

**DECLARATION OF KEVIN McNALLY REGARDING LIFE
WITHOUT RELEASE AS A MITIGATING CIRCUMSTANCE**

Kevin McNally hereby declares under the penalty of perjury under the laws of the United States of America, 28 U.S.C. §1746, that the following is true and correct.

1. I currently serve as the Director of 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 in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Office of Defender Services 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.

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information regarding practices and court rulings in these cases. I accomplish this by reviewing dockets and downloading and obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, orders, opinions and by telephonic or in-person interviews

with defense counsel or consultation with chambers. This information is regularly updated, and is checked for accuracy 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 capital juries have been instructed to consider and some or all jurors have found that a sentence of life without the possibility of parole or release was a mitigating circumstance in, among others, the following cases:

Aguilar (ED NY)(2007)(“If Martin Aguilar is not executed, he will spend the rest of his life in a federal prison, without the possibility of release”)(12 jurors);

Aquart (D.Ct. 2011) (“If not sentenced to death, Azibo Aquart will be imprisoned for the rest of his life without possibility of release.”)(12 jurors), (“Lifetime imprisonment is a severe punishment.”)(12 jurors), (If Azibo Aquart is sentenced to life imprisonment, the Bureau of Prisons has the capability of safely and securely confining him.”)(12 jurors);

Argueta (D MD)(2010)(“If he is not sentenced to death, Roberto Argueta will be incarcerated for the rest of his life in federal prison without the possibility of release or parole”) (8 jurors);

Basciano (EDNY 2011) (“If not sentenced to death, Mr. Basciano will be imprisoned for the remainder of his life with no possibility of release.”)(12 jurors), (“The Federal Bureau of Prisons is capable of fashioning conditions of confinement that will control Mr. Basciano’s activities while he is in prison.”) (12 jurors);

Baskerville (D NJ)(2007)(“If William Baskerville is not executed, he will spend the rest of his life in a federal prison, without the possibility of release”)(7 jurors);

Barnes (SD NY)(2008)(“If he is not sentenced to death, Mr. Barnes can be sentenced to lifetime imprisonment without parole”)(12 jurors);

Bass (ED MI)(2003)(“John Bass will serve a sentence of life in prison without any possibility of release if not sentenced by you to death”)(verdict form instructed that as to “mitigating factors which have been proven by a preponderance of the evidence”, “both parties agree that this factor has been established”);

Britt (ND TX 2002)(“... the fact that ... can be sentenced to life in prison without any possibility of parole or release if he is not executed mitigates against imposition of the death penalty”)(12 jurors);

Burgos-Montes (D PR)(2012) (“If he is spared a sentence of death, a harsh sentence will still be imposed on defendant; that is, Edison Burgos-Montes will be incarcerated for the remainder of his life in a federal prison with no possibility of release.”)(7 jurors);

Byers (D MD)(2009)(“If not sentenced to death, Patrick Byers will spend the rest of his life in a federal prison without possibility of release”)(3 jurors);

Cannon (ED MO) (2005) (12 jurors);

Caraballo (EDNY) (2008)(“If not sentenced to death, Mr. Caraballo will be incarcerated for the rest of his life in a federal prison”)(12 jurors);

Caro (WD VA)(2007)(“If not sentenced to death, Mr. Caro will spend the rest of his life incarcerated in a secure federal prison”)(9 jurors);

Chanthadara (D KS)(1996)(“if he is not executed, Bountaem Chanthadara will serve a life sentence, without any possibility of release”)(3 jurors);

Cisneros (ED VA)(2005)(“That should the jury so direct, Ismael Juarez Cisneros will be sentenced to life in prison without any possibility of release if he is not sentenced to death”)(12 jurors), (9 jurors found that LWOP was “painful”);

Corley (ND IN)(2004)(“Should the jury so direct, the Defendant will be sentenced to life in prison without any possibility of release if he is not executed, and this fact or circumstance indicates that the Defendant should not be sentenced to death”)(1 juror);

Davis (ED LA)(2003)(“... if he is not put to death, Johnny Davis will live every day of the rest of his life incarcerated in a federal prison, he will die in federal prison and he will never enjoy freedom again”)(12 jurors);

