

**DECLARATION OF KEVIN McNALLY REGARDING THE APPOINTMENT
OF MORE THAN TWO ATTORNEYS INCLUDING OUT-OF-STATE COUNSEL**

1. I currently serve with the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project (RCP) in January, 1992. I was the Director of the Project between 2007 and 2018. 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. My responsibilities as 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.¹

¹The 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 28-30. 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 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.

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by internet news searches, by reviewing dockets and by downloading and obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, transcripts and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated and is checked for accuracy by consulting with defense counsel. The Project's information regarding federal 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.

4. Federal district courts, since the reinstatement of the federal death penalty in 1988, have appointed more than two counsel,² including out of state

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."

<http://www.uscourts.gov/services-forms/defender-services/publications/update-cost-and-quality-defense-representation-federal>

²*United States v. Thomas Pitera*, (E.D. NY CR No. 90-0424) (Judge Reena Raggi appointed a defense team of four attorneys to represent Mr. Pitera. Although one of these lawyers was ultimately relieved prior to trial, three attorneys represented

the accused throughout the trial pursuant to their appointment under CJA); *United States v. Dandenny Munoz-Mosquera*, (E.D. NY CR No.91-CR-1285) (three attorneys appointed to represent the defendant in view of an anticipated death penalty request by the government); *United States v. Ronald Eugene Mathis* (M.D. FL CR No. 91-301-CR-T (17) (A)) (a third, “death qualified” attorney was appointed); *United States v. William Green* (E.D. LA CR No. 92-468) (third counsel appointed); *United States v. Wayne Anthony Perry* (D.C. DC CR No. 92-474) (district court permitted CJA-appointed counsel to submit vouchers for hours expended by their law partners in defense of Mr. Perry); *United States v. Kevin Wyrick* (W.D. MO CR. No. 94-00194-01-12-CR-W-9) (third counsel, an associate of the law firm which had been previously appointed, assisted in the defense); *United States v. Stanley Secatero*, (D.NM CR No. 94-401 MV) (third counsel appointed); *United States v. John Acosta, et al.* (D. NM CR No. 95-538-MV) (third counsel appointed for three of the six potential capital defendants to assist previously appointed counsel); *United States v. Ricky Rivera Mungia* (N.D. TX CR No. 5-95-CR-0017-C) (third counsel appointed); *United States v Timothy James McVeigh and Terry Nichols* (W.D. OK CR No. M-95-98-H) (two counsel and one staff federal defender were initially appointed for each defendant. Thereafter, numerous other lawyers were appointed to assist both defendants. Judge Richard Matsch appointed five attorneys to represent McVeigh in 28 U.S.C. §2255 proceedings. Additionally, associates of appointed lead counsel assisted in the defense); *United States v. Theodore Kaczynski* (E.D. CA CR No. S-96-259 & D. NJ CR No. 96-607) (two staff defenders and third counsel were appointed); *United States v. David Paul Hammer* (M.D. P 4-96-CR-239) (two federal defenders and one CJA attorney); *United States v. Howard L. Smith, Jr.* (E.D. VA CR No. 97-341-A) (third counsel appointed); *United States v. Richard Pena* (E.D. LA CR No. 97-CR-145-ALL) (third counsel appointed); *United States v. Jose Cortina Perez* (S.D. NY No. S3 97-CR-1105) (three attorneys); *United States v. Darryl Anthony Carr* (C.D. CA No. 98-CR-34) (two CJA counsel and one federal defender); *United States v. Cody Glover* (D. KS CR No. 98-10059-01-MLB) (third counsel appointed to assist two federal defenders); *United States v. Roy Green* (C.D. CA CR No. 98-337-CBM) (three federal defenders); *United States v. Ahmed Khalfan Ghailani* (S.D. NY CR No. S6 98 CR 1023) (three CJA counsel, along with two military counsel); *United States v. Jamal Shakir* (M.D. TN CR No. 3:98-00038) (three attorneys); *United States v. William Sablan* (D. CO CR No. 00-CR531) (third counsel appointed); *United States v. Diego Rodriguez* (S.D. NY CR No. 00 CR 0761(JSR)) (third lawyer appointed as “learned” counsel pursuant to 18 U.S.C.

