

## **DECLARATION OF KEVIN McNALLY REGARDING CONFIDENTIAL FAMILY MITIGATION VISITS**

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.<sup>1</sup>

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.

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1. 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 28-30. [www.uscourts.gov/dpenalty/1COVER.htm](http://www.uscourts.gov/dpenalty/1COVER.htm). 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.” <http://www.uscourts.gov/FederalCourts/AppointmentofCounsel/Publications/UpdateFederalDeathPenaltyCases.aspx>

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, consultation with other resource counsel, 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. Confidential family mitigation visits have been granted, at defense request, in federal capital cases across the country. In a number of cases, such visits have been arranged directly between defense counsel and the detention facility holding the defendant, without the need for any judicial order. In others, including some cases that remain open, such visits have been court-ordered but the orders remain under seal and cannot be disclosed. In a few, the orders are not under seal. *See United States v. Joseph Pedersen* (D OR No. 3:12-CR-00431-HA) (May 28, 2013 order); *United States v. Dzhokar Tsarnaev* (D. MA No. 1:13-CR-10200-GAO) (April 16, 2014, DE 254 Clerk's Notes granting DE

110). I am not aware of any federal capital case in which such visits have been sought by the defense but refused by the court.

5. The information detailed herein is maintained in the ordinary course of business of the Federal Death Penalty Resource Counsel Project and is accurate to the best of my knowledge, ability and belief.

I declare under the 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 this 19<sup>th</sup> day of September, 2022.

/s/ Kevin McNally  
Kevin McNally