Dhinsa (ED NY)(1997)(“if not sentenced to death, Mr. Dhinsa will spend the rest of his life in prison”)(yes);

Diaz (ND NY)(1996)(“If he is not sentenced to death, Walter Diaz will be punished by a sentence of life imprisonment without the possibility of release or parole”)(jury instructed “you must all accept this factor as proven”)(12 jurors);

Duong (NDCA)(2010) (will spend life in prison) (12 jurors); (“Life imprisonment without the possibility of release is a harsh punishment and Anh will have to live with the consequences of his actions.”)(12 jurors);

Ealy (WD VA 2002)(“If not sentenced to death, ... will be sentenced to life imprisonment without possibility of parole”)(jury instructed “Has been proven”);

Friend (SD WV)(2007)(“If she is not sentenced to death, Valeri Friend will spend the rest of her life in a federal prison without the possibility of release”)(12 jurors);

Frye (SD MS)(2005)(“Should the jury not impose the death penalty, Mr. Frye will be sentenced to life in prison without any possibility of release”)(12 jurors);

Gilbert (D MA 2001)(“A sentence of life in prison without possibility of release is an adequately harsh alternative punishment that will protect society from any further risk of criminal conduct by the defendant”)(12 jurors);

Gordon (ED VA 2005)(“If he is not sentenced to death, Arthur Gordon will be sentenced to a very lengthy prison sentence, including possibly life imprisonment. Whatever sentence he receives, it will be without possibility of parole”)(10 jurors);

Grande (ED VA 2005)(“That a sentence of life imprisonment without the possibility of release will result in a sentence which will end only with Oscar Antonio Grande’s death at the anticipated age of 75 to 85 years of age, between the years 2060 and 2070”(12 jurors);

Hammer (MD PA 1998)(“Mr. Hammer will be sentenced to life in prison without any possibility of release if a sentence of death is not imposed”)(12 jurors);

Hans (D SC)(2007)(“If not sentenced to death, Mr. Hans will be sentenced to life in prison without possibility of release”)(12 jurors);

Henderson (SD OH)(2007)(“If sentenced to life in prison, Thomas Henderson will die in prison”)(6 jurors);

James (ED NY)(2007)(“If not sentenced to death, Mr. James will be sentenced to life imprisonment with no possibility of release”)(verdict form stated “this mitigating factor is deemed proven by operation of law”)(12 jurors);

Johnson (ED LA)(2009)(“If he is not sentenced to death, he will spend the rest of his life in prison without the opportunity for release”)(12 jurors);

Johnson (ND IL 1997)(“Darryl Lamont Johnson will be sentenced to life in prison without any possibility of release if he is not executed “)(6 jurors);

Johnson, Raheem (ED VA 1998)(“The defendant poses no risk of future dangerousness because, if he is not sentenced to death, he will be sentenced to life imprisonment without possibility of release”)(12 jurors);

Julian (MD FL)(2009)(“If not sentenced to death, Jermaine Julian will spend the rest of his life in prison without the opportunity for release”)(12 jurors), (“Life imprisonment without the possibility of release is a sufficiently harsh punishment that would require Jermaine Julian to regularly reflect upon his conduct and actions until the time of his death”)(9 jurors);

Krylov (CD CA)(2007)(“If not sentenced to death, defendant Krylov will be sentenced to life in prison without the possibility of release”)(6 jurors), (“A sentence of life imprisonment without the possibility of release is severe and exacts significant and physical restraints and hardship as well as great psychological pain, particularly because defendant Krylov will be left for years to contemplate his wrongdoing and to feel the loss of his child, wife, friends, and family”)(8 jurors);

Lawrence (SD OH 2006)(“Life in prison without the possibility of parole is an appropriate and sufficient punishment”)(6 jurors), (“If death is not given, Daryl Lawrence will never be released from prison; he will die there”)(7 jurors);

Lecco (SD WV)(2007)(“George Lecco will serve a sentence of life in prison without the possibility of release if not sentenced to death”)(12 jurors);

