

**DECLARATION OF KEVIN McNALLY REGARDING THE DEATH PENALTY
AUTHORIZATION RATES OF THE VARIOUS ATTORNEY GENERALS**

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.

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>

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. The authorization rates for Attorney Generals since 1988 are as follows:

- a. Attorney General Dick Thornburgh (8/12/88 - 8/15/91)- 100% (7 out of 7)
- b. Attorney General William Barr 1st Term (8/16/91 - 1/20/93) - 70% (16 out of 23)
- c. Acting Attorney General Stuart Gerson (1/20/93 - 3/12/93) - no cases
- d. Attorney General Janet Reno (3/12/93 - 1/20/01) - 19% (184 out of 994)²
- e. Acting Attorney General Eric Holder (1/20/01 - 2/2/01) - no cases
- f. Attorney General John Ashcroft (2/2/01 - 2/3/-05) - 22% (136 out of 631)
- g. Attorney General Alberto Gonzales (2/3/05 - 9/17/07) - 21% (85 out of 403)
- h. Acting Attorney General Paul Clement (9/17/07 - 9/18/07) - no cases

²Prior to this time, the Attorney General only reviewed cases where there was a request to seek the death penalty from the United States Attorney.

- i. Acting Attorney General Peter Keisler (9/18/07 - 11/9/07) - 5% (1 out of 19)
- j. Attorney General Michael Mukasey (11/9/07 - 1/20/09) - 13% (21 out of 163)
- k. Acting Attorney General Mark Filip (1/20/09 - 2/3/09) - 6% (1 out of 16)
- l. Attorney General Eric Holder (2/3/09 - 4/27/15) - 4% (43 out of 974)
- m. Attorney General Loretta Lynch (4/27/15 - 1/20/17) - 2% (5 out of 270)
- n. Acting Attorney General Sally Yates (1/20/17 - 1/30/17) - 0% (0 out of 1)
- o. Acting Attorney General Dana Boente (1/30/17 - 2/9/17) - 14% (1 out of 7)
- p. Attorney General Jeff Sessions (2/9/17 - 11/7/18) - 6% (21 out of 336)
- q. Acting Attorney General Matthew Whitaker (11/7/18 - 2/14/19) - 0% (0 out of 41)
- r. Attorney General William Barr 2nd Term (2/4/19 - 12/23/20) - 5% (14 out of 303)

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 30th day of December, 2020.

/s/ Kevin McNally
Kevin McNally
Attorney at Law