

DECLARATION OF MATTHEW RUBENSTEIN REGARDING JOINT AND SEPARATE TRIALS AND OUTCOMES IN CAPITAL PROSECUTIONS INVOLVING MULTIPLE DEFENDANTS IN FEDERAL DEATH PENALTY TRIALS SINCE JANUARY 1, 2009

1. I am an attorney in the federal public defender program specializing in the defense of federal capital prosecutions¹ and I collaborate closely with the Federal Capital Trial Project.² I

¹ I have been representing capital defendants at trial since 1999, exclusively federal capital defendants since 2010, and have tried three capital cases through verdict, lead voir dire in another fifteen capital cases, personally assisted counsel during capital jury selection in eight capital trials, and assisted defense teams and prepared counsel for capital jury selection in six other federal cases. Twenty of these thirty-two cases were federal capital prosecutions. Since 2010 I have been a full-time staff attorney in the federal defender program representing federal capital defendants and assisting federal capital defense teams. In 2025 I joined the Office of the Federal Public Defender for the District of Maryland where I continue my work defending capital defendants in the District of Maryland and in other districts.

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. 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 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 (*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)).

² 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

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. The Capital Resource Counsel and the Federal Death Penalty Resource Counsel (FDPRC) projects comprise the Federal Capital 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. The Trial Project is funded and administered by the Defender Services Office of the Administrative Office of the United States Courts.

2. In my ongoing 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.⁴

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>].

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 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

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 prosecutions which have included more than one defendant.

Capital Co-Defendants

4. Forty-six (46) prosecutions, involving fifty-five (55) capital defendants, have commenced trial since January 1, 2009.⁵ Twelve (12) of those prosecutions have been multi-capital defendant prosecutions, in which some form of severance has been granted in six (6)

is regularly updated and checked for accuracy. 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.

Kevin McNally personally assisted appointed counsel in voir dire in the following federal capital trials: *United States v. Richard Tipton, et al.*, No. 3:92-CR-00068-JRS (E.D. Va.); *United States v. John Javilo McCullah*, No. 6:92-CR-00032-RAW (E.D. Okla.); *United States v. Michael Murray*, No. 1:92-CR-00200-SHR (M.D. Pa.); *United States v. Jean Claude Oscar, et al.*, No. 2:93-CR-00131-HCM (E.D. Va.); *United States v. Stacey Culbert*, No. 2:92-CR-81127-AC (E.D. Mich.); *United States v. Louis Jones*, No. 6:95-CR-00015-C (N.D. Tex.); *United States v. Orlando Hall*, No. 4:94-CR-00121-Y (N.D. Tex.); *United States v. Bruce Webster*, No. 4:94-CR-00121-Y (N.D. Tex.) and *United States v. Len Davis*, No. 2:94-CR-00381-ILRL-MBN (E.D. La.). Kevin McNally observed portions of the jury selections in other cases: *United States v. Thomas Pitera*, No. 1:90-CR-00424-RJD (E.D.N.Y.) and *United States v. Dennis B. Moore*, No. 4:94-CR-00194-DW (W.D. Mo.). Kevin McNally selected federal capital trial juries as counsel of record: *United States v. Quinones and Rodriguez*, No. 1:00-CR-00761-JSR (S.D.N.Y.) and *United States v. Valerie Friend*, No. 2:05-CR-00107 (S.D.W. Va.). Kevin McNally assisted in preparing defense counsel for jury selection in other cases: *United States v. Jason De la Torre*, No. 1:95-CR-00538-MV (D.N.M.); *United States v. Timothy McVeigh*, No. 5:95-CR-00110-RPM (W.D. Okla.) (Alley) on change of venue to No. 1:96-CR-00068-RPM (D. Colo.) (Matsch); *United States v. Theodore Kaczynski*, No. 2:96-CR-00259-GEB-GGH (E.D. Cal.) and *United States v. Angela Johnson*, No. 3:01-CR-03046-MWB-LTS (N.D. Iowa).

