

**DECLARATION OF G.BEN COHEN REGARDING**  
**FEDERAL DEATH PENALTY CASES**  
**INVOLVING DEATH ELIGIBLE BANK ROBBERY CASES**

1. I currently serve as a Resource Counsel with the Federal Death Penalty Resource Counsel Project, which assists court-appointed and defender attorneys responsible for the defense of capital cases in the federal courts. Established in 1992 by the Administrative Office of the United States Courts, Defender Services Division, now the Defender Services Office, the Project serves as a national clearinghouse for information concerning federal capital cases. The Project is funded and administered under the Criminal Justice Act by the Defender Services Office of the Administrative Office of the United States Courts.

2. The responsibilities of Federal Resource Counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.<sup>1</sup>

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<sup>1</sup> The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May 1998), at 25. [http://www.uscourts.gov/sites/default/files/original\\_spencer\\_report.pdf](http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf). The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the

3. In the course of regularly conducted activities, the Project maintains a comprehensive database of federal death penalty prosecutions and information about these cases. The database is maintained by reviewing dockets, obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, reviewing public records, and by regularly conducted email, telephonic or in-person interviews between Resource Counsel and defense counsel, and consultation with clerk's offices and judge's chambers. This information is regularly updated and is checked for accuracy.

4. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts and the Federal Judicial Center. Declarations based upon the data collected by the Project has been accepted, cited to and relied upon in numerous opinions and judgments.<sup>2</sup>

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Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases ...." *Id.* at 36. An update to the Report states: "Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable." See <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf>. Report to the Committee on Defender Services Judicial Conference of the United States – Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases (September 2010) at 76.

<sup>2</sup> See e.g. *United States v. Fell*, 224 F. Supp. 3d 327, 340 (D. Vt. 2016) ("The most striking evidence of arbitrary application of the death sentence provided by Mr. McNally was his review of all cases

The data collected by the Project has also been relied upon as basis for analysis in law review journals, training manuals, and other published material.<sup>3</sup> Resource Counsel collect comprehensive, accurate data concerning various practices that have emerged since the federal courts resumed trying capital cases in 1990. This collection of data includes maintaining information concerning district-level practices.

5. The Project maintains data concerning death eligible prosecutions for murders during the course of a bank robbery.

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like the present case in which there were multiple victims"); *United States v. George*, No. 17-201, 2018 U.S. Dist. LEXIS 216649 (E.D. La. Dec. 27, 2018) (citing Federal Death Penalty Resource Counsel declaration for factual finding that "15 months is below the average time between notice and trial in federal capital cases weighs in favor of a finding of reasonableness."); *United States v. Williams*, No. H-03-221-11, 2004 U.S. Dist. LEXIS 33412, at \*16-17 (S.D. Tex. Dec. 29, 2004) (relying upon "facts in the Declaration" reflecting statistics concerning to find that the defendant "met his burden under Armstrong that similarly situated defendants of a different race were not being charged with the death penalty and that the Defendant had presented "some evidence" of discriminatory intent. *United States v. Bass*, 536 U.S. 862, 863, 122 S. Ct. 2389, 153 L. Ed. 2d 769 (2002)."); *United States v. Ayala Lopez*, 319 F. Supp. 2d 236, 240 (D.P.R. 2004) (citing declaration of Kevin McNally as basis for holding "we find compelling what other federal district courts have done when faced with the "ever-present risk of prejudice" of joint trials.").

<sup>3</sup> See e.g. Rory Little, *The Federal Death Penalty: History And Some Thoughts About The Department Of Justice's Role*, 26 Fordham Urb. L.J. 347 (1999); Lieutenant Commander Stephen C. Reyes, *Left Out in the Cold: The Case for a Learned Counsel Requirement in the Military*, 2010 Army Law. 5 (2010); Kevin McNally, *Race and the Federal Death Penalty: A Nonexistent Problem Gets Worse*, 53 DePaul L. Rev. 1615 (2004); G. Ben Cohen, Rob Smith, *The Geography of the Federal Death Penalty*, 85 Wash. L. Rev. 425 (2010); Rory Little, *What Federal Prosecutors Really Think: The Puzzle of Statistical Race Disparity Versus Specific Guilt and the Specter of Timothy McVeigh*, 53 DePaul L. Rev. 1591 (2004).

6. The data below reflects the information concerning all completed death eligible cases involving a bank robbery (i.e. cases where there is a death eligible charge of 18 U.S.C. § 2113). Project research including the docket and the indictment demonstrate that these are murders during the course of a bank robbery.

