

DECLARATION OF MATTHEW RUBENSTEIN REGARDING THE LENGTH OF TIME
BETWEEN CAPITAL INDICTMENT AND THE GOVERNMENT’S DECISION NOT TO
SEEK THE DEATH PENALTY BETWEEN 2010 AND JANUARY 20, 2025

1. I am an attorney in the federal public defender program specializing in the defense of federal capital prosecutions and I collaborate closely with the Federal Capital Trial Project.¹ I joined the Trial Project in 2010 as a Capital Resource Counsel attorney and was the Director of the Capital Resource Counsel (CRC) project from 2015 to 2025.² The Capital Resource Counsel and the Federal Death Penalty Resource Counsel (FDPRC) projects comprise the Federal Capital

¹ The Trial Project assigns a CRC or FDPRC attorney to work with the defense team in every federal capital eligible case as a “resource counsel.” In their role as resource counsel, the CRC attorneys (full-time salaried federal defender staff) and FDPRC attorneys (part-time contractors) are not counsel of record; rather, they provide advice, assistance, and helpful information and resources to the defense team. In addition to their work as resource counsel, the CRC attorneys often serve as death-qualified “learned” counsel as part of their Project responsibilities; and the FDPRC attorneys are often appointed to serve as “learned” counsel as CJA counsel outside their role with the Project.

² I have appeared as counsel in the following federal capital trials (*United States v. Robert Bowers*, No. 2:18-CR-00292 (W.D. Pa. 2023) (jury selection), *United States v. Brendt Christensen*, No. 2:17-CR-20037 (C.D. Ill. 2019) (jury selection), *United States v. Gary Sampson*, No. 01-10384-LTS (D. Mass. 2016) (jury selection), *United States v. Wesley Coonce*, No. 6:10-cr-03029-GAF (W.D. Mo. 2014) (trial), *United States v. Naaem Williams*, No. 6-00079-JMS (D. Haw. 2014) (jury selection), *United States v. Connell C. Williams*, No. 11-0298-F (W.D. Okla. 2013) (jury selection), and *United States v. Larry Lujan*, No. 05-924 RB (D.N.M. 2011) (jury selection), personally assisted counsel during capital jury selection in the following trials (*United States v. Sayfullo Saipov*, No. 1:17-cr-00722-VSB (S.D.N.Y. 2023), *United States v. Jessie Con-Ui*, No. 3:13-cr-00123-ARC (M.D. Pa. 2017), *United States v. Naeem J. Williams*, No. 1:06-cr-00079-JMS-KSC (D. Haw. 2014), *United States v. John McCluskey*, No. 1:10-cr-02734-JCH (D.N.M. 2013), *United States v. Alexis Candelario-Santana*, No. 3:09-cr-00427-JAF-1 (D.P.R. 2013), *United States v. Kaboni Savage, et al.*, No. 2:04-cr-00269-MAK (E.D. Pa. 2012), *United States v. Brian Richardson*, No. 1:08-cr-139-CC (N.D. Ga. 2012), and *United States v. Anh The Duong*, No. 01-cr-20154-JF (N.D. Cal. 2010)), and assisted defense teams and prepared counsel for capital jury selection in the following cases that resolved prior to trial (*United States v. John Pearl Smith, III*, No. 3:16-CR-00086-SLG-DMS (D. Alaska 2021) (de-auth and settled prior to trial), *United States v. Jarvis Wayne Madison*, No. 6:17-cr-00015-RBD (M.D. Fla. 2021) (entry of appearance pending when case de-auth and settled prior to trial), *United States v. Brandon Council*, No. 4:17-cr-00866-RBH (D.S.C. 2019), *United States v. Donald Fell*, No. 5:01-cr-00012-GWC (D. Vt. 2018) (appeared as counsel, de-auth and settled prior to trial), *United States v. David Hammer*, No. 4:96-CR-239-JHS (M.D. Pa. 2014) (entry of appearance pending when case proceeded as bench trial), and *United States v. Ritz Williams*, No. 4:08-cr-00070-YK (M.D. Pa. 2013) (entry of appearance pending when case de-auth and settled prior to trial)).

Trial Project (or “Trial Project”).³ Established in early 1992, a core function of the Trial Project is to provide consultation, training, and assistance to counsel and courts to improve the quality of representation and the cost-effectiveness of defense services in federal capital prosecution cases.⁴ The Trial Project is funded and administered by the Defender Services Office of the Administrative Office of the United States Courts.

2. In my collaboration with the Federal Capital Trial Project, my responsibilities include reviewing all federal capital prosecutions throughout the United States and overseeing the collection of data on the initiation and prosecution of federal capital cases.⁵

³ The Trial Project assigns a CRC or FDPRC attorney to work with the defense team in every federal capital eligible case as a “resource counsel.” In their role as resource counsel, the CRC attorneys (full-time salaried federal defender staff) and FDPRC attorneys (part-time contractors) are not counsel of record; rather, they provide advice, assistance, and helpful information and resources to the defense team. In addition to their work as resource counsel, the CRC attorneys often serve as death-qualified “learned” counsel as part of their Project responsibilities; and the FDPRC attorneys are often appointed to serve as “learned” counsel as CJA counsel outside their role with the Project.

⁴ The work of the Trial 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 28 – 30, http://www.uscourts.gov/sites/default/files/original_spencer_report.pdf [Perma.cc archive: <https://perma.cc/SU25-GWMV>]. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the 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 50.

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.” *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 63. <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf> [Perma.cc archive: <https://perma.cc/LPH6-K8QB>].

⁵ In order to carry out the duties entrusted to me, I rely on the data gathered by Kevin McNally who served as Resource Counsel with FDPRC since the inception of the Trial Project in January 1992, served as the Director of FDPRC between 2007 and 2018, and continued overseeing the collection of data on the initiation and prosecution of federal capital cases until 2024 when I took over this responsibility. This information is gathered from a variety of sources including PACER case dockets and case filings, transcripts, the Administrative Office of the United States Courts, Department of Justice press releases, Federal Defender offices and CJA counsel, and information gathered by and received from Federal Capital Trial Project Resource Counsel. This information is regularly updated and checked for accuracy. The Project’s information regarding federal

3. Pursuant to these responsibilities and my collaboration, I have compiled information in the regular course of the business of the Federal Capital Trial Project regarding the length of time between capital indictment and the government's notice of its decision not to seek the death penalty. I have reviewed data on the 2,315 defendants for whom the Department of Justice provided notice from 2010 until January 20, 2025, that a capital prosecution would not be initiated after the defendant had been charged in a capital eligible indictment. The average number of months between the capital eligible indictments and the government's notices of its decisions not to seek the death penalty for this group of 2,315 defendants was 5.2 months.

I declare under penalty of perjury under the laws of the United States of America, 28 U.S.C. §1746, that the foregoing is true and correct. Executed October 12, 2025.

/s/ Matthew Rubenstein
Matthew Rubenstein

capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.