§3005 to assist two other very experienced CJA lawyers); *United States v. Angela Johnson* (N.D. IA CR No. 00 CR 3034-MWB) (three attorneys); *United States v. Zacarius Moussaoui* (E.D. VA CR No. 01-CR-455-ALL) (two CJA counsel were appointed to assist five federal public defenders); *United States v. Lezmond Mitchell* (D.AZ CR No. 01-CR-1062) (two federal defenders joined by one CJA panel attorney); *United States v. David Lien* (N.D. CACR No. 01-CR-20071-ALL) (judge appointed a research and writing attorney in addition to two CJA attorneys); *United States v. Anh The Duong* (N.D. CA CR No. 5:01CR20154 JF) (judge appointed a research and attorney in addition to two CJA attorneys); *United States v. Jairo Zapata* (E.D. NY CR No. 01-516) (three CJA attorneys); *United States v. Brian P. Regan* (ED VA No. 01-CR-405-ALL) (four attorneys at counsel table during trial); *United States v. Ronald Mallay* (E.D. NY CR No. 02-778 (S-1) (SJ)) (three CJA attorneys); *United States v. William LeCroy* (N.D. GA CR No. 02-CR-38) (three federal defenders joined by one CJA counsel); *United States v. Darryl Green* (D. MA CR No. 02-CR-10301-ALL) (third counsel appointed after the notice of intent to seek the death penalty was filed); *United States v. Darrell David Rice* (W.D. VA CR No. 02-CR-26) (two CJA counsel were appointed to assist the federal defender); *United States v. Darryl Henderson* (S.D. NY CR No. 1:02-CR-00451-MBM-ALL) (three federal public defenders were joined by one CJA panel attorney); *United States v. Yamil Matos-Quinones* (D.PR CR No. 02-CR-183) (third counsel appointed); *United States v. Wilfredo Perez* (D. CT CR No. 02-CR-7) (three CJA counsel); *United States v. Richard James* (E.D. NY CR No. 02-778 (S-1) (SJ)) (three CJA counsel); *United States v. Brima Wurie* (D. MA CR No. 1:03-CR-10329-PBS-ALL) (three CJA counsel were appointed in the pre-authorization stage); *United States v. Terrance Lash* (E.D. LA No. 03-CR-135-ALL) (three CJA attorneys); *United States v. Kenneth Jamal Lighty* (D. MD CR No. 8:03-CR-00457-PJM-ALL) (three CJA attorneys); *United States v. Larry Gooch* (D. DC CR No. 04-128) (three CJA attorneys); *United States v. Rejon Taylor* (E.D.TN CR No. 1:04-CR-00160-1) (four CJA attorneys); *United States v. John Johnson* (E.D. LA No. 2:04-CR-00017-HGB-SS) (three CJA attorneys); *United States v. Gilbert Saldana* (C.D. CA CR No. 04-CR-415-ALL) (a panel attorney was appointed along with two federal public defenders); *United States v. Scott Cheever* (D. KS CR No. 05-10050-01-06-MLB) (three federal public defenders were joined by one CJA panel attorney); *United States v. Ryan Veazie* (E.D. LA CR No. 2:05 CR 00268-ILRL-SS) (three federal defenders were assigned); *United States v. Raheen Davis* (S.D. NY CR No. 05 1157) (three CJA attorneys); *United States v. Michael Petzold* (D. ND CR No. 3:05-CR-00101-RRE-ALL) (three CJA attorneys); *United States*