7. Detailed data on each such case, on which this declaration is based, is contained in Appendix A.

8. From data collected, the Project has identified 93 death eligible, federally charged bank robbery cases in which the Attorney General has made an authorization decision (*i.e.*, a decision whether or not to seek the death penalty).

**Authorization Decisions  
Death Eligible Bank Robberies**

<b>Outcome</b>	<b>Number of Defendants</b>
Not Authorized	66
Authorized	27
<b>Total</b>	<b>93</b>

Table 1

9. The Attorney General has authorized 27 of the 93 death eligible bank robbery cases. Of the 27 authorized defendants, 23 were Black. One was white. Two others were Hispanic. And the remaining, Asian defendant was categorized as “Other Minority.”

**Authorized  
Death Eligible Bank Robbery Cases  
Racial Demographics of Authorized Cases by Defendant**

<b>Race of Defendant</b>		<b>27 (100%)</b>
<b>Black</b>	23 (85%)	
<b>Hispanic</b>	2 (7%)	
<b>White</b>	1 (4%)	
<b>Other</b>	1 (4%)	

Table 2.

**Authorization Decisions  
Death Eligible Bank Robbery Cases  
Frequency of Authorization by Race of Defendant**

Race of Defendant		Number
<b>Black</b>		58 (100%)
	Not Authorized	35 (60%)
	Authorized	23 (40%)
<b>Hispanic</b>		22 (100%)
	Not Authorized	20 (91%)
	Authorized	2 (9%)
<b>White</b>		12 (100%)
	Not Authorized	11 (92%)
	Authorized	1 (8%)
<b>Other</b>		1 (100%)
	Authorized	1 (100%)
<b>Total</b>		<b>93 (100%)</b>

Table 3.

The data collected by the Project also reveal the race of the victim in in the 27 authorized cases, and in 60 of the 63 cases not authorized (*i.e.*, in 90 of the 93 total death eligible bank robbery cases). As detailed below, in 18 of the 27 authorized cases, the victim — or, for multiple-victim cases, at least one of the victims — was a white person.

**Authorization Decisions  
Death Eligible Bank Robbery Cases  
Racial Demographics of Authorized Cases By Victim**

<b>Authorized</b>		
<b>Black</b>	8 (30%)	
<b>Hispanic</b>	2 (7%)	
<b>White</b>	17 (63%)	
<b>Total</b>		<b>27 (100%)</b>

Table 4.

**Authorization Decisions  
Death Eligible Bank Robbery Cases  
Frequency of Authorization by Race of Victim**

Race of Victim		Number
<b>Black</b>		25 (100%)
	Not Authorized	17 (68%)
	Authorized	8 (32%)
<b>Hispanic</b>		18 (100%)
	Not Authorized	16 (89%)
	Authorized	2 (11%)
<b>White</b>		47 (100%)
	Not Authorized	30 (63%)
	Authorized	17 (38%)
<b>Unknown</b>		3 (100%)
	Not Authorized	3 (100%)
<b>Total</b>		<b>93</b>

Table 5.

**Death Eligible Bank Robbery Cases  
Race of Defendant / Victim**

Race of defendant	Race of victim	Number
<b>Black</b>		<b>58 (100%)</b>
	Black	23 (40%)
	Unknown	1 (2%)
	White	34 (59%)
<b>Hispanic</b>		<b>22 (100%)</b>
	Hispanic	18 (82%)
	White	2 (9%)
	Unknown	2 (9%)
<b>White</b>		<b>12 (100%)</b>
	Black	2 (17%)
	White	10 (83%)
<b>Other</b>		<b>1(100%)</b>
	White	1 (.8%)
<b>Total</b>		<b>93 (100%)</b>

Table 6.

10. Black defendants make up 23 of the 27 defendants authorized in bank robbery cases. Of the 27 authorized bank robbery cases, 16 (59%) involve the killing of a white victim by a Black defendant. See Table 7. One out of 27 (4%) cases involve the killing of a Black victim by a white defendant.



**Death Eligible Bank Robbery Cases  
Race of Defendant / Victim  
Authorized cases**

Race of defendant	Race of victim	Number
<b>Black</b>		<b>23 (85%)</b>
	White	16 (59%)
	Black	7 (26%)
<b>Hispanic</b>		<b>2 (7%)</b>
	Hispanic	2 (7%)
<b>Other</b>		<b>1 (4%)</b>
	White	1 (4%)
<b>White</b>		<b>1 (4%)</b>
	Black	1 (4%)
<b>Total</b>		<b>27 (100%)</b>

Table 7.

