NO DATE FOR ORAL ARGUMENT HAS BEEN SET

No. 20-1144

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE OF THE FEDERAL PUBLIC DEFENDER FOR THE DISTRICT OF ARIZONA; SAMMANTHA ALLEN; STEVE BOGGS; JONATHAN BURNS; ALAN CHAMPAGNE; MIKE GALLARDO; RODNEY HARDY; ALVIE KILES; ANDRE LETEVE; BRAD NELSON; STEVEN PARKER; WAYNE PRINCE; PETE ROGOVICH; GILBERT MARTINEZ,

Petitioners,

v.

WILLIAM P. BARR, UNITED STATES ATTORNEY GENERAL; UNITED STATES OF AMERICA,

Respondents,

STATE OF ARIZONA,

Intervenor.

On Petition for Review of the Attorney General's April 14, 2020 Decision Certifying Arizona's Capital Counsel Mechanism Under 28 U.S.C. §§ 2261–2266, Docket No. OAG-167

BRIEF OF FEDERAL PUBLIC DEFENDER CAPITAL HABEAS UNITS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Scott Braden
Capital Habeas Unit
Federal Public Defender –
Eastern District of Arkansas
1401 West Capitol Avenue
Little Rock, AR 72201
(501) 324-6114
scott_braden@fd.org

Paul Alessio Mezzina
Joshua N. Mitchell
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, D.C. 20006
(202) 737-0500
pmezzina@kslaw.com
jmitchell@kslaw.com

Counsel for *Amici Curiae*

August 20, 2020

Additional counsel listed on inside cover

David Stebbins
Capital Habeas Unit
Federal Public Defender –
Southern District of Ohio
10 W. Broad Street
Suite 1020
Columbus, OH 43215
(614) 469-4117
david_stebbins@fd.org

Carol A. Wright
Capital Habeas Unit
Federal Public Defender –
Middle District of Florida
400 N. Tampa Street
Tampa, FL 33602
(813) 228-2715
carol_wright@fd.org

Counsel for *Amici Curiae*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The following information is provided pursuant to D.C. Circuit Rule 28(a)(1).

A. Parties and *Amici*

All parties and intervenors appearing in this Court are listed in the Opening Brief for Petitioners. In addition, a group of sixteen professors of administrative law, a group of fifteen academic experts in federal criminal procedure and post-conviction practice, and the American Bar Association have each given notice that they intend to file briefs as *amici curiae*.

Amici filing this brief are not corporate entities required to file disclosure statements under D.C. Circuit Rule 26.1.

B. Ruling Under Review

Reference to the ruling at issue appears in the Opening Brief for Petitioners.

C. Related Cases

Amici are not aware of any related cases other than the case identified in the Opening Brief for Petitioners.

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

In accordance with Circuit Rule 29(b), counsel represents that all parties have consented to the filing of this *amicus* brief.*

In accordance with Circuit Rule 29(d), counsel certifies that this separate brief is necessary to provide the Capital Habeas Units' distinct perspective as federal habeas litigators with extensive experience representing indigent clients facing state death sentences. Because of that experience, the CHUs are in a unique position to explain the demands of capital habeas representation and how unwarranted Chapter 154 certifications will impair the CHUs' ability to perform that important work.

* No party's counsel authored this brief in whole or in part, and no one other than *amici* and their counsel contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. P. 29(4)(E).

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INTEREST OF *AMICI CURIAE*

Amici are the nation's Capital Habeas Units (CHUs)—the divisions of Federal Defender Organizations that represent indigent state death-row inmates in federal habeas proceedings.[1] CHUs devote their energy and expertise to ensuring that state death sentences are carried out only when those sentences have been obtained in compliance with the Constitution. Often operating under extraordinarily challenging conditions and facing harsh deadlines, CHUs strive to provide the highest quality representation to those who most desperately need it.

Unwarranted certifications under Chapter 154 of the Antiterrorism and Effective Death Penalty Act (AEDPA), such as the Attorney General's certification under review in this case, could undermine the CHUs'

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[1] *Amici* are all the Capital Habeas Units that exist nationwide, except the one in the Office of the Federal Public Defender for the District of Arizona, which is a party to this case. Specifically, *amici* are the CHUs of the Federal Defender Organizations for the Middle District of Alabama; the Eastern District of Arkansas; the Central and Eastern Districts of California; the Middle and Northern Districts of Florida; the Northern District of Georgia; the District of Idaho; the Western District of Missouri; the District of Nevada; the Northern and Southern Districts of Ohio; the Western District of Oklahoma; the Eastern, Middle, and Western Districts of Pennsylvania; the Eastern and Middle Districts of Tennessee; and the Northern and Western Districts of Texas.

ability to operate in an ethical or effective manner. Chapter 154 certification will impose severe burdens on the work of CHUs in the affected state. Among other things, Chapter 154 greatly reduces the time available for the CHU to develop and present its clients' claims.