⁵ Cases from 2009 to the present were selected as the focus of this analysis because they best reflect modern capital defense practice following key developments in the law and professional standards. In particular, defense representation in capital cases evolved significantly in the wake of *Wiggins v. Smith*, 539 U.S. 510 (2003), *Rompilla v. Beard*, 545 U.S. 374 (2005), the American Bar Association's 2003 revisions to the *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913 (2003), and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 Hofstra L. Rev. 677 (2008), which collectively updated and expanded the norms of capital defense practice and clarified the essential elements of effective representation in capital cases. This time period captures cases tried under the Obama, Trump (45), and the Biden administrations.

instances⁶ (or 50%). Severance was denied in the other six (6) multi-capital defendant prosecutions or 50 % (6 of 12 cases).⁷

5. In each of the six (6) multi-capital defendant prosecutions in which severance was denied, the jury returned identical sentencing decisions for every one of the capital defendants tried together, calling into question the Eighth Amendment requirement of individualized sentencing. *See Lockett v. Ohio*, 438 U.S. 586, 587 (1978) (“The need for treating each defendant in a capital case with that degree of respect due the uniqueness of the individual is far more important than in noncapital cases.”) When the same jury considered the life or death sentence simultaneously for two or more capital defendants, the jury returned death sentences for all defendants in four (4) cases⁸ and life without the possibility of release for all defendants in two (2) cases.⁹

6. Of the cases in which the capital co-defendants were severed, in the case that proceeded with separate penalty hearings and sequential jury deliberations before the same jury, the jury returned a death sentence for one defendant and life sentence without the

⁶ 1) *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.) (separate penalty hearings and sequential jury deliberations before the same jury); 2) *United States v. Azibo Aquart*, No. 3:06-CR-00160-SRU (D. Conn.) (separate trials); 3) *United States v. Timothy O'Reilly*, No. 2:05-CR-80025-VAR-RSW (E.D. Mich.) (separate trials); 4) *United States v. John Johnson*, No. 2:04-CR-00017-HGB-SS2 (E.D. La.) (separate trials); and 5) *United States v. Ebron*, No. 1:07-CR-00142-MAC-ESH & 1:08-CR-00036-MAC-ESH (E.D. Tex.) (severance and new docket number ordered), and 6) *United States v. Donnell Young*, No. 3:98-CR-00038 (M.D. Tenn.) (separate trials).

⁷ 1) *United States v. Christopher Cramer and Ricky Allen Fackrel*, No. 1:16-CR-00026-MAC-ZJH (E.D. Tex.); 2) *United States v. Wesley Paul Coonce and Charles Michael Hall*, No. 6:10-CR-03029-GAF (W.D. Mo.); 3) *United States v. Ahmed Muse Salad, Shani Nurani Abrar, and Abukar Osman Beyle*, No. 2:11-CR-00034-RBS-DEM (E.D. Va.); 4) *United States v. Mark Snarr and Edgar Garcia*, No. 1:09-CR-00015-MAC-KFG All (E.D. Tex.); 5) *United States v. Melvin Gilbert and James Dinkins*, No. 1:06-CR-00309-JFM (D. Md.); and 6) *United States v. Ricardo Sanchez and Danny Troya*, No. 9:06-CR-80171-DTKH (S.D. Fla.).

⁸ 1) *United States v. Christopher Cramer and Ricky Allen Fackrel*, No. 1:16-CR-00026-MAC-ZJH (E.D. Tex.); 2) *United States v. Wesley Paul Coonce and Charles Michael Hall*, No. 6:10-CR-03029-GAF (W.D. Mo.); 3) *United States v. Mark Snarr and Edgar Garcia*, No. 1:09-CR-00015-MAC-KFG All (E.D. Tex.); 4) *United States v. Ricardo Sanchez and Danny Troya*, No. 9:06-CR-80171-DTKH (S.D. Fla.).

⁹ 1) *United States v. Ahmed Muse Salad, Shani Nurani Abrar, and Abukar Osman Beyle*, No. 2:11-CR-00034-RBS-DEM (E.D. Va.); and 2) *United States v. Melvin Gilbert and James Dinkins*, No. 1:06-CR-00309-JFM (D. Md.).

possibility of release for the other defendant.¹⁰ In the five (5) other cases in which severance was granted, the jury returned death sentences in three (3) cases,¹¹ a life sentence in one (1) case,¹² and one (1) case¹³ resolved after voir dire began with a non-death result.

Non-Capital Co-Defendants Charged with Capital Co-Defendants

7. Of the forty-six prosecutions, involving fifty-five capital defendants, that commenced trial since January 1, 2009, twenty-seven (27)¹⁴ of these prosecutions initially included a

¹⁰ *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.) (separate penalty hearings and sequential jury deliberations before the same jury; Savage sentenced to death, Northington sentenced to life imprisonment without the possibility of release, Merritt found not guilty of capital charges).

¹¹ 1) *United States v. Azibo Aquart*, No. 3:06-CR-00160-SRU (D. Conn.) (separate trials); 2) *United States v. John Johnson*, No. 2:04-CR-00017-HGB-SS2 (E.D. La.) (separate trials); and 3) *United States v. Ebron*, No. 1:07-CR-00142-MAC-ESH & 1:08-CR-00036-MAC-ESH (E.D. Tex.) (severance and new docket number ordered).

