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.”


²United 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 Perezo (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 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
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 Baquias Alvarez (C.D. CA No. 2:19-CR-00117-
ODW) (three CJA counsel).

3United 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)
of the case and the situation warranted the appointment or participation of three or more attorneys in the defense of the accused. Appointment of more than two


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.  

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).


5United 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.

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*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* (DPR) (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.\textsuperscript{6}

8. Courts have also appointed counsel to assist retained counsel in federal capital prosecutions.\textsuperscript{7}


\textsuperscript{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 CR No. 2:07-CR-00549-ICJ) (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 13\textsuperscript{th} day of February, 2020.

/s/ Kevin McNally
Kevin McNally
Attorney at Law