The CHUs submit this brief to explain the unique demands of capital habeas representation and how unwarranted Chapter 154 certifications will impair their ability to perform the work for which the district courts and courts of appeals appoint them.

INTRODUCTION

The U.S. Constitution guarantees certain fundamental rights to all defendants, including those charged with capital crimes. Protecting those rights is never more vital than when a state seeks to impose the grave and irreversible sentence of death. State courts are responsible for honoring defendants' constitutional rights in the first instance. But habeas proceedings in federal court provide an essential backstop to ensure that fundamental constitutional errors are identified and corrected before the state can take a prisoner's life. *See McFarland v. Scott*, 512 U.S. 849, 859 (1994) ("Congress has recognized that federal habeas corpus has a particularly important role to play in promoting fundamental fairness in the imposition of the death penalty.").

Federal habeas representation in capital cases is a significantly different type of proceeding from the appeals and petitions for review that dominate this Court's docket. In those cases, a more-or-less orderly record is preserved and transmitted in due course by the district court or the agency; the parties are limited to raising arguments supported by that record; and counsel's job largely consists of reviewing that closed record and drafting briefs. In contrast, the record that federal capital habeas

counsel receive from the state courts is often far more extensive and requires far more intensive review. Due to the nature of habeas corpus review, CHUs must investigate the circumstances surrounding the trial to determine whether trial counsel were effective. *See Massaro v. United States*, 538 U.S. 500, 504 (2003). They must investigate whether the prosecution suppressed evidence. *See Banks v. Dretke*, 540 U.S. 668, 675 (2004); *Strickler v. Greene*, 527 U.S. 263, 278 (1999). They must investigate whether the defendant was actually innocent. *See House v. Bell*, 547 U.S. 518, 536–37 (2006). And they must do all this under severe time constraints, often with the added disadvantage of cold or missing records, fading memories, and unwilling or deceased witnesses.

When a Chapter 154 certification is granted, capital habeas counsel's job becomes exponentially more difficult. Among other things, Chapter 154 drastically reduces—and may eliminate altogether—the time available for counsel to investigate and develop the client's constitutional claims. 28 U.S.C. § 2263(a). These and other changes will make it extraordinarily difficult for CHUs to continue providing high-quality habeas representation to capital clients without substantial additional resources.

Chapter 154's restrictions on federal habeas are meant to be available only in states that have established a reliable mechanism for timely providing capital defendants with postconviction counsel who are competent and reasonably compensated, and who have access to funding for reasonable expenses (like investigators and experts). Chapter 154 thus strikes a *quid pro quo*: If the state provides experienced postconviction counsel and gives them adequate resources to investigate and litigate federal constitutional claims in *state* court, Chapter 154's severe restrictions may then be imposed on habeas litigation in *federal* court. But the *quid pro quo* cannot work if the states are not held to strict compliance with Chapter 154's mandate to provide competent, experienced, adequately resourced postconviction counsel. And the resulting litigation may overwhelm the federal courts.

Arizona is not keeping up its side of the bargain. The state routinely fails to provide competent or experienced postconviction counsel for capital defendants. *Amici* ask this Court to vacate the Attorney General's decision and make clear that the Attorney General's Chapter 154 certification process must be a searching and rigorous review—as must this Court's. Anything less risks converting the collateral-review process in

capital cases into a forced march to ultimate finality at the expense of justice.

ARGUMENT

I. Capital habeas representation requires extensive factual investigation and demands far more time and resources than ordinary appeals.