¹² *United States v. Timothy O'Reilly*, No. 2:05-CR-80025-VAR-RSW (E.D. Mich.) (separate trials).

¹³ *United States v. Donnell Young*, No. 3:98-CR-00038 (M.D. Tenn.) (separate trials).

¹⁴ 1) *United States v. Juan Briseno*, No. 2:11-CR-00077-PPS-APR (N.D. Ind.); 2) *United States v. Naeem Williams*, No. 1:06-CR-00079-DAE (D. Haw.); 3) *United States v. John Charles McCluskey*, No. 1:10-CR-02734-JCH (D.N.M.); 4) *United States v. Ahmed Muse Salad, Shani Nurani Abrar, and Abukar Osman Beyle*, No. 2:11-CR-00034-RBS-DEM (E.D. Va.); 5) *United States v. Xavier Jimenez-Bencevi*, No. 3:12-CR-00221-JAF (D.P.R.); 6) *United States v. Connell Williams*, No. 5:11-CR-00298-F (W.D. Okla.); 7) *United States v. Alexis Candelario-Santana*, No. 3:09-CR-00427-JAF (D.P.R.); 8) *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.); 9) *United States v. Edison Burgos-Montes*, No. 3:06-CR-00009-JAG-CVR (D.P.R.); 10) *United States v. Larry Lujan*, No. 2:05-CR-00924-RB (D.N.M.); 11) *United States v. Azibo Aquart*, No. 3:06-CR-00160-SRU (D. Conn.); 12) *United States v. Vincent Basciano*, No. 1:05-CR-00060-NGG (E.D.N.Y.); 13) *United States v. Timothy O'Reilly*, No. 2:05-CR-80025-VAR-RSW (E.D. Mich.); 14) *United States v. Alejandro Enrique Umana*, No. 3:08-CR-00134-RJC (W.D.N.C.); 15) *United States v. Anh The Duong*, No. 5:01-CR-20154-JF (N.D. Cal.); 16) *United States v. Antonio Roberto Argueta*, No. 8:05-CR-00393-DKC (D. Md.); 17) *United States v. Maurice Phillips*, No. 2:07-CR-00549-JCJ (E.D. Pa.); 18) *United States v. Antoine Demetrius Baker*, No. 4:06-CR-00041-GTE (E.D. Ark.); 19) *United States v. David Runyon*, No. 4:08-CR-00016-RBS-TEM (E.D. Va.); 20) *United States v. John Johnson*, No. 2:04-CR-00017-HGB-SS (E.D. La.); 21) *United States v. Melvin Gilbert and James Dinkins*, No. 1:06-CR-00309-JFM (D. Md.); 22) *United States v. Joseph Ebron*, No. 1:07-CR-00142-MAC-ESH (1:08-CR-00036-MAC-ESH) (E.D. Tex.); 23) *United States v. Patrick Albert Byers*, No. 1:08-CR-00056-RDP (D. Md.); 24) *United States v. Jermaine Michael Julian*, No. 8:07-CR-00009-JDW-TGW (M.D. Fla.); 25) *United States v. Dennis Cyrus Jr.*, No. 3:05-CR-00324-MMC (N.D. Cal.); 26) *United States v. Donnell*

defendant for whom the government was not seeking a sentence of death.¹⁵ Of these twenty-seven (27) prosecutions which included one or more non-capital co-defendants, twenty (20)¹⁶ (74%) prosecutions proceeded to trial with the capital (authorized) defendant or defendants only and no non-capital defendant.¹⁷ Of the seven (7) prosecutions that started trial with both a capital (authorized) defendant (or defendants) and a non-capital defendant, in two (2) cases¹⁸ no motion to sever the capital and non-capital defendant(s) was filed.

Young, No. 3:98-CR-00038 (M.D. Tenn.); and 27) *United States v. Ricardo Sanchez and Danny Troya*, No. 9:06-CR-80171-DTKH (S.D. Fla.).

¹⁵ The non-capital defendant was either not charged capitally or the government did not authorize a capital prosecution for the defendant.