11. Discrepancies correlating to race of defendant and race of victim are apparent in the outcome of cases as well. In the 27 authorized death eligible bank robbery cases, 8 defendants were sentenced to death, 17 defendants were sentenced to life or a lesser sentence, 1 defendant died after authorization and 1 was found not guilty.

**Outcomes of Authorized Death Eligible Bank Robbery Cases  
Race of Defendant**

<b>Outcome</b>	<b>Race of Defendant</b>	<b>Number</b>
<b>Death</b>		<b>8 (100%)</b>
	Black	7 (88%)
	Other	1 (13%)
<b>Life or Less</b>		<b>17 (100%)</b>
	Black	14 (82%)
	Hispanic	2 (12%)
	White	1 (6%)
<b>Dismissed or Died</b>		<b>2 (100%)</b>
	Black	2 (100 %)
<b>Total</b>		<b>27 (100%)</b>

Table 8.

12. In each of the 8 cases in which a death sentence was imposed, the victim was white. And in none of the 8 was the defendant white; 7 of the 8 defendants were Black.

**Outcomes of Authorized Death Eligible Bank Robbery Cases  
Race of Victim**

<b>Outcome</b>	<b>Race of Victim</b>	<b>Number</b>
<b>Death</b>		<b>8 (100%)</b>
	White	8 (100%)
<b>Life or Less</b>		<b>17 (100%)</b>
	Black	7 (41%)
	Hispanic	2 (12%)
	White	8 (47%)
<b>Dismissed or Died</b>		<b>2 (100%)</b>
	Black	1 (50%)
	White	1 (50%)
<b>Total</b>		<b>27 (100%)</b>

Table 9.

13. The above information regarding federal capital cases was collected in the regular course of the business of the Federal Death Penalty Resource Counsel Project, as part of tracking ongoing federal capital cases.

I declare under the penalty of perjury under the laws of the United States of American, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 28th day of January, 2021.

/s/ **G. BEN COHEN**

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**G. BEN COHEN**

## APPENDIX – CASE LIST

	Name	Docket	Authorized?	Race of Defendant	Race of Victim	Outcome
1	Allen, Billie Jerome	E.D. MO No. 4:97-CR-00141-ERW-TCM	Authorized	B	W	death
2	Armstrong, Marjorie Deal	W.D. PA No. 07-CR-00026-SJM	Not Authorized	W	W	Life or less
3	Baldwin, Fred	S.D. WV No. 2:02-CR-00146-ALL	Not Authorized	W	W	Life or less
4	Barnes, Ken	W.D. PA No. 07-CR-00026-SJM	Not Authorized	W	W	Life or less
5	Bluford, Henry	N.D. IL No. 1:07-CR-00351	Not Authorized	B	B	Life or less
6	Bobbitt, LaFawn	E.D. VA No. 3:97-CR-00169-JAG	Authorized	B	B	Life or less
7	Bolden, Robert Sr.	E.D. MO No. 4:02-CR-00557-CEF-AGF	Authorized	B	W	death
8	Broom, Archie	E.D. MI No. 2:05-CR-80025-VAR-RSW	Not Authorized	B	B	Life or less
9	Corley, Odell	N.D. IN No. 3:02-CR-00116-TLS-APR	Authorized	B	W	death
10	Council, Brandon Michael	D. SC No. 4:17-CR-00866-CRI	Authorized	B	W	death
11	Cruz, Alex	W.D. MI No. 1:97-CR-00043-RAE	Not Authorized	H	W	Life or less
12	Davis, Derrick	E.D. MI No. 2:00-CR-80966-PJD	Not Authorized	B	B	Dismissed or not guilty
13	Dean, Adelbert	E.D. MI No. 2:00-CR-80966-PJD	Not Authorized	B	B	Dismissed or not guilty
14	Douglas, Paul	S.D. NY No. 7:04-CR-01065-CM	Not Authorized	B	B	Life or less
15	Draven, Michael	E.D. VA No. 4:08-CR-00016-RBS-TEM	Not Authorized	W	W	Life or less
16	Duncan, Norman	E.D. MI No. 2:05-CR-80025-VAR-RSW	Authorized	B	B	Life or less
17	Edwards, Corteze	E.D. MO No. 4:02-CR-00557-CEF-AGF	Not Authorized	B	W	Life or less
18	Fermin Cortes, Cortes Jahn	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
19	French, Iralee Jr.	W.D. MO No. 4:08-CR-00262-GAF	Not Authorized	B	W	Life or less
20	Gay, Danyass Wu	N.D. IN No. 3:02-CR-00116-TLS-APR	Not Authorized	B	W	Life or less
21	Goins, Joey	E.D. TN No. 2:02-CR-00080-JRG-CRW	Not Authorized	W	W	Life or less
22	Gray, George Timothy	W.D. MI No. 1:97-CR-00043-RAE	Not Authorized	H	W	Life or less
23	Gray, Tabitha	S.D. AL No. 2:01-CR-00007-KD-C	Not Authorized	B	B	Life or less
24	Guerrido-Medina, Luis Angel	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
25	Haynes, Aaron	W.D. TN No. 2:01-CR-20247-SHM	Authorized	B	B	Life or less
26	Henderson, Marcellus Levan	N.D. GA No. 1:03-CR-00648-WBH-GGB	Not Authorized	B	W	Life or less
27	Hermes, Arthur Cunningham	E.D. NC No. 5:00-CR-00175-BO	Not Authorized	W	W	Life or less
28	Holder, Norris G.	E.D. MO No. 4:97-CR-00141-ERW-TCM	Authorized	B	W	death
29	Holiday, Leonard Jerome	S.D. AL No. 2:01-CR-00007-KD-C	Not Authorized	B	B	Life or less
30	Hollie, Perry	E.D. MI No. 5:96-CR-90058-BKH	Not Authorized	B	W	Life or less
31	Inocencio, Felix Rodriguez	D. PR No. 3:97-CR-00191-CC	Not Authorized	H	Unknown	Life or less
32	Jackson, Falisha Yolanda	S.D. AL No. 2:01-CR-00007-KD-C	Not Authorized	B	B	Life or less
33	Jackson, Jeremiah	D. NM No. 1:10-CR-01374-MCA	Not Authorized	B	W	Life or less
34	Johnson, Earl	E.D. MI No. 2:05-CR-80025-VAR-RSW	Not Authorized	B	B	Life or less
35	Johnson, Edward	N.D. IN No. 3:02-CR-00116-TLS-APR	Not Authorized	B	W	Life or less