Representing defendants in capital cases is extraordinarily complex and demanding, requiring "a significantly greater degree of skill and experience" than is required in noncapital cases. Am. Bar Ass'n, *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913, 921 (2003) ("ABA Guidelines"). The difficulty of the litigation and the demands it places on attorneys only increase after conviction, in the "often nightmarish system" of postconviction proceedings. *Id.* at 1082.[2]

Federal capital habeas proceedings ratchet the difficulty up yet again, requiring "enormous amounts of time, energy, and knowledge." *Id.*

[2] The Judicial Conference has thus recognized that experience with the unique demands of postconviction litigation is an important consideration when federal courts appoint postconviction counsel in capital cases under 18 U.S.C. § 3599. *See* Judicial Conference of the U.S., Guidelines for the Administration of the Criminal Justice Act and Related Statutes § 620.50(b) ("courts should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings").

at 1085. Not only must habeas counsel grapple with the "increasingly complex and ever-changing" state of federal habeas law, *id.*, and scour the case record for constitutional errors; they also must conduct multiple, concurrent investigations, examining in painstaking detail the crime of conviction, the state proceedings, and the client's personal history.

This investigative work is critical, because federal habeas proceedings present the first—and likely only—opportunity to ensure that the state court proceedings were not rendered unfair or unreliable as a result of limitations on state-court processes, limited availability of state-court resources, state counsel's incompetence or deficient performance, or other factors outside the petitioner's control. *See Williams v. Taylor*, 529 U.S. 420, 437, 444 (2000) (under limited circumstances, a habeas petition may present new claims or evidence that could not have been developed in state court despite diligent effort).

The most common federal constitutional claim raised in capital habeas petitions is that the petitioner was denied the effective assistance of trial counsel. *See* Nancy King et al., *Final Technical Report: Habeas Litigation in U.S. District Courts* 28, 64 (2007), *available at* https://bit.ly/2YiOBQN. Trial counsel's performance may have been deficient because

they failed to conduct a reasonable investigation into the facts of the crime to develop the client's defense, failed to present important evidence or legal arguments, or failed to conduct a reasonable investigation into the client's life history to discover compelling mitigating evidence. *See, e.g.*, *Wiggins v. Smith*, 539 U.S. 510, 534 (2003). Other common claims in capital habeas petitions include lost, undisclosed, or false evidence; juror bias or misconduct; new evidence of innocence; and mental disabilities rendering the defendant ineligible for the death penalty. *See* King, *supra*, at 29–31, 63–64.

The basis for these claims is frequently not apparent from the cold state-court record, and often these claims were not fully developed in state court. Counsel preparing a federal habeas petition must therefore "conduct a reasonable and diligent investigation aimed at including *all* relevant claims and grounds for relief." *McCleskey v. Zant*, 499 U.S. 467, 498 (1991) (emphasis added). For this reason, the Supreme Court has recognized that "[t]he services of investigators and other experts may be critical" in preparing a federal habeas petition to identify "possible claims and their factual bases." *McFarland v. Scott*, 512 U.S. 849, 855 (1994). Congress, too, has recognized that investigative and expert services are

a necessary component of effective habeas representation. *See* 18 U.S.C. § 3599(a), (f); *Ayestas v. Davis*, 138 S. Ct. 1080, 1093–94 (2018).

Consider just one example. In *Williams v. Taylor*, an investigator working with federal habeas counsel discovered, by conducting interviews with jurors and searching public records, that the jury foreperson at petitioner's capital murder trial had been married for 17 years to a deputy sheriff who was a key witness for the prosecution. The investigator also uncovered that the prosecutor had failed to disclose to trial counsel that he had not only known about the marriage but had also represented the juror during her divorce. 529 U.S. at 440–44. Because habeas counsel had the time and resources to uncover these critical facts, petitioner was granted habeas relief. *Williams v. True*, 39 F. App'x 830, 831 (4th Cir. 2002).

CHU teams therefore include, at a minimum, an investigator and a mitigation specialist. Investigators aid attorneys in collecting documents and performing interviews, while mitigation specialists help to investigate and explain a client's life story and assist in finding additional experts to provide analysis of any mental-health or developmental disorders from which the client may suffer. *See, e.g.*, *Rompilla v. Beard*, 545

U.S. 374, 382 (2005). With their assistance, habeas counsel works to identify defenses and exculpatory or mitigating evidence that may not have been presented at trial or sentencing. This evidence is critical to preparing an effective habeas petition.

A. Habeas counsel must investigate the crimes of conviction and the state-court proceedings.

Habeas counsel must first investigate the crimes for which the client was convicted. Because the record developed by the trial attorney and presented at trial resulted in a capital conviction, habeas counsel are tasked with "changing the picture" to present a true account of the facts of the crime and the client's psychosocial background and mental-health history. *See* ABA Guidelines at 1085. Doing so requires a "thorough, independent investigation," as the trial record often does not provide "a complete or accurate picture of the facts and issues in the case." *Id.* at 1085–86. Deficient performance of trial counsel or prosecutorial misconduct (*e.g.*, in suppressing exculpatory evidence) may also be determining factors that led to the conviction or sentence and that may not have been uncovered during state-court proceedings. *Id.* at 1086.