¹⁶ 1) *United States v. Juan Briseno*, No. 2:11-CR-00077-PPS-APR (N.D. Ind.); 2) *United States v. Naeem Williams*, No. 1:06-CR-00079-DAE (D. Haw.); 3) *United States v. John Charles McCluskey*, No. 1:10-CR-02734-JCH (D.N.M.); 4) *United States v. Ahmed Muse Salad, Shani Nurani Abrar, and Abukar Osman Beyle*, No. 2:11-CR-00034-RBS-DEM (E.D. Va.); 5) *United States v. Xavier Jimenez-Bencevi*, No. 3:12-CR-00221-JAF (D.P.R.); 6) *United States v. Connell Williams*, No. 5:11-CR-00298-F (W.D. Okla.); 7) *United States v. Edison Burgos-Montes*, No. 3:06-CR-00009-JAG-CVR (D.P.R.); 8) *United States v. Larry Lujan*, No. 2:05-CR-00924-RB (D.N.M.); 9) *United States v. Azibo Aquart*, No. 3:06-CR-00160-SRU (D. Conn.); 10) *United States v. Vincent Basciano*, No. 1:05-CR-00060-NGG (E.D.N.Y.); 11) *United States v. Timothy O'Reilly*, No. 2:05-CR-80025-VAR-RSW (E.D. Mich.); 12) *United States v. Alejandro Enrique Umama*, No. 3:08-CR-00134-RJC (W.D.N.C.); 13) *United States v. Anh The Duong*, No. 5:01-CR-20154-JF (N.D. Cal.); 14) *United States v. Antonio Roberto Argueta*, No. 8:05-CR-00393-DKC (D. Md.); 15) *United States v. Antoine Demetrius Baker*, No. 4:06-CR-00041-GTE (E.D. Ark.); 16) *United States v. John Johnson*, No. 2:04-CR-00017-HGB-SS (E.D. La.); 17) *United States v. Joseph Ebron*, No. 1:07-CR-00142-MAC-ESH (1:08-CR-00036-MAC-ESH) (E.D. Tex.); 18) *United States v. Jermaine Michael Julian*, No. 8:07-CR-00009-JDW-TGW (M.D. Fla.); 19) *United States v. Dennis Cyrus Jr.*, No. 3:05-CR-00324-MMC (N.D. Cal.); and 20) *United States v. Donnell Young*, No. 3:98-CR-00038 (M.D. Tenn.).

¹⁷ This was the result of the motions for severance and or the issue became moot because of guilty pleas ahead of trial or, in one instance, the defendant had absconded.

¹⁸ *United States v. Melvin Gilbert and James Dinkins*, No. 1:06-CR-00309-JFM (D. Md.) (motion for severance filed by non-capital defendant seeking severance from one of the two capital defendants (Doc. 259) and one of the capital co-defendants moved for severance from the capital codefendant (Doc. 260) (two capital and one non-capital defendant began trial together)) and *United States v. Maurice Phillips*, No. 2:07-CR-00549-JCJ (E.D. Pa.) (motion for severance only filed by non-capital defendant; capital defendant began trial with two non-capital defendants).

8. The status of the capital defendant’s motion for severance, government’s position, court ruling, and whether the capital and non-capital defendants were tried together or not is summarized below.

Of these twenty-seven (27) prosecutions which included one or more non-capital co-defendants:

Status of Capital Defendant’s Severance Motion	Capital def(s) & Non-capital def(s) tried together	Capital def(s) tried without non-capital def(s)
5 cases severance was granted over the government’s objection ¹⁹	0	5
4 cases severance was granted unopposed by the government ²⁰	0	4
1 case severance granted sue sponte (capital defendant ultimately tried alone) ²¹	0	1
1 case issue was not ruled upon because it was premature (capital defendant ultimately tried alone) ²²	0	1
7 cases severance motion was denied (in five cases the capital and non-capital defendant were tried together, in two cases the capital defendant(s) were ultimately tried without non-capital defendants) ²³	5	2
9 cases no severance motion was filed by the capital defendant (in seven cases the non-capital co-defendant(s) plead guilty making a motion by the capital defendant unnecessary and the capital defendant was tried alone; in two instances the capital defendant did	2	7

¹⁹ *United States v. Juan Briseno*, No. 2:11-CR-00077-PPS-APR (N.D. Ind.), *United States v. Larry Lujan*, No. 2:05-CR-00924-RB (D.N.M.), *United States v. Vincent Basciano*, No. 1:05-CR-00060-NGG (E.D.N.Y.), *United States v. Anh The Duong*, No. 5:01-CR-20154-JF (N.D. Cal.), and *United States v. Dennis Cyrus Jr.*, No. 3:05-CR-00324-MMC (N.D. Cal.).

²⁰ *United States v. Azibo Aquart*, No. 3:06-CR-00160-SRU (D. Conn.), *United States v. Timothy O’Reilly*, No. 2:05-CR-80025-VAR-RSW (E.D. Mich.), *United States v. John Johnson*, No. 2:04-CR-00017-HGB-SS (E.D. La.), and *United States v. Joseph Ebron*, No. 1:07-CR-00142-MAC-ESH (1:08-CR-00036-MAC-ESH) (E.D. Tex.).