36	Johnson, John	E.D. LA No. 2:04-CR-00017-HGB-SS	Authorized	B	W	death
37	Johnson, Terance	W.D. TN No. 2:01-CR-20247-SHM	Not Authorized	B	B	Life or less
38	Jones, Herbert	E.D. LA No. 2:04-CR-00017-HGB-SS	Not Authorized	B	W	Died before authorization
39	Jones, Justin	E.D. TN No. 2:02-CR-00080-JRG-CRW	Not Authorized	W	W	Life or less
40	Jones, Rashi	E.D. VA No. 3:97-CR-00169-JAG	Authorized	B	B	Life or less
41	Kershaw, Dean Jr.	E.D. NC No. 5:00-CR-00175-BO	Not Authorized	W	W	Life or less
42	Kieffer, Armistead	E.D. LA No. 2:17-CR-00114-ILRL-JVM	Not Authorized	B	W	Life or less
43	Kieffer, Jerome	E.D. LA No. 2:17-CR-00114-ILRL-JVM	Not Authorized	B	W	Life or less
44	Lawrence, Daryl	S.D. OH No. 2:05-CR-00011-GLF-1	Authorized	B	W	death
45	Lopez, Enrique	N.D. TX No. 3:09-CR-00320-M	Authorized	H	H	Life or less
46	Marshall, Alton	N.D. IL No. 1:07-CR-00351	Not Authorized	B	B	Life or less
47	Maxwell, William	W.D. TN No. 2:01-CR-20247-SHM	Authorized	B	B	Life or less
48	McGregor, Andre L.	N.D. IN No. 3:02-CR-00116-TLS-APR	Not Authorized	B	W	Life or less
49	McKelton, Antonio	E.D. MI CR No. 98-80348	Authorized	B	B	Dismissed or not guilty
50	Medero-Rosario, Manuel I.	D. PR No. 3:96-CR-00001-PG	Not Authorized	H	H	Life or less
51	Merriweather, William Jr.	N.D. AL No. 2:07-CR-00243-RDP-JEO	Authorized	B	W	Life or less
52	Mojica-Rivera, Juan Miguel	D. PR No. 3:96-CR-00039-SEC	Not Authorized	H	H	Life or less
53	Montanez, Ian Rosario	D. PR No. 3:96-CR-00001-PG	Authorized	H	H	Life or less
54	Moore, Derrick D.	W.D. KY No. 3:01-CR-00035-TBR-CHL	Not Authorized	B	W	Life or less
55	Moose, Thirplus	W.D. MO No. 4:08-CR-00262-GAF	Not Authorized	B	W	Life or less
56	Morales-Ramirez, Elvin	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
57	Nelson, Yohann Renwick	M.D. TN No. 3:95-CR-00084	Not Authorized	B	Unknown	Life or less
58	Nevarez-Marrero, Luis F.	D. PR No. 3:96-CR-00039-SEC	Not Authorized	H	H	Life or less
59	Nixon, Latoya Tiana	S.D. AL No. 2:01-CR-00007-KD-C	Not Authorized	B	B	Life or less
60	Nunez-Alama, Onix	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
61	O'Reilly, Timothy	E.D. MI No. 2:05-CR-80025-VAR-RSW	Authorized	W	B	Life or less
62	Ortiz-Nieves, Javier	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
63	Pennington, Tiffany D	W.D. KY No. 3:01-CR-00035-TBR-CHL	Authorized	B	W	Life or less
64	Perez-Carrera, Jose Ramon	D. PR No. 3:96-CR-00039-SEC	Not Authorized	H	H	Life or less
65	Price, Dominick	E.D. MO No. 4:02-CR-00557-CEF-AGF	Not Authorized	B	W	Life or less
66	Quidgley, Alexis Terreforte	D. PR No. 3:96-CR-00001-PG	Not Authorized	H	H	Life or less
67	Ramos, Hugo Sanchez	D. PR No. 3:96-CR-00001-PG	Not Authorized	H	H	Life or less
68	Ramsey, Jeana	N.D. IN No. 3:02-CR-00116-TLS-APR	Not Authorized	W	W	Life or less
69	Reyes-Nevarez, Jose	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
70	Rivers, Roosevelt Santana	S.D. AL No. 2:01-CR-00007-KD-C	Not Authorized	B	B	Life or less
71	Rosario-Marrero, Juan	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
72	Runyon, David	E.D. VA No. 4:08-CR-00016-RBS-TEM	Authorized	Other	W	death