v. Jorge Amador (D. MD CR No. 8:05 CR 00393-DKC-ALL) (three CJA attorneys); *United States v. Vincent Basciano* (E.D. NY No. 05-CR-060) (four counsel appointed); *United States v. Patrick Holifield* (C.D. CA No. 05-CR-920) (three federal defenders); *United States v. Antonio Argueta* (D. MD CR No. 8:05 CR 00393-DKC) (three CJA counsel); *United States v. Michael Eldren Bracey* (E.D. MI No. 2:06-CR-20185) (two federal defenders and one CJA counsel); *United States v. Damion Jerome Thompson* (C.D. CA No. 06-CR-00466) (three federal defenders); *United States v. Steven Green* (W.D. KY No. 5:06-CR-00019-TBR) (two federal defenders and one CJA counsel); *United States v. Jorge Manuel Arandas* (D. ND No. 3:06-CR-14-01) (three counsel appointed); *United States v. James Dinkins* (D. MD No. 1:06-CR-00309-JFM) (research and writing attorney appointed); *United States v. Harry Burton* (D. MD No. 1:07-CR-00149-WDQ) (research and writing attorney appointed); *United States v. Jesse Dorsz* (D. MD No. 1:07-CR-00399-JFM) (research and writing attorney appointed); *United States v. Joseph Ebron* (E.D. TX No. 1:07-CR-142) (three CJA counsel); *United States v. Catherina Voss* (E.D. VA CR No. 4:08-CR-16) (three federal defenders and one CJA counsel); *United States v. Charles Santiago* (E.D. NY No. 1:08-CR-00559) (three CJA counsel); *United States v. Sheldon Villanueva* (W.D. LA No. 08-00386) (three federal defenders and one CJA counsel); *United States v. Michael Raymond Thompson* (W.D. TN No. 08-20397-M1) (three CJA counsel); *United States v. James Kendrick and Pablo (Paul) Plaza* (W.D. NY No. 10-CR-6096) (each have three CJA counsel); *United States v. Miguel Alvarado-Linares* (N.D. GA No. 1:10-CR-086) (three federal defenders and one CJA counsel); *United States v. Silvestre Rivera* (D. CO No. 1:10-CR-00164-LTB) (three CJA counsel); *United States v. Dwayne A. Davis, Jr.* (N.D. OH No. 1:10-CR-021) (three CJA attorneys); *United States v. Quenshy Mitchell* (E.D. LA No. 2:10-CR-00297-EEF-DEK) (three CJA counsel appointed); *United States v. Efrain Rodriguez-Mendoza* (S.D. TX No. H-10-459) (three CJA counsel); *United States v. Ronald Herron* (E.D. NY No. CR-10-615) (three CJA counsel); *United States v. Watland* (D. CO No. 1:11-CR-00038-JLK) (three CJA counsel); *United States v. Ahmed Muse Salad* (E.D. VA No. 2:11CR34) (two federal defenders and one CJA counsel); *United States v. Gregory Plaskett* (S.D. NY No. 11CR184) (three CJA counsel); *United States v. Davie Jimmy Mejia-Sensente* (N.D. CA No. 3:11-CR-00293-MMC) (three CJA counsel); *United States v. Edgar Nelson Pitts* (E.D. CA 2011) (two federal defenders and one CJA counsel); *United States v. Khaa McKenzie* (E.D. NY No. 11-405) (one federal defender and two CJA counsel); *United States v. Connell Williams* (W.D. OK No. 5:11-CR-298) (one federal defender and two CJA counsel); *United States v. Ricky L. Wedgeworth* (S.D.

MS No. 5:11 CR 7 DCB-LRH) (two federal defenders and one CJA counsel); *United States v. Efrain Hidalgo* (W.D. NY No. 1:11-CR-00151-RJA) (three CJA counsel); *United States v. Nestor Pagan* (D. CT No. 3:12-CR-00267-ACV) (two federal defenders, one CJA counsel); *United States v. Trumaine Hearst* (D. CT No. 3:13-CR-00139-MPS) (two federal defenders, one CJA counsel); *United States v. Paul Ciancia* (C.D. CA No. 2:13-CR-00902-PSG) (three federal defenders, one CJA counsel); *United States v. Jonathan Rene Martinez* (W.D. OK No. 5:13-CR-00286-D) (two federal defenders, one CJA counsel); *United States v. Alfonzo Williams* (N.D. CA No. 3:13-CR-00764-WHO) (one federal defender and two CJA counsel); *United States v. Lorell Antonio Battle* (N.D. OK No. 4:13-CR-00028) (three CJA lawyers); *United States v. Gordon Lasley* (N.D. IA No. 1:14-MJ-00065-JSS) (three federal defenders); *United States v. Kevin Bolton* (W.D. AR No. 6:14-CR-60003-SOH) (two federal defenders, one CJA counsel); *United States v. Lance Green* (S.D. OH No. 1:14-CR-00127-ALM) (one federal defender, two CJA counsel); *United States v. Tommy Smalls* (S.D. NY No. 7:14-CR-00604-UA) (four CJA lawyers); *United States v. Irek Ilgiz Hamidullin* (E.D. VA No. 3:14-CR-00140-HEH) (one federal defender and two CJA lawyers); *United States v. John Vailette* (D. CT. No. 3:14-CR-00060-RNC) (three CJA counsel, two at same firm); *United States v. Robin Tyrone Smith* (D. MD No. 1:14-CR-00582-JFM) (three CJA lawyers); *United States v. Maryssa Middleton* (D. KS No. 5:15-CR-40018-DDC) (three CJA lawyers); *United States v. Antonio Cruz* (N.D. CA No. 5:15-CR-00285-LHK) (three CJA lawyers); *United States v. Leonardo Antolin* (C.D. CA No. 2:16-CR-00390-R) (two federal defenders, one CJA lawyer); *United States v. Jason Polanco* (S.D. NY No. 1:16-CR-00826-LTS) (three CJA lawyers); *United States v. Joseph Biggs* (S.D. NY No. 7:16-CR-00832-KMK) (three CJA lawyers); *United States v. Juan R. Pedro-Vidal* (D. PR No. 3:16-CR-00778-GAG) (four federal public defenders, one CJA lawyer); *United States v. Enrique Portillo and Omar Villalta* (E.D. NY No. 2:16-CR-00403-JFB) (three CJA lawyers); *United States v. Francis McCard* (D UT 2016) (five federal defenders); *United States v. Tyvon Bannister* (E.D. NY No. 1:17-CR-00116-BMC-1) (three CJA lawyers); *United States v. Adam Purinton* (D KS No. 2:17-CR-20028-CM-JPO-1) (three public defenders); *United States v. Fitzroy Simmonds* (E.D. NY No. 1:17-CR-00220-GBD) (two public defenders and one CJA lawyer); *United States v. Romeo Giovanni* (D. AZ No. 4:17-CR-01428-JAS-BPV) (three public defenders); *United States v. Jarvis Wayne Madison* (M.D. FL No. 6:17-CR-00015-RBD-KRS) (two federal defenders, one CJA lawyer); *United States v. Curtis Johnson, Jr.* (E.D. LA No. 2:17-CR-00201-LMA-DEK) (three CJA lawyers); *United States v. Chukwudi Ofomata* (E.D. LA No. 2:17-CR-00201-LMA-DEK) (three CJA lawyers);

