

DECLARATION OF KEVIN McNALLY
REGARDING EXECUTION IMPACT TESTIMONY

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. 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. www.uscourts.gov/dpenalty/1COVER.htm. 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. A recent update to the Report stated: “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/FederalCourts/AppointmentOfCounsel/Publications/UpdateFe>

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, jury instructions and findings 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 received evidence and listened to testimony about the impact the defendant's execution would have on them and other family and friends in numerous cases. Such evidence has generally been presented to federal capital juries without objection by prosecutors. Juries have found execution impact as a mitigating circumstance in, among others, the following cases:

LIFE SENTENCES: *United States v. Ramon Molina and John McCullah* (E.D. OK CR No. 1:92-032-S) (Seay); *United States v. Anthony Walker and Walter Diaz* (N.D. NY CR No. 94-328); *United States v. Dennis Moore* (W.D. MO CR No. 94-00194-01-12-CR-W-9); *United States v. Phouc Nguyen* (D. KS CR No. 94-10128-01); *United States v. Dean Anthony Beckford*

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(E.D. VA CR No. 3:96 CR 66); *United States v. Rashi Jones* (E.D. VA CR No. 97 CR 129); *United States v. Raheem and Shaheem Johnson* (E.D. VA CR No. 97-00314-A); *United States v. Gurmeet Singh Dhinsa* (E.D. NY CR No. 97-672 (S-3) (ERK)); *United States v. John Bass* (E.D. MI CR No. 97-80235); *United States v. Plutarco Tello* (W.D. MO CR No. 98-00311-01/05-CR-W-2); *United States v. Willis Haynes* (D. MD CR No. PJM-98-0502); *United States v. Marcus Sanders* (S.D. AL CR No. 98-0056-CB); *United States v. Kristin Gilbert* (D. MA CR No. 98-30044-MAP); *United States v. Khalfan Mohamed* (S.D. NY CR No. S6 98 CR 1023); *United States v. Tommy Edelin* (D. DC CR No. 98-264); *United States v. Xavier Lightfoot* (W.D. MO CR No. 00-CR-395-ALL); *United States v. Coleman Johnson* (W.D. VA CR No. 3:00CR00026); *United States v. Christopher Willis* (E.D. VA CR No. 99-00396); *United States v. Joseph P. Miner* (W.D. PA CR No. 99-215); *United States v. Carl Haskell* (W.D. MO CR No. 00-CR-395-ALL); *United States v. Tebiah Tucker* (N.D. NY CR No. 00-CR-269-ALL); *United States v. William Sablan* (D. CO CR No. 00-CR-531-ALL); *United States v. Michael O'Driscoll* (M.D. PA CR No. 4:CR-01-277); *United States v. Jay Lentz* (E.D. VA CR No. 01-CR-150-ALL); *United States v. Cornell Winfrei McClure* (D. MD CR No. 01-CR-367-ALL); *United States v. Johnny Davis* (E.D. LA CR No. 2:01-CR-282-ALL); *United States v. Andre Cooper and Jamain Williams* (E.D. PA CR No. 01-CR-512-ALL); *United States v. Robert and Michael Ostrander* (W.D. MI CR No. 01-M-639-ALL); *United States v. Wayne Bridgewater and Henry Michael Houston* (C.D. CA CR No. 02-00938-GHK); *United States v. Luis Gonzales-Lauzan* (S.D. FL CR No. 02-

CR-20572-ALL); *United States v. Hernaldo Medina Villegas and Lorenzo Catalan Roman* (D. PR CR No. 3:02-CR-117-ALL); *United States v. Shawn Arnette Breeden* (W.D. VA CR No. 03-CR-13-ALL); *United States v. Brent Simmons* (W.D. VA CR No. 5:04-CR-00014-sgw-ALL); *United States v. Ishmael Cisneros and Oscar Antonio Grande* (E.D. VA CR No. 04-CR-283-ALL); *United States v. Kenneth McGriff* (E.D. NY CR No. 04-966 (ERK) (VVP)); *United States v. John Street* (W.D. MO CR No. 4:04-CR-00298-GAF-ALL); *United States v. Khalid Barnes* (S.D. NY No. 04-CR-186); *United States v. James Dinkins* (D. MD No. 1:06-CR-00309-JFM); *United States v. Steven Green* (W.D. KY No. 5:06-CR-00019-TBR); *United States v. Jermaine Michael Julian* (M.D. FL No. 8:07-CR-9-T-27TGW); *United States v. Patrick Albert Byers, Jr.* (D. MD No. 08-056); *United States v. Antonio Argueta* (D. MD No. 8:05 CR 00393-DKC); *United States v. Maurice Phillips* (E.D. PA No. 2:07-CR-00549-JCJ); *United States v. Anh The Duong* (N.D. CA No. 5:01-CR-20154-JF); *United States v. George Lecco* (S.D. WV CR No. 2:05-00107); *United States v. Timothy O'Reilly* (E.D. MI No. 05-CR-80025); *United States v. Vincent Basciano* (E.D. NY No. 05-CR-0060-NGG); *United States v. Brian Richardson* (N.D. GA No. 1:08-CR-139); *United States v. Edison Burgos-Montes* (D. PR No. 06-CR-009-JAG); *United States v. LaShaun Casey* (D PR. No. 3:05-CR-0277-JAG); *United States v. Larry Lujan* (D. NM No. 05-CR-924) and *United States v. Steven Northington* (E.D. PA No. 2:07-CR-00550-RBS).²

