



COMMONWEALTH of VIRGINIA

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February 24, 2020

Danielle Spinelli, Esquire
WilmerHale
1875 Pennsylvania Avenue NW
Washington, DC 20006

Re: *Randall Mathena, Warden v. Lee Boyd Malvo*, Supreme Court No. 18-217

Dear Ms. Spinelli,

This letter memorializes our agreement about the next steps of this case. Neither the District Court for the Eastern District of Virginia nor the Court of Appeals for the Fourth Circuit has prescribed a deadline for Malvo's resentencing, and we agree that neither court's order creates a specific or unwaivable timeframe during which any such resentencing must occur.

The parties have therefore agreed as follows:

1. Pursuant to Supreme Court Rule 46.1, the parties will file with the Clerk of the Supreme Court a written agreement that the above-captioned case be dismissed, specifying that the parties will bear their own costs.
2. The parties agree that H.B. 35, Reg. Sess. (Feb. 24, 2020) (adding Va. Code § 53.1-165.1(B)) (the "Legislation") operates retroactively and makes Malvo eligible to be considered for parole.
3. Subject to paragraph 4, Malvo will not request or otherwise seek to obtain resentencing on any existing Virginia conviction before any court in Virginia and will, if requested, join the Warden in requesting that any such resentencing be indefinitely deferred.
4. In the event that (a) the Virginia courts make a final determination (either by the Supreme Court of Virginia or through the denial of a petition for

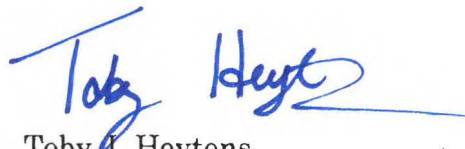
Danielle Spinelli, Esq.

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appeal or review) that Malvo is ineligible for parole under the Legislation or (b) the Virginia Parole Board determines that Malvo is ineligible for parole under the Legislation and a Virginia court declines to review that determination for any reason, Malvo's obligations under paragraph 3 shall terminate. In that event, the parties agree that Malvo shall be entitled to resentencing pursuant to the decision of the Court of Appeals for the Fourth Circuit.

If you agree with the above, please sign and date this page and return a scanned copy to me.

Best,



Toby J. Heytens
Solicitor General
Counsel to Warden Mathena

On behalf of myself and my client, I agree to the terms stated above.



Danielle Spinelli
Counsel to Lee Boyd Malvo

2.24.2020

Date