counsel,³ in a significant number of federal death penalty cases in which the facts

United States v. Aurelio Patino (C.D. CA No. 5:18-CR-00250-SJO) (two federal defenders, one CJA lawyer); *United States v. Luis Rojas* (N.D. CA No. 3:18-CR-00119-RS) (three CJA lawyers); *United States v. Terrence Allen Miles* (W.D. TX No. 1:18-CR-00039-LY) (three federal defenders and one CJA lawyer); *United States v. Victor Kingsley* (E.D. NY No. 1:18-CR-00128-SJ-ST) (two federal defenders and one CJA lawyer); *United States v. Donnie Arlondo Ferrell* (N.D. TX No. 3:18-CR-00142-K) (two federal defenders and one CJA lawyer); *United States v. James Alex Fields, Jr.* (W.D. VA No. 3:18-CR-00011-MFU) (two federal defenders and one CJA lawyer); *United States v. Aurelio Patino* (C.D. CA No. 5:18-CR-00250-SJO) (three federal defenders), *United States v. Jorge Luis Monsivais, Jr.* (W.D. TX No. 2:18-MJ-05710-CW) (three federal defenders); *United States v. Louis Coleman, III* (D. MA No. 1:19-MJ-06053-MPK) (two federal defenders and one CJA counsel); *United States v. Javier Enrique Da Silva Rosa* (S.D. NY No. 7:19-MJ-01458-UA) (two federal defenders and one CJA attorney) and *United States v. Jose Baquix Alvarez* (C.D. CA No. 2:19-CR-00117-ODW) (three CJA counsel).

³*United States v. Darryl Johnson* (W.D. NY CR No. 92-159-16C) (district court appointed a third, death penalty qualified, out-of-state, attorney); *United States v. Michael Murray* (M.D. PA CR No. 1:CR-92-200) (out-of-state third counsel appointed); *United States v. Tyrone Tidwell* (E.D. PA CR No. 94-353) (out of state, third counsel was appointed due to the lack of death penalty experience of the previously appointed counsel); *United States v. Tim Holloway* (M.D. TN CR No. 3:96-00004) (a third, out-of-state, counsel was appointed); *United States v. Deric Frank* (S.D. NY CR No. 97 CR269 (DLC)) (a third, out-of-state, CJA counsel was appointed to assist two federal defenders); *United States v. Renee Beth Smith* (D. HI No. 97-CR-01141 HG 01) (two federal defenders and one CJA counsel from out-of-state); *United States v. Ricky Lee Brown* (N.D. WV No. 1:98CR34) (three CJA counsel - two from out-of-state); *United States v. Chris Dean* (D. VT CR No. 2:98M0021) (third, out-of-state, counsel appointed); *United States v. Donald Fell* (D. VT No. 2:01-CR-12-01) (three CJA lawyers, two from out-of-state); *United States v. Gary Sampson* (D. MA CR No. 01-CR-10384-ALL) (third, out-of-state counsel appointed); *United States v. Petro Krylov* (C.D. CA CR No. 02-220 (A)-NM) (third, out-of-state counsel appointed); *United States v. Craig Petties* (W.D. TN No. 02-20449-ML) (two CJA lawyers, one from out-of-state and associate billing); *United States v. Khalid Barnes* (S.D. NY No. 7:04-CR-00186-SCR)

