

**DECLARATION OF KEVIN McNALLY
REGARDING THE JURY BEING INSTRUCTED
THAT A DEATH SENTENCE IS NEVER REQUIRED**

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->

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, instructions 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 capital juries have been instructed that the death penalty is never required in most federal capital trials², including the following:

LIFE SENTENCES: 1) *United States v. Phouc Nguyen* (D. KS No. 6:94-CR-10128-JTM); 2) *United States v. Terry Nichols* (D. CO No. 1:96-CR-00068-RPM); 3) *United States v. Mohamed Rashed Al'Owhali and Khalfan Khamis Mohamed* (S.D. NY No. 1:98-CR-01023-LAK); 4) *United States v. Willis Haynes* (D. MD No. 8:98-CR-00520-PJM); 5) *United States v. Kristin Gilbert* (D. MA No. 3:98-CR-30044-MAP); 6) *United States v. Lemond Garrett* (S.D.

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² 175 trials were completed to penalty verdict. Of those, in at least 102 (58%), the Court instructed that the death penalty is never required under the law. (Not all instructions have been reviewed).

GA No. 4:99-CR-00133-WTM); 7) *United States v. Jose Denis* (S.D. FL No. 1:99-CR-00714-FAM); 8) *United States v. Joseph Miner* (W.D. PA No. 2:99-CR-00215-MBC); 9) *United States v. Coleman Johnson* (W.D. VA No. 3:00-CR-00026-NKM); 10) & 11) *United States v. Rudy and William Sablan* (D. CO No. 1:00-CR-00531-WYD); 12) *United States v. Samuel Stephen Ealy* (W.D. VA No. 1:00-CR-00104-JPJ); 13) *United States v. L.J. Britt* (N.D. TX No. 4:00-CR-00260-Y); 14) *United States v. Alan Quinones and Diego Rodriguez* (S.D. NY No. 1:00-CR-00761-JSR); 15) & 16) *United States v. Martin Aguilar and Gilberto Caraballo* (E.D. NY No. 1:01-CR-01367-RJD); 17) *United States v. Aaron Haynes* (W.D. TN No. 2:01-CR-20247-SHM); 18) *United States v. Andre Cooper and Jamain Williams* (E.D. PA No. 2:01-CR-00512-JCJ); 19) *United States v. Johnny Davis* (E.D. LA No. 2:01-CR-00282-SSV); 20) *United States v. Michael O'Driscoll* (M.D. PA No. 4:01-CR-00277-MM) (2002 WL 32063824*3); 21) *United States v. Emile Dixon* (E.D. NY No. 1:01-CR-00389-RJC); 22) *United States v. Jay Lentz* (E.D. VA No. 1:01-CR-00150-TSE); 23) *United States v. Anh The Duong* (N.D. CA No. 5:01-CR-20154-JF); 24) *United States v. Luis Gonzalez-Lauzan* (S.D. FL No. 1:02-CR-20572-JIC); 25) *United States v. Lorenzo Catalan-Roman and Hernaldo Medina Villegas* (D. PR No. 3:02-CR-00117-PG); 26) *United States v. Keon Moses and Michael Lafayette Taylor* (D. MD No. 1:02-CR-00410-CCB); 27) *United States v. Petro Krylov* (C.D. CA No. 2:02-CR-00220-SJO); 28) *United States v. Carlos L. Ayala-Lopez* (D. PR No. 3:03-CR-00055-ADC); 29) and 30) *United States v. Barry Byron Mills, Tyler Bingham, Wayne Bridgewater and Henry*

Michael Houston (C.D. CA No. 2:02-CR-00938-RGK); 31) *United States v. John Mayhew* (S.D. OH No. 2:03-CR-00165-ALM); 32) *United States v. William Baskerville* (D. NJ No. 3:03-CR-00836-JAP); 33) *United States v. Demetrius Hargrove* (D. KS No. 2:03-CR-20192-CM-DJW); 34) *United States v. Shawn Arnette Breeden and Michael Anthony Carpenter* (W.D. VA No. 3:03-CR-00013-SGW); 35) *United States v. Kenneth Wilk* (SD. FL No. 0:04-CR-60216-JIC); 36) *United States v. Kenneth McGriff* (E.D. NY No. 1:04-CR-00966-ERK); 37) *United States v. Peter Jordan* (E.D. VA No. 3:04-CR-00058-HEH); 38) *United States v. Khalid Barnes* (S.D. NY No. 7:04-CR-00186-SCR); 39) *United States v. Brent Simmons* (W.D. VA No. 5:04-CR-00014-SGW-ALL); 40) *United States v. James McTier* (E.D. NY No. 1:05-CR-00401-ILG); 41) *United States v. Vincent Basciano* (E.D. NY No. 1:05-CR-00060-NGG); 42) *United States v. Larry Lujan* (D. NM No. 2:05-CR-00924-RB); 43) *United States v. Dennis Cyrus* (N.D. CA No. 3:05-CR-00324-MMC); 44) *United States v. Lashaun Casey* (D. PR No. 3:05-CR-00277-JAG); 45) *United States v. Antonio Argueta* (D. MD No. 8:05-CR-00393-DKC); 46) *United States v. Timothy O'Reilly* (E.D. MI No. 2:05-CR-80025-VAR); 47) *United States v. Edison Burgos-Montes* (D. PR No. 3:06-00009-JAG); 48) *United States v. Donna Moonda* (N.D. OH No. 1:06-CR-00395-DDD); 49) *United States v. Steven Green* (W.D. KY No. 5:06-CR-00019-TBR); 50) *United States v. Naeem Williams* (D. HI No. 1:06-CR-00079-DAE); 51) *United States v. Jermaine Julian* (M.D. FL No. 8:07-CR-00009-JDW); 52) *United States v. Maurice Phillips* (E.D. PA No. 2:07-CR-00549-JCJ); 53) *United States v. Steven Northington* (E.D. PA

