

For Immediate Release

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**Statement from Attorney for Cleve Foster in Response to
Change in Texas Execution Protocol**

"The Texas Department of Criminal Justice (TDCJ) has known since at least early January that its supply of sodium thiopental was set to expire on March 1, 2011, and that the company from which they had always obtained the drug had stopped production. Yet it is only today, less than three weeks shy of Mr. Foster's scheduled execution, that TDCJ has announced a decision to change the protocol by which they will execute Mr. Foster. The timing of the decision and disclosure raises serious concerns about the haste with which they are seeking to implement this new process, and a lack of transparency by state officials. To permit less than three weeks for these matters to be vetted undermines any faith we can have in TDCJ's concern for deliberate process, accountability, or the constitutionality of the new procedures.

"Moreover, Texas is rushing to carry out an execution using an entirely new protocol, but they refuse to fully disclose basic information, such as whether any medical authorities were consulted regarding the incorporation of a new drug; the source of the pentobarbital; and the training of personnel who will implement the new procedure for the first time.

"Prison officials are not medical professionals. They cannot be trusted to change a medical procedure in the dark of night without public scrutiny, especially when there is such a minimal track record on the use of pentobarbital in lethal injections. To ensure that the new protocol comports with Texas' constitution, we need -- and Texas law requires -- a deliberative process with appropriate authoritative input and public comment. We expect our state officials to not conduct its business in secret -- particularly when it concerns the ultimate act that Texas can take against one of its citizens. The rush to execute should not trump the need to ensure

that appropriate safeguards have been taken, or the far reaching implications of circumventing a deliberate process, especially when it is TDCJ that has waited until the last minute to decide on or announce the change in how it plans to carry out executions."

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Brief background on Cleve Foster case:

Cleve Foster was convicted and sentenced to death under Texas' law of parties for the 2003 murder of Nyanuer "Mary" Pal. His codefendant, Sheldon Ward, was convicted and sentenced to death as the triggerman. Mr. Ward, who died on death row of natural causes, gave four statements asserting that Mr. Foster was not involved in Ms. Pal's murder. Mr. Foster was scheduled to be executed on January 11, 2011, but received a stay from the United States Supreme Court as the result of litigation raising questions about his innocence, and the ineffectiveness of appointed counsel in failing to adequately raise that issue. The Supreme Court subsequently lifted that stay without comment on the merits and Mr. Foster is now scheduled for execution on April 5, 2011.