(one federal defender and two CJA appointed counsel, one from out-of-state); *United States v. Ronell Wilson* (E.D. NY CR No. 1:04-CR-01016-NGG-ALL) (three CJA attorneys, one from out-of-state); *United States v. Timothy O'Reilly* (E.D. MI No. 05-80025) (two CJA counsel, including out of state counsel and two associates permitted to bill); *United States v. Larry Lujan* (D. NM No. 05-924) (three federal defenders and one CJA counsel); *United States v. LaShaun Casey* (D. PR No. 3:05-CR-0277-JAG) (three federal defenders and one CJA counsel from out-of-state); *United States v. Jelani Solomon* (W.D. PA No. 2:05-CR-00385-TFM-ALL) (third, out-of-state, counsel appointed); *United States v. Valeri Friend* (S.D. WV CR No. 2:05-00107) (two CJA counsel, including one out-of-state, and billing also approved for out-of-state law partner); *United States v. George Lecco* (S.D. WV CR No. 2:05-00107) (three federal defenders, two from out-of-state); *United States v. Azikiwe and Azibo Aquart* (D. CT No. 3:06CR160(PCD)) (both had third, out-of-state counsel appointed); *United States v. Antoine Baker* (E.D. AR No. 4:06 CR 00041 GTE) (third, out-of-state, counsel appointed); *United States v. Jarvis Brown* (S.D. IN EV06-CR-0014-01-Y/H) (three counsel appointed, one from out-of-state); *United States v. Martin Carillo* (D. ND No. 3:06 CR 14) (two federal defenders and out-of-state counsel appointed); *United States v. Naeem Williams* (D. HI No. 1:06-CR-00079-DAE) (three CJA counsel appointed, two out of state); *United States v. Joseph Duncan* (D. ID No. 07-23-N-EJL) (two out-of state counsel and federal defender office); *United States v. Steven Northington* (E.D. PA No. 2:07-CR-00550-RBS) (three CJA counsel, one out of state); *United States v. Hisan Lee* (S.D. NY 1:07-CR-00003-BSJ) (three CJA counsel, one out-of-state); *United States v. Earl Davis* (D. MD No. 8:07-CR-00199-RWT) (two federal defenders and one CJA counsel from out-of-state); *United States v. Kaboni Savage* (E.D. PA No. 2:07-CR-00550-RBS) (three counsel appointed, two from out-of-state); *United States v. William Merriweather, Jr.* (N.D. AL No. 2:07-CR-243-RDP-JEO) (five CJA lawyers, one from out-of-state); *United States v. Michael Thompson* (MD FL) (two federal defenders and one CJA appointed counsel from out-of-state); *United States v. Joseph Cabrera Sablan* (E.D. CA No. 08 CR 00259) (one federal defender from out of state and two CJA appointed counsel, one from out-of-state); *United States v. Antun Lewis* (N.D. OH No. 1:08-CR-404) (two federal defenders and two CJA appointed counsel); *United States v. James Leon Guerrero* (E.D. CA No. 08-CR-00259) (one federal defender and two CJA counsel appointed); *United States v. Patrick Albert Byers, Jr.* (D. MD No. 08-056) (three CJA attorneys, one out-of-state); *United States v. Narayan Thadani* (E.D. MI No. 2:08-CR-20290-GER-VMM) (three CJA

