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October 26, 2011

Donald B. Verrilli, Jr.
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: United States v. Jason Wayne Pleau

Dear Solicitor General Verrilli:

The undersigned organizations are writing to respectfully request that you halt any further efforts by the office of the United States Attorney for the District of Rhode Island (USARI) to secure federal jurisdiction over Jason Wayne Pleau in order to prosecute him for capital murder. A recent decision by the U.S. Court of Appeals for the First Circuit, that Governor Lincoln Chafee's refusal to transfer Pleau's custody to the federal government under the Interstate Agreement on Detainers was proper, should mark the end of this matter. We write to you because we understand that the decision whether to pursue this case any further is in your hands.

Although our reasons for making this request to you largely mirror those that have already been presented by the Governor and Mr. Pleau's attorneys to the USARI, we believe it is important, as outside organizations not directly involved in the case, to emphasize the troubling nature of that office's decision to pursue death penalty jurisdiction over Pleau. It is not only directly contrary to, and an undermining of, Rhode Island's strong and long-standing policy and practice against the imposition of capital punishment, but it is fundamentally at odds with the Department of Justice's own guidelines and standards. Under the circumstances, any continuing efforts to impose the death penalty in this case create an impression of governmental vengeance, a role ill-befitting the U.S. Attorney's Office and the notion of what a prosecutor's role in our criminal justice system should be.

In analyzing the USARI's actions, one critical fact about which there is no dispute must be emphasized: Mr. Pleau has already agreed to serve a life sentence without the possibility of parole. Thus, the only basis for the Department of Justice to consider expending the enormous amount of time, energy and financial resources necessary to pursue this case is to put the defendant to death.

In objecting to this pursuit, we do not in any way seek to minimize the tragedy that the victim's family has suffered. Their loss is heartrending, and we can appreciate

how it has led to their publicly-stated views that they would like to see the death penalty imposed against their family's killer. But the federal government has a much different and more dispassionate function to play in cases like this. As the United States Attorney Manual notes, the federal prosecutor's responsibility is not one of retribution, but rather "assurance of warranted punishment, deterrence of further criminal conduct, protection of the public from dangerous offenders, and rehabilitation of offenders." USAM 9-27.110. Pursuit of the death penalty in this case is difficult to mesh with any of those purposes.

Rhode Island was the second state in the Union to abolish the death penalty in 1852, and it has not carried out an execution since that time. Jason Pleau's agreement to serve a state sentence of life in prison without the possibility of parole, on top of an additional sentence of 18 years on related charges, is certainly severe and sufficient punishment in light of that history. The USARI's effort to impose on our state a policy that Rhode Island eliminated more than a century and a half ago is thus, in our view, inappropriately gratuitous, and the federal government's respect for federalism on such a sensitive and crucial matter should, we submit, lead to the same conclusion.*

However, what makes the USARI's efforts especially appalling to us is that the Department of Justice's own standards offer no basis for this course of conduct. According to the Department of Justice Capital Crimes Protocols and relevant sections of the United States Attorney's Manual:

> When concurrent jurisdiction exists with a State or local government, a Federal indictment for an offense subject to the death penalty generally should be obtained **only when the Federal interest in the prosecution is more substantial than the interests of the State or local authorities**. (emphasis added) USAM 9-10.090

The U.S. Attorney's Manual further mandates that federal prosecutions should proceed if there is a "substantial federal interest," which is defined in part as follows:

> In determining whether prosecution should be declined because no substantial Federal interest would be served by prosecution, the attorney for the government should weigh all relevant considerations, including:
>
> . . . The Probable Sentence . . . If the offender is already subject to a substantial sentence, or is already incarcerated, as a result of a conviction for another offense, the prosecutor should weigh the likelihood that another conviction will result in a meaningful addition to his/her sentence, might otherwise have a deterrent effect, or is necessary to ensure that the offender's record accurately reflects the extent of his/her criminal conduct. USAM 9-27.230 and 9-27.240

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*Vigorous pursuit of the death penalty in this case, without any compelling independent grounds for doing so, is also surprising because Rhode Island's position on capital punishment is gaining, not losing, ground across the country. Recent CNN and Gallup polls indicate diminishing public support for the death penalty in light of life without parole sentencing. Indeed, in the last two years, New Mexico and Illinois joined 14 other states in abolishing the death penalty in their states. Thus, while Rhode Island's lengthy history of rejecting capital punishment is unique, its current aversion to it is not.

Surely there are other crimes that the USARI and the DOJ should expend their precious resources on instead of prosecuting Mr. Pleau for a crime in which the state has secured agreement on a sentence of life imprisonment without parole. More specifically, in light of that agreement, we cannot envision any legitimate argument that a prosecution will "result in a meaningful addition to his/her sentence, might otherwise have a deterrent effect, or is necessary to ensure that the offender's record accurately reflects the extent of his/her criminal conduct."

Other relevant U.S. Attorney Manual policies all point to this same assessment. Under the government's so-called Petite Policy, dealing with dual and successive prosecutions where the federal government and the state share jurisdiction to prosecute an offender:

> This policy **precludes** the initiation or continuation of a federal prosecution, following a prior state or federal prosecution based on substantially the same act(s) or transaction(s) unless three substantive prerequisites are satisfied: **first, the matter must involve a substantial federal interest; second, the prior prosecution must have left that interest demonstrably unvindicated**; and third, applying the same test that is applicable to all federal prosecutions, the government must believe that the defendant's conduct constitutes a federal offense, and that the admissible evidence probably will be sufficient to obtain and sustain a conviction by an unbiased trier of fact. …
>
> Satisfaction of the three substantive prerequisites does not mean that a proposed prosecution must be approved or brought. The traditional elements of federal prosecutorial discretion continue to apply. USAM 9-2.031 (emphasis added)

Thus, even assuming that the broad "federal prosecutorial discretion" that the USARI possesses was an insufficient basis to eschew the death penalty, and even assuming further that this case involves a substantial federal interest (see below), it is simply impossible to imagine how the "life without parole" sentence agreement has "left that interest demonstrably unvindicated."

Finally, it is worth briefly addressing the "substantial federal interest" purportedly involved in this case. The only rationale publicly expressed by the USARI is as follows: "This office is committed to protecting federally insured banks and, most importantly, the persons who use them." As federal law enforcement priorities go, we hardly believe that the government's interest in "protecting banks" should serve as the basis for federal intervention here. One need not be a supporter of the "Occupy Wall Street" protests to find it dismaying to learn that the primary reason for seeking the death penalty in a state that has rejected this punishment for over 150 years is to show solicitude for "protecting federally insured banks" and the people who use them.

Last month, there was a great deal of public discussion and soul-searching when, during a Republican presidential candidate debate, the audience erupted in applause over Texas Governor's Rick Perry's record of presiding over more than 200 executions during his tenure. Many commented on the unseemliness of that enthusiasm. With respect, we find it similarly unseemly were the Department of Justice

to vigorously support pursuing the death penalty in a case where imposition of the ultimate sentence short of death is already a foregone conclusion.

It is distressing to see the federal government seeking to circumvent Rhode Island law in order to respond to a heinous crime with another act of barbarism and violence. It is even more distressing when one considers that this effort flies in the face of your agency's own standards and guidelines.

We therefore strongly urge you to end any efforts by the USARI and your Department to subject Jason Pleau to the death penalty. We thank you in advance for your attention to our views.

Sincerely,

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cc: Attorney General Eric Holder
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