73	Scott, Deltoine	E.D. LA No. 2:17-CR-00114-ILRL-JVM	Not Authorized	B	W	Life or less
74	Shorter, Ramon Lori	W.D. TN No. 2:01-CR-20041-JTF	Authorized	B	W	Life or less
75	Sims, Jermaine Jerrell	E.D. VA No. 3:97-CR-00129-RLW	Not Authorized	B	B	Dismissed or not guilty
76	Smith, Daymon	E.D. TX No. 1:99-CR-00164-TH	Authorized	B	W	Life or less
77	Smith, Joseph	E.D. LA No. 2:04-CR-00017-HGB-SS	Authorized	B	W	Life or less
78	Stephens, Charles Lee	E.D. TX No. 1:99-CR-00164-TH	Authorized	B	W	died after authorization
79	Tatum, Kenneth A.	E.D. TX No. 1:99-CR-00164-TH	Authorized	B	W	Life or less
80	Tirado, Jose Diaz	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
81	Umpierre-Santiago, Alfredo	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
82	Vance, David	N.D. IL No. 1:07-CR-00351	Not Authorized	B	B	Life or less
83	Vargas-Santiago, David	D. PR No. 3:16-CR-00218-GAG	Not Authorized	H	H	Life or less
84	Velez-Martinez, Luis Antonio	D. PR No. 3:97-CR-00191-CC	Not Authorized	H	Unknown	Life or less
85	Vernon, Terron Vassell	N.D. GA No. 1:03-CR-00648-WBH-GGB	Not Authorized	B	W	Life or less
86	Villery, Garrett Paul	W.D. TN No. 2:01-CR-20041-JTF	Not Authorized	B	W	Life or less
87	Voss, Catherina	E.D. VA No. 4:08-CR-00016-RBS-TEM	Not Authorized	W	W	Life or less
88	Watson, Kevin	E.D. MI No. 2:05-CR-80025-VAR-RSW	Authorized	B	B	Life or less
89	Watts, James	S.D. IL No. 4:14-CR-40063-JPG	Authorized	B	W	Life or less
90	Wilbern, Richard	W.D. NY No. 6:17-CR-06017-CJS-JWF	Not Authorized	B	W	Life or less
91	Williams, Ross Alan	D. KS No. 6:09-CR-10013-JTM	Not Authorized	W	B	Life or less
92	Wilson, Bryant Lakeith	W.D. TN No. 2:01-CR-20041-JTF	Authorized	B	W	Life or less
93	Wilson, Khayyam	E.D. MI No. 2:05-CR-80025-VAR-RSW	Not Authorized	B	B	Life or less