counsel, one from out of state); *United States v. Michael Jacques* (D. VT No. 2:08-MJ-00057-JJN) (one federal defender and two CJA counsel from out-of-state); *United States v. Jonathan Ortiz-Torres* (D. PR No. 10-138 (GAG)) (three federal defenders and one CJA counsel from out of state); *United States v. John Charles McCluskey* (D. NM No. 1:10-CR-02734) (three CJA lawyers, one from out-of-state); *United States v. Wesley Paul Coonce, Jr.* (W.D. MO 10-03029-01/02-CR-S-GAF); (two CJA counsel and an Assistant Federal Public Defender from out of state); *United States v. Thomas Steven Sanders* (W.D. LA No. 1:10CR00351) (three federal defenders, one from out-of-state and CJA counsel appointed); *United States v. Ricky Lewis Kelly* (W.D. KY No. 3:11CR-33-H) (three CJA counsel, one from out-of-state); *United States v. Jorge Avila Torrez* (E.D. VA No. 1:11-CR-115) (two federal defenders and one CJA appointed counsel from out-of-state; three CJA counsel were appointed to replace the initial defense team); *United States v. Chastain Montgomery* (W.D. TN No. CR 11-20044) (three CJA lawyers appointed, one from out of state); *United States v. Christian John* (E.D. NY No. 11-CR-405) (three CJA lawyers, one from out-of-state); *United States v. Jared Loughner* (D. AZ No. 4:11-CR-00187-LAB) (two out-of-state attorneys and the Federal Defender of Southern California appointed); *United States v. Walter Porter* (E.D. LA No. 2:12-CR-00001-MLCF-ALC) (three CJA counsel, including one from out-of-state); *United States v. Samuel Stone* (E.D. CA CR No. E.D. CA No. 1:12-CR-00072-AWI-DLB) (two federal defenders and one CJA counsel from out-of-state); *United States v. Farad Roland* (D. NJ No. 2:12-CR-00298-ES) (four CJA counsel); *United States v. Dzhokhar Tsarnaev* (D. MA No. 1:13-CR-10200-GAO) (the federal defender and two out-of-state CJA counsel); *United States v. John Travis Millner* (E.D. KY No. 7:13-CR-15-ART) (three CJA counsel, one from out-of-state); *United States v. James Wayne Ham* (S.D. TX No. 4:13-CR-00363) (three federal defenders, one from out-of-state); *United States v. Ahmed Abu Khatallah* (D. DC No. 1:14-CR-00141-CRC) (two federal defenders and one out-of-state CJA counsel); *United States v. Jessie Con-Ui* (M.D. PA No. 3:CR-13-123) (three CJA lawyers, two from out-of-state); *United States v. James Watts* (S.D. IL No. 4:14-CR-40063-JPG) (one federal defender, two CJA attorneys, one from out-of-state); *United States v. Milton Huff* (C.D. CA 2014) (two federal defenders, one CJA lawyer from out-of-state); *United States v. Ailsa Jackson* (D. HI No. 1:15-CR-00293-SOM-KSC-1) (two federal defenders, one CJA lawyer from out-of-state); *United States v. Victor Skates* (N.D. CA No. 5:15-CR-00285-LHK) (two CJA and five from Federal Defender Office out of state); *United States v. Daniel Chavez* (N.D. CA No. 5:15-CR-00285-LHK) (two federal defenders from out-of-state, one CJA

of the case and the situation warranted the appointment or participation of three or more attorneys in the defense of the accused.⁴ Appointment of more than two

lawyer); *United States v. Dylann Storm Roof* (D. SC No. 2:15-MC-00218-BM) (two federal defenders, one CJA lawyer from out-of-state); *United States v. Jesus Yeizon Deniz Mendoza* (D. MT No. 1:15-CR-00093-SPW) (two federal defenders, one CJA lawyer from out-of state); *United States v. Ramon De La Cerda* (S.D. TX No. 4:15-CR-00564) (three CJA lawyers, one from out-of-state); *United States v. Andrew Rogers* (S.D. IN No. 2:16-CR-00018-WTL-CMM) (two federal defenders, two CJA lawyers from out-of-state, one research and writing attorney); *United States v. Richard Smith* (S.D. IN 2016) (one federal defender, two CJA lawyers from out-of-state); *United States v. John Pearl Smith, III* (D. AK No. 3:16-CR-00086-SLG-DMS) (three CJA attorneys, including two from out-of state); *United States v. Jaime Rivera* (E.D. NY No. 2:17-CR-0050-SJF) (two federal defenders, one CJA lawyer from out-of-state); *United States v. Brendt Christensen* (C.D. IL No. 2:17-CR-20037-CSB-EIL) (three federal defenders, one CJA lawyer from out-of-state); *United States v. Brandon Durell Hardison* (M.D. TN No. 3:17-CR-00124) (three CJA attorneys, one from out-of-state); *United States v. Omar Rivera-Moyet* (D. PR No. 3:18-CR-00023-PAD) (three federal defenders and one CJA lawyer from out-of-state); *United States v. Chase Smothermon* (D. NM No. 1:18-CR-00930-MV) (two federal defenders and one CJA lawyer from out-of-state); *United States v. Mariah Ferry* (D. NM No. 1:18-CR-00930-MV) (three CJA attorneys); *United States v. Armando Raul Ramirez-Serna* (D. WY No. 2:18-MJ-00051-ABJ-1) (one federal defenders and two out-of-state CJA lawyers); *United States v. Steven Joshua Wiggins* (M.D. TN No. 3:18-MJ-01099) (two federal defenders and one out-of-state CJA lawyer); *United States v. Devonte Hodge* (N.D. IN No. 2:18-CR-00021-JVB-APR) (two CJA lawyers [one out of state] and one out-of-state federal defender); *United States v. Ryan Bacon* (D. DE 1:18-CR-00075-LPS) (two federal defenders and one out-of-state CJA lawyer); *United States v. Reta Mays* (N.D. WV 2019) (one federal and two CJA lawyers, one out-of state); *United States v. Daniel Nantz* (E.D. KY No. 6:19-CR-00016-REW-HAI) (out-of-state CJA counsel in addition to two retained counsel) and *United States v. Patrick Crusius* (W.D. TX No. 3:20-CR-00389-DCG) (one out-of-state federal defender and two CJA lawyers, one out of state).