A thorough investigation encompasses exploring potential defenses to the crime of conviction, including innocence or alibi, self-defense, misidentification, insanity, diminished capacity, and misconduct by law enforcement or the prosecution. Habeas counsel must also investigate any other offenses the state relied on to show aggravating circumstances, such as the client's future dangerousness, that supported imposition of the death penalty. They must identify and interview any eyewitnesses, complaining witnesses, informants, and law-enforcement personnel, as well as any surviving victims. They must also gather relevant documentary evidence concerning the circumstances of the crime and conviction.

But because often a decade or more has passed since the crime and the original trial, collecting records and interviewing witnesses is considerably more difficult and time-consuming for habeas counsel than it would have been for trial counsel. Records have often become more difficult to locate, requiring additional effort and time. Some witnesses may have moved. Their memories may have faded, requiring additional time and effort to help them overcome their confusion or memory lapses. Other witnesses may have passed away or become unavailable.

Moreover, there have often been dramatic developments in forensic science that may change the picture of a client's guilt or innocence. Many supposedly scientific tests once used to obtain convictions have been shown to be unreliable or misleading and are no longer accepted by the scientific community. *See* Comm. on Identifying the Needs of Forensic Scis. Cmty., Nat'l Research Council, *Strengthening Forensic Science in the United States: A Path Forward* 4 (2009), *available at* https://bit.ly/3aikwpy. And new scientific developments, such as advances in the ability to collect and analyze DNA evidence, may call convictions into question and lead to the exoneration of death-row inmates.

Habeas counsel's investigation, moreover, must extend to the prior attorneys' representation. This includes obtaining and reviewing all prior attorneys' files to determine what they investigated and where their investigations may have fallen short. Habeas counsel must then interview all state-court counsel, investigators, and experts to determine whether their investigations were reasonable and sufficient to support their decisionmaking, and to identify anything they may have missed. State-court counsel may have failed to pursue available leads or stopped their investigation prematurely; either would constitute deficient performance. But

the determination that trial counsel's investigation was incomplete or inadequate can be made only after locating all relevant witnesses and discovering all relevant records—including those never collected by counsel or even the police. Similarly, habeas counsel must review the work of state postconviction counsel to determine whether they had sufficient experience and resources.

This work demands substantial time and effort, but it often results in identifying meritorious constitutional claims, as well as grounds for excusing the failure to raise those claims during earlier state-court proceedings. *See, e.g.*, *Ayestas*, 138 S. Ct. at 1095–1101 (Sotomayor, J., concurring) (concluding that investigative services were justified to explore the likelihood that trial counsel was deficient for failing to conduct an adequate investigation and that state postconviction counsel was deficient for failing to develop and present that claim).

B. Habeas counsel must also investigate mitigation and mental-health evidence.

While investigating the facts surrounding the crime of conviction, habeas counsel must also investigate the client's life history in order to assemble mitigation evidence and identify mental-health issues that may raise "fundamental questions of competency and mental-state defenses,"

ABA Guidelines at 1086, and may lead to compelling mitigating evidence that would have supported imposition of a lesser sentence. Investigating the client's mental health may call into question the client's sanity at the time of the crime or the client's competency at the time of the trial. It may disclose brain damage, learning disabilities, or organic mental illnesses. Indeed, it may disclose that the client suffered multiple mental problems, all of which may be relevant in determining guilt or innocence and the appropriate sentence. Social-history and mental-health records must be compiled and provided to any mental-health expert before that expert can conduct an adequate evaluation.

Before a capital sentence may lawfully be imposed or affirmed, the court or jury must consider mitigating factors that weigh against imposing a death sentence—including a defendant's history, character, and background. *See Tennard v. Dretke*, 542 U.S. 274, 285 (2004). Accordingly, counsel must investigate and understand the client's biological, psychological, and social history and present it to the jury or the courts. *See, e.g.*, *Porter v. McCollum*, 558 U.S. 30, 39–40 (2009) (trial counsel's inadequate mitigation investigation was deficient performance); *Wiggins*, 539 U.S. at 534 (same). And habeas counsel must conduct their own

thorough investigation to determine whether trial counsel fulfilled that responsibility. *See Ayestas*, 138 S. Ct. 1093–94.

