

DECLARATION OF MATTHEW RUBENSTEIN REGARDING PREPARATION TIME IN CASES AUTHORIZED FOR THE DEATH PENALTY

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 maximize the benefits of the Federal Death Penalty Resource Counsel Project . . . , which has

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

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 is regularly updated and checked for accuracy. The Project’s information regarding federal

3. Pursuant to these responsibilities and my collaboration, I have compiled the information in Exhibit A regarding proceedings in federal capital cases in the regular course of the business of the Federal Capital Trial Project. Forty-two defendants were authorized for a capital prosecution and began a federal capital trial since 2010.⁵

4. Excluding five cases from the time calculation because of extended delays in the cases caused by a retrial or the COVID pandemic,⁶ the average time between the capital indictment and the authorization of a capital prosecution by the Attorney General is 14 months,

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 2010 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.

⁶ These cases involved a retrial (George Lecco, No. 2:05-CR-00107 (S.D.W. Va.), Ronell Wilson, No. 1:04-CR-01016-NGG (E.D.N.Y.), and Gary Lee Sampson, No. 1:01-CR-10384-LTS (D. Mass.)) and cases delayed because of the COVID pandemic (Sayfullo Habibullaevic Saipov, No. 1:17-CR-00722-VSB (S.D.N.Y.), Robert Bowers, No. 2:18-CR-00292-DWA (W.D. Pa.)).

the average time between the authorization of a capital prosecution and the start of trial is 28 months, and the average time between the capital indictment and the start of trial is 42 months. The median length of time between the capital indictment and the start of trial for these thirty-seven defendants is 43 months.

	All cases: Forty-two defendants were authorized for a capital prosecution and began a federal capital trial since 2010			Excluding 5 cases because of extended delay caused by either retrial or COVID.		
	Cap. Ind. to Auth.	Auth. to Trial	Cap. Ind. to Trial	Cap. Ind. to Auth.	Auth. to Trial	Cap. Ind. to Trial
Average	13	34	47	14	28	42
Median	13	25	43	13	22	43

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 this 17th day of March 2026.