⁴There have been several pending appeals in which federal courts have appointed or allowed appointment of three attorneys, none of whom work in the same office:

lawyers to defend a federal death penalty case has become the standard of practice.

Currently, at least three attorneys have been appointed in a clear majority of cases

“authorized” for a capital trial by the Attorney General.⁵

Gabrion v. United States, Nos. 02-1386, 02-1461 and 02-1570 in the Sixth Circuit (three CJA attorneys appointed) *United States v. Honken*, No. 05-3871 in the Eighth Circuit (three CJA lawyers appointed from start of case); *United States v. Wilson*, No. 07-1320 in the Second Circuit (three CJA lawyers initially appointed; one later withdrew on her own motion); *United States v. Caro*, No. 07-05 in the Fourth Circuit (two assistant federal defenders, from different offices, and one CJA lawyer presently assigned); *United States v. Kadamovas*, No. 07-99009 in the Ninth Circuit (three CJA attorneys appointed); *United States v. Duncan*, No. 08-99031 in the Ninth Circuit (two CJA lawyers and one assistant federal defender appointed); *United States v. Savage*, No. 14-9003 in the Third Circuit (one federal defender and two CJA attorneys appointed); *United States v. Coonce*, No. 14-2800 in the Eighth Circuit (one federal defender and two CJA attorneys); *United States v. Tsarnaev*, No. 16-6001 in the First Circuit (one federal defender and two CJA attorneys) and *United States v. Sampson*, No. 17-6001 in the First Circuit (one federal defender and two CJA attorneys).

At least three lawyers participated in the appellate briefing in: *United States v. Lecroy*, No. 04-15597 in the Eleventh Circuit; *United States v. Taylor*, No. 09-5517 in the Sixth Circuit; *United States v. Barnette*, No. 10-2 in the Fourth Circuit and *United States v. Wilson*, No. 13-3566 in the Second Circuit (resentencing appeal). Additionally, associate billing was permitted in: *United States v. Lee*, No. 02-2389 in the Eighth Circuit; *United States v. Lawrence*, No. 07-3004 in the Sixth Circuit; *United States v. Lighty*, No. 09-6 in the Fourth Circuit and *United States v. Nelson*, No. 12-4025 in the Eighth Circuit. On post-conviction, federal defender organizations have paired with two CJA counsel in: *United States v. Nelson* (4:04-cv-08005-FJG) and *United States v. Montgomery* (4:12-cv-08001-GAF).

⁵*United States v. Madison* (M.D. FL) (three attorneys); *United States v. Ashley* (C.D. CA) (four attorneys); *United States v. Candelario-Santana* (D PR) (three attorneys); *United States v. Owle* (ND WV) (four attorneys); *United States v. Duran-Gomez* (SD TX) (five attorneys); *United States v. Rodriguez-Mendoza* (SD TX) (five attorneys);

5. The relevant Judicial Conference policy governing representation in federal capital cases expressly contemplates such appointments, in that it specifies: “Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed ...” CJA Guidelines, § 6.01(A)(1).

6. The “Federal Death Penalty Act of 1994” included the first substantive revision of 18 U.S.C. §3005, enacted in 1790 by the first Congress of the United States. This appointment of counsel statute remained virtually unchanged until President Clinton signed into law the 1994 Act. The limitation of appointment of counsel “learned in the law ... not exceeding two ...” was removed.

