relied on declarations from three proposed experts, but none has had any recent contact or communication with Montgomery. Two of the proposed experts last examined her in 2016, and the third last saw her in 2010. She moved for a stay of execution.

Last night the district court issued a stay of execution. The government appealed and filed an emergency motion to vacate the stay. This morning we ordered a response, and Montgomery has now complied.

We vacate the stay. As the Supreme Court has repeatedly emphasized, "[l]ast-minute stays [of execution] should be the extreme exception, not the norm." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019). That principle is particularly strong where, as here, the petitioner's claim could have been brought earlier. *Id.* Montgomery and her defense team were given notice of today's execution date many weeks ago and yet waited until after the close of business on Friday to file a § 2241 petition and a stay motion—fewer than four days before the scheduled execution. The delay appears strategic, but at the very least, it "implicate[s] the 'strong equitable presumption' that no stay should be granted 'where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.'" *Id.* n.5 (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). Nothing in Montgomery's stay request or § 2241 petition overcomes this "strong presumption."

In addition, the proponent of a stay must make a "strong showing" of a likelihood of success on the merits of the underlying claim. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Montgomery has not done so. As noted, the expert declarations she tendered with her § 2241 petition rest on extremely outdated evaluations, two conducted more than four years ago and another as long as ten years ago. These stale observations cannot support a claim about her current mental state. The submission does not satisfy *Nken*.

Because Montgomery has not overcome the strong presumption against last-minute stays, *Bucklew*, 139 S. Ct. at 1134, and has not made a strong showing of a likelihood of success on her proposed *Ford* claim, *Nken*, 556 U.S. at 434, we vacate the district court's stay of execution.

MOTION GRANTED; STAY VACATED