Lecco (SD WV) (2010)(“... will spend the rest of his life in prison if sentenced to life without the possibility of release”)(7 jurors);

Lentz (ED VA 2003)(“If not sentenced to death, Jay Lentz will be sentenced to life imprisonment without possibility of release”)(12 jurors);

Lujan (DNM) (2011) (“If he is not sentenced to death, Larry Lujan will spend the rest of his life in a highly structured and secure federal prison without the possibility of release.”);

Mallay (ED NY)(2007)(“If not sentenced to death, Mr. Mallay will be imprisoned for the remainder of his life with no possibility of release”)(verdict form stated “this mitigating factor is deemed proven by operation of law”)(12 jurors), (“Mr. Mallay’s activities in prison will be controlled by the conditions of confinement imposed upon him by the Federal Bureau of Prisons”)(5 jurors);

Mayhew (SD OH 2005)(“John Mayhew will serve a sentence of life in prison without any possibility of release if not sentenced by you to death”)(12 jurors);

McCullah (ED OK 1993)(“that if the defendant ... does not receive a sentence of death, he will spend the rest of his life in a maximum security prison”)(12 jurors);

McGriff (ED NY)(2007)(“If not sentenced to death, Mr. McGriff will be punished by a sentence of lifetime imprisonment with no possibility of release”)(jury instructed that this was one of the mitigating factors which “have been established”);

McTier (ED NY)(2008)(“If he is not executed, James McTier will spend the rest of his life in federal prison, without the possibility of release”) (11 jurors);

Mikos (NDIL) (2005)(“Ronald Mikos will be sentenced to life imprisonment without any possibility of release if not sentenced by you to the death penalty”)(6 jurors; 4 jurors);

Minerd (WD PA 2002)(“Joseph P. Minerd will serve a sentence of life in prison without the possibility of release if not sentenced by you to death”)(12 jurors);

Mitchell (D AZ 2003)(“Lezmond Mitchell will be sentenced to life in prison without any possibility of release if he is not sentenced to death”)(12 jurors);

Mohamed (SD NY 2001)(“The law mandates that if Khalfan Mohamed is not sentenced to death, he will spend the rest of his life in a United States prison without any possibility of release”)(Court instructed jury that this mitigating factor “involved matters of law not in dispute”, and jury “should consider [this] mitigating factor in the weighing process”);

Molina (ED OK)(1993)(“that if the defendant Ramon Medina Molina does not receive a sentence of death, he will spend the rest of his life in a maximum security prison”)(11 jurors);

Moonda (ND OH)(2007)(“... a life sentence without the possibility of parole is in and of itself a severe sentence”)(12 jurors);

Moore (WD MO 1996)(“If not sentenced to death, Dennis B. Moore, Sr. will be sentenced to a lengthy term of imprisonment without possibility of probation, parole or release up to life imprisonment”)(12 jurors);

Moussaoui (ED VA)(2006)(“That if he is not sentenced to death, Zacarias Moussaoui will be incarcerated in prison for the rest of his life, without the possibility of release”)(5 jurors);

Natson (MD GA)(2007)(“That a sentence of life in prison without possibility of release is final and will result in Michael Antonio Natson's continuous and uninterrupted imprisonment in any prison facility to which he might be assigned for approximately 49 years until the year 2058, which is the anticipated year of his death based on the Annuity Mortality tables of the codes and laws of the State of Georgia”)(12 jurors);

Nguyen (D KS 1996)(“If he is not executed, defendant will serve a life sentence, without any possibility of release” (12 jurors);

O’Driscoll (MD PA 2003)(“The Federal Bureau of Prisons is capable of fashioning conditions of confinement that will isolate and punish Mr. O'Driscoll for the murder ...”)(3 jurors), (“Nothing will be accomplished by executing Mr O'Driscoll that cannot be accomplished by imprisoning him for the rest of his life”)(1 juror);

O’Reilly (EDMI) (2010) (“If he is not sentenced to death, Mr. O’Reilly will be sentenced to life in prison without the possibility of release”) (12 jurors), (“Life in prison without the possibility of release is a harsh punishment”) (12 jurors), (“The