United States v. Ham (S.D. TX) (three attorneys); *United States v. Laurel* (ND WV) (four attorneys); *United States v. Skates* (N.D. CA) (seven attorneys); *United States v. Arnold* (ED MI) (three attorneys); *United States v. Wilson* (E.D. MI) (three attorneys); *United States v. Jordan* (E.D. MO) (ten attorneys); *United States v. Tartaglione* (S.D. NY) (seven attorneys); *United States v. Saipov* (SD NY) (eight attorneys), *United States v. George* (ED LA) (three attorneys); *United States v. Ofomata* (ED LA) (three attorneys); *United States v. Curtis Johnson* (ED LA) (three attorneys); *United States v. Pedro-Vidal* (D PR) (five attorneys); *United States v. Smith* (D AK) (four attorneys); *United States v. Nesbitt* (WD MO) (three attorneys); *United States v. Rebolledo* (ND CA) (three attorneys); *United States v. Wiggins* (MD TN) (five attorneys); *United States v. Wood* (ND NY) (four attorneys) and *United States v. Bowers* (MD PA) (four attorneys).

7. Federal Public Defenders have assigned as many as seven attorneys in a capital trial prosecution.⁶

8. Courts have also appointed counsel to assist retained counsel in federal capital prosecutions.⁷

⁶*United States v. James Allen Irby* (D. MD CR No. 8:03-CR-00490-RDB) (four federal defenders), *United States v. Brian Richardson* (N.D. GA No. 1:08CR139) (four federal defenders); *United States v. Frederick Ashley* (C.D. CA 2012) (four federal defenders); *United States v. Anthony Jordan* (E.D. MO No. 4:15-CR-00404-HEA-NAB) (seven federal defenders); *United States v. Victor Skates* (N.D. CA No. 5:15-CR-00285-LHK) (six federal defenders); *United States v. Juan R. Pedro-Vidal* (D. PR No. 3:16-CR-00778-GAG) (four federal defenders); *United States v. Saipov* (SD NY No. 1:17-CR-00722) (six federal defenders) and *United States v. Steven Joshua Wiggins* (M.D. TN No. 3:18-MJ-01099) (four federal defenders).

⁷*United States v. Anthony Jones* (D. MD CR No. WMN-96-0458) (two CJA counsel were appointed to assist retained counsel); *United States v. Daniel Ray Bennett and Edward Stanley* (C.D. CA CR No. 96-1140(A)) (two staff federal defenders assigned to assist retained counsel); *United States v. Julio Otero* (M.D. PA CR No. 3:CR-96-005) (two CJA counsel were appointed to assist retained counsel); *United States v. Richard Oslund* (D.MN CR No. 03-151) (two CJA attorneys were appointed to assist retained counsel); *United States v. Ekabal Singh Busra* (E.D. WI CR No. 1:03 CR 00052-WCG-AEG) (two retained counsel and one CJA counsel from out-of-state); *United States v. Kenneth McGriff* (E.D. NY No. 04-966-ERK) (retained counsel and two CJA counsel from out-of-state); *United States v. Michael Antonio Natson* (N.D. OH No. 1:06CR-00395-DDD) (out-of-state CJA attorney appointed to assist two retained counsel); *United States v. Donna Moonda* (N.D. OH No. 1:06-CR-00395-DDD) (CJA attorney appointed to assist two retained counsel); *United States v. Maurice Phillips* (E.D. PA No. 2:07-CR-00549-JCJ) (CJA attorney appointed to assist two retained counsel); *United States v. Jose Luis Gracesqui* (S.D. NY No. 1:10-CR-00074-PKS) (two CJA counsel and one retained counsel); *United States v. Eugene Slone* (E.D. KY No. 6:12-CR-00028-ART-HAI) (three retained counsel and one CJA lawyer from out-of-state); *United States v. Melissa Hack* (D. NV No. 2:12-CR-00063-PMP-RJJ) (two retained

9. Various courts have permitted CJA appointed counsel to submit vouchers for hours expended by their law partners. The effect of this authorization (which is in any event contemplated in non-capital cases, see, Administrative Office of the United States Courts, *Guide to Judiciary Policies and Procedure*, Guidelines for Administration of the Criminal Justice Act, Vol. VII (Appointment of Counsel in Criminal Cases), § 2.11(A), (hereinafter CJA Guidelines), is to permit at least three and as many as four lawyers to participate.

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 13th day of February, 2020.

/s/ Kevin McNally

Kevin McNally
Attorney at Law

counsel and one out-of-state CJA counsel); *United States v. Geovanny Valladares* (E.D. NY No. 2:14-CR-00068-JFB) (two CJA counsel and one retained counsel); *United States v. Carlo Wilson* (E.D. MI No. 2:16-CR-20460-MAG-RSW) (two out-of-state CJA counsel, one federal defender and one retained counsel) and *United States v. Daniel Nantz* (E.D. KY No. 6:19-CR-00016-REW-HAI) (out-of-state CJA counsel in addition to two retained counsel).