²The district court in Western District of Virginia federal death penalty case in May 2006 entered a pretrial order denying the government's motion to precluded the admission of execution impact evidence at trial. See *United States v. Caro*, 2006 WL 1529473 (W.D. Va. 2006).

DEATH SENTENCES: *United States v. Bruce Webster* (N.D. TX CR No. 4:94-CR-121-Y)-1; *United States v. Bountaem Chanthadara* (D. KS CR No. 94-10128-01); *United States v. Louis Jones* (N.D. TX CR No. 6-95 CR 0015-C); *United States v. Darryl Johnson* (N.D. IL CR No. 96 CR 379); *United States v. David Paul Hammer* (M.D. PA CR No. 4-96-CR-239); *United States v. Aquila Marcivicci Barnette* (W.D. NC CR No. 3:97-CR-23-P); *United States v. Billie Jerome Allen* (E. D. MO CR No. 4:97 CR 0141 ERW (TCM)); *United States v. Richard Stitt* (E.D. VA CR No. 2:98CR47); *United States v. German Sinisterra* (W.D. MO CR No. 98-00311-01/05-CR-W-2); *United States v. Dustin Higgs* (D. MD CR No. PJM-98-0502); *United States v. Marvin Charles Gabrion* (W.D. MI CR No. 1:99-CR-76); *United States v. Keith Nelson* (W.D. MO CR No. 99-138H-01); *United States v. Angela Johnson* (N.D. IA CR No. 00 CR 3034-MWB); *United States v. Richard Jackson* (W.D. NC CR No. 00-CR-74-ALL); *United States v. Gary Sampson* (D. MA CR No. 01-CR-10384-ALL); *United States v. Sherman Fields* (W.D. TX CR No. 01-CR-164-ALL); *United States v. William Emmett LeCroy* (N.D. GA CR No. 02-CR-38-ALL); (E.D. NY CR No. 1:04-CR-01016-NGG-ALL); *United States v. Alfonso Rodriguez* (D. ND CR No. 04-CR-55-ALL); *United States v. Ronell Wilson* (E.D. NY No. 1:04-CR-01016-NGG); *United States v. John Johnson* (E.D. LA No. 2:04-CR-00017-HGB-SS); *United States v. George Lecco and Valerie Friend* (S.D. WV CR No. 2:05-00107); *United States v. David Runyon* (E.D. VA CR No. 4:08-CR-16) and *United States v. Ronell Wilson* (E.D. NY No. 1:04-CR-01016-NGG).

5. Such testimony is regularly heard in state death penalty trials. *See, e.g., State v. Smith* (Union County Indictment No. 94-GS-44-906, 907). Rejection of such testimony has been found to be error. *See, e.g., Romine v. State*, 305 S.E.2d 93 (Ga. 1983) (error where the defendant, who murdered his parents, was not allowed to present the testimony of his grandfather that he did not wish his grandson to be executed); *State v. Stevens*, 879 P.2d 162 (Or. 1994) (trial court erred in excluding the testimony of the defendant's wife that she believed the execution of her husband would have a negative effect on their six year old daughter) and *Richmond v. Lewis*, 506 U.S. 40, 43 (1992) (recognizing Arizona's practice of accepting evidence "of the effect [defendant's] execution would have upon his family" as mitigation evidence) (*dicta*). The federal government has been allowed to present such evidence. *See United States v. Battle*, 1999 WL 252378 (11th Cir. 4/28/99) (allowing the testimony by three prison guards about the murder of a fellow officer. Eleventh Circuit upheld direct questions to the prison guards of the effect of a "life without parole sentence" on "inmates at the institution ...").

6. 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 6th day of September, 2013.

/s/ Kevin McNally
Kevin McNally