Federal Bureau of Prisons can safely manage and confine Mr. O'Reilly for the rest of his natural life")(8 jurors);

Oscar and Henry (ED VA 1994)("There is a strong probability that Arnold Mark Henry will be sentenced to life in prison without any possibility of parole if a sentence of death is not imposed"(4 jurors), ("There is a strong probability that Jean Claude Oscar will be sentenced to life in prison without any possibility of parole if a sentence of death is not imposed")(4 jurors);

Phillips (EDPA) (2010) (If not sentenced to death, Mr. Phillips will be imprisoned for the rest of his life" (12 jurors);

Pitera (ED NY)(1990)("That, if not sentenced to death, defendant will serve a term of life imprisonment without parole (12 jurors);

Richardson (NDGA) (2012) ("If not sentenced to death, Brian Richardson will spend the rest of his life in federal prison without any possibility of release") (12 jurors); ("If sentenced to life in federal prison without release, Brian Richardson will be sent to ADX where he will live in solitary confinement with limited human contact")(9 jurors); ("Brian Richardson can be managed with a combination of medication and secure confinement that will minimize the risk of future dangerousness")(12 jurors);

Robinson (ND TX 2002)(“...that Julius Omar Robinson can be sentenced to life in prison without any possibility of parole or release if he is not executed mitigates against imposition of the death penalty”)(4 jurors);

Runyon (ED Va)(2009) (“... will serve a sentence of life in prison without the possibility of release if not sentenced to death”)(12 jurors);

Sablan, R (D CO)(2008)(“If not sentenced to death, Rudy Sablan will be sentenced to a term of life in prison without any possibility of release”)(7 jurors);

Sablan W (D CO)(2007)(“If not sentenced to death, William Sablan will be sentenced to a term of life in prison without any possibility of release”)(9 jurors);

Sampson (D MA 2004)(“If not sentenced to death, Gary Sampson will be sentenced to a term of life in prison without any possibility of release”)(12 jurors);

Shakir (MDTN) (2008)(“A life sentence without the possibility of release provides Jamal Shakir with many years to repent his crimes and seek to make amends for them”)(8 jurors);

Smith (WD MO)(2007)(“Life in prison without the possibility of parole is a severe punishment and serves society's goals to punish Thomas D. Smith, IV”)(8 jurors);

Stitt (ED VA 1998)(“... may be sentenced to life in prison without any possibility of release if he is not executed”)(12 jurors);

Tipton, Roane (ED VA 1993)(“That defendant ...if not sentenced to death, will be sentenced to life in prison without any possibility of parole”)(12 jurors)(12 jurors);

Tucker (ND NY 2003)(“Tebiah Tucker will be sentenced to life in prison without the possibility of release if he is not sentenced to death”)(12 jurors);

Walker (ND NY 1996)(“If Tyrone Walker is not sentenced to death, he will be punished by a sentence of life imprisonment without the possibility of release or parole (jury instructed “you must all accept this factor as proven”)(12 jurors);

Wills (ED VA 2001) (“Should the Jury so direct, Christopher Andaryl Wills will be sentenced to life imprisonment without any possibility of release if he is not executed”)(12 jurors), (“A sentence of life imprisonment without the possibility of release is severe and exacts both significant physical restraint and hardship as well as great psychological pain, particularly because Christopher Andaryl Wills is left for years to contemplate his wrongdoing and to feel the loss of his children, friends, and family”)(12 jurors), (“Imposing a sentence of life imprisonment without the possibility of release yet preserving Christopher Andaryl Wills' life, protects society and at the same time shows a proper respect for life itself”)(8 jurors);

Wilson (ED NY)(2007)(“If he is not sentenced to death, Ronell Wilson will be incarcerated for the rest of his life in prison without possibility of release or parole”)(12 jurors);

Wilk (SD FL)(2007))(“If not sentenced to death, Mr. Wilk will spend the rest of his life in prison without the possibility of release”)(12 jurors).

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.

Executed this 17th day of March, 2013.

/s/ Kevin McNally

Kevin McNally