Performing an effective mitigation investigation requires proper training. The lawyers or mitigation specialists conducting the investigation must possess keen interviewing skills. They must have a working understanding of mental health and the effects of trauma—especially childhood trauma. They must be familiar with research into human growth and development. And they must have knowledge of the ABA Guidelines and the ABA's *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 Hofstra L. Rev. 677 (2008).

As part of the mitigation investigation, habeas counsel or their colleagues must conduct in-person interviews with the client, as well as with the client's family, friends, teachers, coaches, pastors, caretakers, community members, and others. They must develop a nuanced understanding of the client's social history, including both the static facts of the client's life history (such as income, work, and housing) and the dynamic narrative of complex human experiences (such as love, loss, abuse, trauma, and neglect) that make up the client's life history.

A competent mitigation investigation thus involves intensive field-work. The team must develop rapport with every witness, especially close family members. This requires traveling to interview witnesses in person. While witnesses may readily share some information, many of the topics that must be explored in a mitigation investigation are highly sensitive. The investigation may expose shameful family secrets that witnesses would prefer not to reveal. At times, these secrets may re-traumatize the witness or the client. The investigation thus depends on the interviewer's ability to make witnesses comfortable enough to disclose sensitive, embarrassing, or painful information.

In-person interviews also let the interviewer observe key details about the client's or witness's environment, which can further inform the direction of the mitigation investigation. More can be learned about a person's habits, beliefs, and values in a single visit to the person's home than in any number of conversations over the telephone or by videoconference. The investigator can also observe the witness's reactions and gauge whether the witness is being forthcoming.

In-person communication with the client on death row is likewise critical for obtaining information about the client's background. Counsel

must also be able to offer reassurance and to observe and note any worsening of the client's mental condition, which "may directly affect the legal posture of the case." ABA Guidelines at 1082–83; *see Ford v. Wainwright*, 477 U.S. 399, 402 (1986).

Expert evaluations of the client are also critical. In *Brumfield v. Cain*, 576 U.S. 305 (2015), for example, federal habeas counsel worked with mental-health experts to develop new evidence of the defendant's mental disability, which was severe enough to render him ineligible for the death penalty. *Id.* at 311; *Brumfield v. Cain*, 808 F.3d 1041, 1066 (5th Cir. 2015). Expert evaluations typically require extended in-person interviews—for example, many psychological tests cannot properly be conducted by videoconference. In capital cases, it is critical to ensure the validity of mental-health testing on which counsel will ask the courts to rely.

C. Habeas counsel must collect and analyze voluminous records.

At the same time as they are interviewing witnesses, the habeas team must also collect, review, and organize voluminous documents—including the client's prenatal care records, childhood medical records,

school records, work records, criminal records, and mental-health records, as well as maternal and paternal birth, death, and health records. Witness interviews and records collection must proceed in tandem, because each informs the other. Before each witness interview, counsel must collect relevant records and perform extensive research to direct their questioning, provide context for the witness's answers, and confirm or challenge the information the interview provides. After the interview, counsel must perform additional research to substantiate the witness's recollections using contemporaneous records.

Habeas counsel cannot rely exclusively on self-reporting or on documents compiled by the client's previous counsel. Instead, they must actively seek out records to ensure that they have a full picture of the client's history, behavior, and mental state. Third-party documentation about the client, the client's family, and the client's community is essential to allow the habeas team to understand the client and to confirm information gleaned from witness interviews. Third-party documentation also provides the perspective of professionals who observed and recorded aspects of the client and the client's family and community life from a different and unique perspective.

* * *

To sum up: In a state *without* a Chapter 154 certification, habeas counsel—during AEDPA's one-year statute of limitations period, and starting from zero knowledge of the case—must track down all relevant records, documents, and witnesses; perform each of the interlocking investigations discussed above; develop a thorough knowledge of the crime, the case history, and the client; identify any constitutional defects in the state proceedings; synthesize that knowledge into a compelling narrative; and present that narrative in a persuasive habeas petition. And Chapter 154 threatens to make that already daunting task all but impossible by cutting the statute of limitations in half.

II. Chapter 154's restrictions will make it more difficult for capital habeas counsel to provide their clients with effective representation.

The consequences of a Chapter 154 certification will make it extraordinarily difficult for habeas counsel—already laboring under AEDPA's strict requirements—to continue providing the level of representation necessary to ensure that state capital convictions and death sentences were obtained in compliance with the Constitution.