No. 2:07-CR-00550-RBS); 54) *United States v. Patrick Albert Byers, Jr.* (D. MD No. 1:08-CR-00056-RDP); 55) *United States v. Brian Richardson* (N.D. GA No. 1:08-CR-00139-CCH); 56) *United States v. Alexis Candelario-Santana* (D. PR No. 3:09-CR-00427-JAF); 57) *United States v. John Charles McCluskey* (D. NM No. 1:10-CR-02734-JCH); 58) *United States v. Juan Briseno* (N.D. IN No. 2:11-CR-00077-PPS); 59) *United States v. Ahmed Muse Salad, Abukar Osman Beyle and Shani Nurani Shiekh Abrar* (E.D. VA No. 2:11-CR-00034-RBS); 60) *United States v. Jesse Con-Ui* (M.D. PA No. 3:13-CR-00123-ARC) and 61) *United States v. Brendt A. Christensen* (C.D. IL No. 2:17-CR-20037-CSB).

DEATH SENTENCES: 62) *United States v. Bountaem Chanthadara* (D. KS No. 6:94-CR-10128-JTM); 63) *United States v. Len Davis and Paul Hardy* (E.D. LA No. 2:94-CR-00381-ILRL) (Davis received a death sentence at a second trial); 64) and 65) *United States v. Orlando Hall and Bruce Webster* (N.D. TX No. 4:94-CR-00121-Y); 66) *United States v. Louis Jones* (N.D. TX No. 6:95-CR-00015-C); 67) *United States v. Anthony Battle* (N.D. GA No. 1:95-CR-99528-ODE); 68) *United States v. Timothy McVeigh* (D. CO No. 1:96-CR-00068-RPM); 69) *United States v. David Paul Hammer* (M.D. PA No. 4:96-CR-00239-JHS) (1997 WL 312609 *43) (Hammer received a death sentence from a judge at a second trial); 70) *United States v. Darryl Alamont Johnson* (N.D. IL CR No. 1:96-CR-00379); 71) *United States v. Aquila Marcivicci Barnette* (W.D. NC No. 3:97-CR-00023-ALL); 72) *United States v. Dustin Higgs* (D. MD No. 8:98-CR-00502-PJM); 73) *United States v. Donald Fell* (D. VT No. 5:01-CR-

00012-GWC); 74) *United States v. Julias Robinson* (N.D. TX No. 4:00-CR-00260-Y); 75) *United States v. Sherman Lamont Fields* (W.D. TX No. 6:01-CR-00164-LY); 76) and 77) *United States v. Dustin Honken and Angela Johnson* (N.D. IA No. 3:01-CR-03047-LTS) & (N.D. IA No. 3:01-CR-03046-MWB); 78) *United States v. Gary Sampson* (D. MA No. 1:01-CR-10384-LTS) (both trials); 79) *United States v. William Emmett LeCroy* (N.D. GA No. 2:02-CR-00038-RWS); 80) and 81) *United States v. Chadrick Fulks and Branden Basham* (D. SC No. 4:02-CR-00992-JFA); 82) *United States v. Jurijus Kadamovas and Iouri Mikhel* (C.D. CA No. 2:02-CR-00220-SJO); 83) *United States v. Meier Jason Brown* (S.D. GA No. 4:03-CR-00001-BAE); 84) *United States v. Ronald Mikos* (N.D. IL No. 1:02-CR-00137); 85) *United States v. Kenneth Eugene Barrett* (E.D. OK No. 6:04-00115-RAW); 86) *United States v. John Johnson* (E.D. LA No. 2:04-CR-00017-HGB); 87) *United States v. Rejon Taylor* (E.D. TN No. 1:04-CR-00160-CLC); 88) *United States v. Ronell Wilson* (E.D. NY No. 1:04-CR-01016-NGG) (both trials); 89) *United States v. George Lecco and Valeri Friend* (S.D. WV No. 2:05-CR-00107) (Lecco received a life sentence at a second trial); 90) *United States v. Ricardo Sanchez and Danny Troya* (S.D. FL No. 9:06-CR-80171-DTKH); 91) *United States v. Azibo Aquart* (D. CT No. 3:06-CR-00160-SRU); 92) *United States v. Kaboni Savage* (E.D. PA No. 2:07-CR-00550-RBS); 93) *United States v. Joseph Ebron* (E.D. TX No. 1:07-CR-00142-MAC); 94) *United States v. David Runyon* (E.D. VA No. 4:08-CR-00016); 95) *United States v. Alejandro Enrique Umana* (W.D. NC No. 3:08-CR-00134-RJC); 96) *United States v. Mark Snarr and Edgar*

Garcia (E.D. TX No. 1:09-CR-00015-MAC); 97) *United States v. Wesley Paul Coonce, Jr. and Charles Michael Hall* (W.D. MO No. 6:10-CR-03029-GAF); 98) *United States v. Thomas Steven Sanders* (W.D. LA No. 1:10-CR-00351-DDD); 99) *United States v. Jorge Avila Torrez* (E.D. VA No. 1:11-CR-00115-LO); 100) *United States v. Dzhokar Tsarnaev* (D. MA No. 1:13-CR-10200-GAO); 101) *United States v. Christopher Cramer & Ricky Allen Fackrel* (E.D. TX No. 1:16-CR-00026-MAC) and 102) *United States v. Brandon Michael Council* (D. SC No. 4:17-CR-00866-CRI).

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.

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 26th day of January, 2023.

/s/ Kevin McNally