²¹ *United States v. Alejandro Enrique Umana*, No. 3:08-CR-00134-RJC (W.D.N.C.).

²² *United States v. Edison Burgos-Montes*, No. 3:06-CR-00009-JAG-CVR (D.P.R.).

²³ Five cases capital and non-capital defendants tried together: *United States v. Alexis Candelario-Santana*, No. 3:09-CR-00427-JAF (D.P.R.), *United States v. Kaboni Savage*, *Steven Northington*, and *Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.), *United States v. David Runyon*, No. 4:08-CR-00016-RBS-TEM (E.D. Va.), *United States v. Patrick Albert Byers*, No. 1:08-CR-00056-RDP (D. Md.), and *United States v. Ricardo Sanchez and Danny Troya*, No. 9:06-CR-80171-DTKH (S.D. Fla.); two cases capital defendants tried alone after non-capital defendants plead guilty: *United States v. Ahmed Muse Salad*, *Shani Nurani Abrar*, and *Abukar Osman Beyle*, No. 2:11-CR-00034-RBS-DEM (E.D. Va.) and *United States v. Donnell Young*, No. 3:98-CR-00038 (M.D. Tenn.).

not move for severance and the trials proceeded with the capital and non-capital defendant tried together)		
<i>Totals</i>	7	20

9. When this information is incorporated into the analysis of the twenty-seven cases (27) capital prosecutions since 2009 that initially included a noncapital defendant, in the instances in which the court denied the capital defendant’s motion for severance from the non-capital defendant, only five (5) cases ultimately proceeded to trial with both a capital and non-capital defendant.²⁴

10. In the seven (7) capital prosecutions that started trial with both a capital defendant (or defendants) and a non-capital defendant, in the penalty phase the jury returned a death sentence in three (3) cases²⁵ and life imprisonment without the possibility of release in five (5) cases.²⁶ (In one of these cases the jury returned a death sentence for one defendant and life imprisonment without the possibility of release for the other defendant.²⁷)

²⁴ *United States v. Ricardo Sanchez and Danny Troya*, 9:06-CR-80171-DTKH (S.D. Fla.), *United States v. Patrick Albert Byers*, No. 1:08-CR-00056-RDP (D. Md.), *United States v. David Runyon*, No. 4:08-CR-00016-RBS-TEM (E.D. Va.), *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, 2:07-CR-00550-RBS (E.D. Pa.), and *United States v. Alexis Candelario-Santana*, No. 3:09-cr-00427-JAF-1 (D.P.R. 2013).

²⁵ 1) *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.) (separate penalty hearings and sequential jury deliberations before the same jury; Savage sentenced to death, Northington sentenced to life imprisonment without the possibility of release, Merritt found not guilty of capital charges); 2) *United States v. David Runyon*, No. 4:08-CR-00016-RBS-TEM (E.D. Va.); and 3) *United States v. Ricardo Sanchez and Danny Troya*, No. 9:06-CR-80171-DTKH (S.D. Fla.).

²⁶ 1) *United States v. Alexis Candelario-Santana*, No. 3:09-cr-00427-JAF-1 (D.P.R. 2013); 2) *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.) (separate penalty hearings and sequential jury deliberations before the same jury; Savage sentenced to death, Northington sentenced to life imprisonment without the possibility of release, Merritt found not guilty of capital charges); 3) *Maurice Phillips*, No. 2:07-CR-00549-JCJ (E.D. Pa.); 4) *United States v. Melvin Gilbert and James Dinkins*, No. 1:06-CR-00309-JFM (D. Md.); and 5) *United States v. Patrick Albert Byers*, No. 1:08-CR-00056-RDP (D. Md.).

²⁷ *United States v. Kaboni Savage, Steven Northington, and Robert Merritt*, No. 2:07-CR-00550-RBS (E.D. Pa.) (separate penalty hearings and sequential jury deliberations before the same jury; Savage sentenced to death, Northington sentenced to life imprisonment without the possibility of release, Merritt found not guilty of capital charges).

11. In summary, of these twenty-seven (27) prosecutions which initially included one or more non-capital co-defendants, twenty-two (22) (81%) of these prosecutions proceeded to trial with either capital (authorized) defendant (or defendants) only or, if the trial proceeded with a capital and non-capital defendant, when no motion to sever the non-capital defendant was ruled upon.

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 February 4, 2026.

/s/ Matthew Rubenstein
Matthew Rubenstein