/s/ Matthew Rubenstein
Matthew Rubenstein

Defendant	Docket No.	Status	Cap. Ind. to Auth.	Auth. to Trial	Cap. Ind. to Trial	Excluding 5 cases below because of extended delay caused by either retrial or COVID.			Indictment - w Capital Counts	Authorization - Yes	Trial - Voir Dire Start [Sort column]
						Cap. Ind. to Auth.	Auth. to Trial	Cap. Ind. to Trial			
Phillips, Maurice	E.D. PA No. 2:07-CR-00549-JCJ	Life sentence from jury	20	8	28	20	8	28	9/12/2007	5/6/2009	1/4/2010
Argueta, Antonio Roberto	D. MD No. 8:05-CR-00393-DKC	Life sentence from jury	13	32	45	13	32	45	4/3/2006	5/8/2007	1/12/2010
Duong, Anh The	N.D. CA No. 5:01-CR-20154-JF	Life sentence from jury	32	69	101	32	69	101	9/26/2001	5/13/2004	2/23/2010
Umana, Alejandro Enrique Ramirez	W.D. NC No. 3:08-CR-00134-RJC	Death Sentence - Clemency	3	18	21	3	18	21	6/23/2008	9/23/2008	3/22/2010
Lecco, George*	S.D. WV No. 2:05-CR-00107	Death Sentence - Motion for New Trial Granted by Judge - Life Sent by Jury	10	44	54				10/18/2005	8/16/2006	4/5/2010
Garcia, Edgar Baltazar	E.D. TX No. 1:09-CR-00015-MAC-KFG All	Death Sentence - Clemency	1	14	15	1	14	15	1/21/2009	2/13/2009	4/6/2010
Snarr, Mark	E.D. TX No. 1:09-CR-00015-MAC-KFG All	Death Sentence - Clemency	1	14	15	1	14	15	1/21/2009	2/13/2009	4/6/2010
O'Reilly, Timothy	E.D. MI No. 2:05-CR-80025-VAR-RSW	Life sentence from jury	20	43	63	20	43	63	3/3/2005	11/1/2006	6/8/2010
Basciano, Vincent	E.D. NY No. 1:05-CR-00060-NGG	Life sentence from jury	26	47	73	26	47	73	1/26/2005	4/2/2007	3/1/2011
Aquart, Azibo	D. CT No. 3:06-CR-00160-SRU	Death Sentence Reversed - Authorization Withdrawn	32	26	58	32	26	58	6/6/2006	1/29/2009	4/6/2011
Lujan, Larry	D. NM No. 2:05-CR-00924-RB	Life sentence from jury	27	47	74	27	47	74	4/27/2005	7/12/2007	6/20/2011
Richardson, Brian	N.D. GA No. 1:08-CR-00139-CC-CCH	Life sentence from jury	8	39	46	8	39	46	4/15/2008	12/2/2008	2/27/2012
Burgos-Montes, Edison	D. PR No. 3:06-CR-00009-JAG-CVR	Life sentence from jury	18	58	75	18	58	75	1/12/2006	6/27/2007	4/16/2012
Merritt, Robert	E.D. PA No. 2:07-CR-00550-RBS	Acquittal	23	20	43	23	20	43	4/8/2009	3/14/2011	11/6/2012
Northington, Steven	E.D. PA No. 2:07-CR-00550-RBS	Life sentence from jury	23	20	43	23	20	43	4/8/2009	3/14/2011	11/6/2012
Savage, Kaboni	E.D. PA No. 2:07-CR-00550-RBS	Death Sentence - Clemency	23	20	43	23	20	43	4/8/2009	3/14/2011	11/6/2012
Candelario-Santana, Alexis	D. PR No. 3:09-CR-00427-JAF	Life Sentence Reversed - Life Sentence	16	7	23	16	7	23	2/28/2011	7/8/2012	1/28/2013
Casey, Lashaun	D. PR No. 3:05-CR-00277-JAG	Life sentence from jury	23	67	90	23	67	90	8/17/2005	7/17/2007	2/4/2013
Williams, Connell C.	W.D. OK No. 5:11-CR-00298-F	Guilty plea at trial	7	10	17	7	10	17	9/7/2011	4/17/2012	2/11/2013
Wilson, Ronell*	E.D. NY No. 1:04-CR-01016-NGG	Death Sentence Reversed - Death Sentence 2 - Intellectually Disabled	9	92	101				11/17/2004	8/2/2005	4/3/2013
Jimenez-Bencevi, Xavier	D. PR No. 3:12-CR-00221-JAF	Life sentence from jury	8	4	13	8	4	13	3/23/2012	12/7/2012	4/15/2013
Abbar, Shani Nurani	E.D. VA No. 2:11-CR-00034-RBS-DEM	Life sentence from jury	13	14	27	13	14	27	3/8/2011	4/17/2012	6/4/2013
Beyle, Abukar Osman	E.D. VA No. 2:11-CR-00034-RBS-DEM	Life sentence from jury	13	14	27	13	14	27	3/8/2011	4/17/2012	6/4/2013
Salad, Ahmed Muse	E.D. VA No. 2:11-CR-00034-RBS-DEM	Life sentence from jury	13	14	27	13	14	27	3/8/2011	4/17/2012	6/4/2013
McCluskey, John Charles	D. NM No. 1:10-CR-02734-JCH	Life sentence from jury	16	18	34	16	18	34	9/29/2010	1/26/2012	7/22/2013
Williams, Naeem	D. HI No. 1:06-CR-00079-DAE	Life sentence from jury	7	89	95	7	89	95	2/15/2006	9/8/2006	1/28/2014
Torrez, Jorge Avila	E.D. VA No. 1:11-CR-00115-LO	Death Sentence - Clemency	8	25	34	8	25	34	5/26/2011	2/9/2012	3/11/2014
Coonce, Wesley Paul	W.D. MO No. 6:10-CR-03029-GAF	Death Sentence - Clemency	16	33	49	16	33	49	4/7/2010	7/22/2011	4/28/2014
Hall, Charles Michael	W.D. MO No. 6:10-CR-03029-GAF	Death Sentence - Clemency	16	33	49	16	33	49	4/7/2010	7/22/2011	4/28/2014
Sanders, Thomas Steven	W.D. LA No. 1:10-CR-00351-DDD-JDK	Death Sentence - Clemency	20	25	45	20	25	45	11/18/2010	8/1/2012	8/18/2014
Briseno, Juan	N.D. IN No. 2:11-CR-00077-PPS-APR	Life sentence from jury	21	22	43	21	22	43	6/2/2011	3/6/2013	1/12/2015
Tsarnaev, Dzhokhar	D. MA No. 1:13-CR-10200-GAO	Death Sentence - Death row - Appeal	7	12	19	7	12	19	6/27/2013	1/30/2014	1/15/2015
Sampson, Gary Lee*	D. MA No. 1:01-CR-10384-LTS	Death sentence - reversed - death sentence 2 - died before execution	13	166	179				10/24/2001	11/19/2002	9/14/2016
Roof, Dylann Storm	D. SC No. 2:15-CR-00472-RMG	Death Sentence - Death row - 2255	10	6	16	10	6	16	7/22/2015	5/24/2016	11/28/2016
Con-Ui, Jessie	M.D. PA No. 3:13-CR-00123-ARC	Life sentence from jury	15	31	46	15	31	46	6/25/2013	10/2/2014	4/24/2017
Jones, Ulysses	W.D. MO No. 6:10-CR-03090-DGK	Life sentence from jury	0	60	60	0	60	60	10/3/2012	10/4/2012	9/25/2017
Cramer, Christopher Emory	E.D. TX No. 1:16-CR-00026-MAC-ZJH	Death Sentence - Clemency	1	26	25	1	26	25	3/3/2016	2/4/2016	4/2/2018
Fackrell, Ricky Allen	E.D. TX No. 1:16-CR-00026-MAC-ZJH	Death Sentence - Clemency	0	25	25	0	25	25	3/3/2016	3/4/2016	4/2/2018
Christensen, Brendt A.	C.D. IL No. 2:17-CR-20037-CSB-EIL	Life sentence from jury	4	16	20	4	16	20	10/3/2017	1/19/2018	6/3/2019
Council, Brandon Michael	D. SC No. 4:17-CR-00866-CRI	Death Sentence - Clemency	6	18	24	6	18	24	9/20/2017	3/21/2018	9/9/2019
Saipov, Sayfullo Habibullaevic*	S.D. NY No. 1:17-CR-00722-VSB	Life sentence from jury	10	48	59				11/21/2017	9/28/2018	10/11/2022
Bowers, Robert*	W.D. PA No. 2:18-CR-00292-DWA	Death Sentence - Death row - Appeal	10	44	54				10/31/2018	8/26/2019	4/24/2023
Note: * designates cases not included because of extended delay caused by either retrial or COVID.											
			Average Months	13	34	47	14	28	42		
			Median Months	13	25	43	13	22	43		