Most critically, Chapter 154 certification slashes the amount of time habeas counsel has to investigate and develop a client's constitutional claims. Under the existing strict AEDPA rules, a state prisoner must file his federal habeas petition within one year after the conclusion of direct review (including review in the U.S. Supreme Court), and the time is tolled while any properly and timely filed application for state postconviction relief is pending. 28 U.S.C. § 2244(d). Investigating and preparing an effective habeas petition in a capital case on that compressed timeline is challenging enough. But when a state is certified under Chapter 154, things get considerably more difficult. That state's death-row inmates must file their federal habeas petitions within *180 days* (not one year) from the final *state-court* decision on their direct appeal (not from the Supreme Court's affirmance or denial of certiorari). *Id.* § 2263(a). And that period is tolled only (i) from the filing of the inmate's *first* state postconviction petition to the final *state-court* disposition of that petition, and (ii) while the inmate's case on direct appeal is *pending* in the Supreme Court. *Id.* § 2263(b).

The practical consequences of these limitations may be severe. Notably, Chapter 154 does not address tolling while the inmate's counsel is

preparing a cert petition seeking Supreme Court review of the final state-court decision on direct appeal. The Supreme Court allows 90 days for counsel to prepare and file that petition. S. Ct. R. 13.[3] In some states, the Chapter 154 clock may keep ticking during that period—as well as during any Supreme Court review of the final state-court postconviction decision, and during the pendency of any second or successive state postconviction petition, even one that is properly filed under state law. So it will not be surprising if, by the time state postconviction proceedings conclude and federal habeas counsel is finally appointed, most or all of the 180-day time period for preparing a habeas petition has already run.

Amici CHUs already face a herculean task in rooting out constitutional errors in state capital convictions under AEDPA's significant constraints. Because the consequences of a Chapter 154 certification are so drastic, requests for certification should be subject to the most exacting

[3] Moreover, this time can be extended to 150 days on application. S. Ct. R. 13.5. And the Court has extended to 150 days the time to file *all* petitions for certiorari during the COVID-19 pandemic. Order, 589 U.S. __ (Mar. 19, 2020). A petitioner using the full 150 days granted by this general order may have exhausted *five-sixths* of the time allowed by Chapter 154.

scrutiny, both by the Attorney General and by this Court under its congressionally mandated *de novo* review. *See* 28 U.S.C. § 2265(c)(3). Chapter 154's *quid pro quo* curtails review of state capital convictions in *federal* court in exchange for assurances that capital defendants will be well represented in *state* court. But that exchange is premised on a state's genuine commitment to meet Chapter 154's requirements—to *timely* appoint *competent* postconviction counsel, *reasonably* compensate them, and *pay their reasonable expenses*. *See* 28 U.S.C. § 2265(a)(1). This Court must undertake a searching review of any Chapter 154 certification and hold the certified state to its side of that bargain.

CONCLUSION

The Court should set aside the Attorney General's order.

Respectfully submitted,

/s/ *Paul Alessio Mezzina*

Paul Alessio Mezzina
Joshua N. Mitchell
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, D.C. 20006
(202) 737-0500
pmezzina@kslaw.com
jmitchell@kslaw.com

Scott Braden
Capital Habeas Unit
Federal Public Defender –
Eastern District of Arkansas
1401 West Capitol Avenue
Little Rock, AR 72201
(501) 324-6114
scott_braden@fd.org

David Stebbins
Capital Habeas Unit
Federal Public Defender –
Southern District of Ohio
10 W. Broad Street
Suite 1020
Columbus, OH 43215
(614) 469-4117
david_stebbins@fd.org

Carol A. Wright
Capital Habeas Unit
Federal Public Defender –
Middle District of Florida
400 N. Tampa Street
Tampa, FL 33602
(813) 228-2715
carol_wright@fd.org

Counsel for *Amici Curiae*

August 20, 2020

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this brief complies with the type-volume limitation of Rules 29(a)(5) and 32(a)(7)(B) because it contains 4,062 words, excluding the parts exempted by Rule 32(f) and Circuit Rule 32(e)(1).

I further certify that this brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because the brief was prepared in 14-point Century Schoolbook font using Microsoft Word ProPlus 365.

Dated: August 20, 2020

/s/ *Paul Alessio Mezzina*

Paul Alessio Mezzina
KING & SPALDING LLP

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25, I certify that on August 20, 2020, I caused a copy of this document to be served on all registered counsel via CM/ECF.

Dated: August 20, 2020

/s/ *Paul Alessio Mezzina*

Paul Alessio Mezzina
KING & SPALDING LLP