STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.ALABAMA.GOV

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Pamela Bondi
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

Dear Attorney General Bondi,

As the state official with responsibility for federal habeas corpus litigation, I respectfully request that you certify that the State of Alabama meets the requirements under Chapter 154 of Title 28 of the United States Code for special habeas corpus procedures in capital cases.

In support of certification, I have enclosed a memorandum describing Alabama's mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in state postconviction proceedings brought by indigent prisoners who have been sentenced to death. Please let me know if you require any additional information.

Sincerely,

Steve Marshall
Attorney General of Alabama

cc: Aaron Reitz, Office of Legal Policy, U.S. Department of Justice
Sarah Stewart, Chief Justice of the Alabama Supreme Court

MEMORANDUM IN SUPPORT OF ALABAMA'S REQUEST FOR CHAPTER 154 CERTIFICATION

The Attorney General of Alabama respectfully requests that the Attorney General of the United States certify that Alabama meets the requirements under section 107(a) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), codified as Chapter 154 of Title 28 of the United States Code, for special habeas corpus procedures in capital cases.

Alabama qualifies because it has established a mechanism for providing competent counsel to indigent prisoners who have been sentenced to death and wish to avail themselves of State postconviction proceedings.

BACKGROUND

Alabama has long guaranteed counsel for indigent defendants in accordance with Supreme Court doctrine under the Sixth and Fourteenth Amendments. *See Powell v. Alabama*, 287 U.S. 45, 71 (1932); *Johnson v. Zerbst*, 304 U.S. 458, 463 (1938); *Gideon v. Wainright*, 372 U.S. 335, 344-45 (1963). Alabama effectuated *Gideon*'s promise through a 1963 statute requiring that trial judges, prior to arraignment, determine the accused's ability to obtain counsel and then appoint counsel when needed to protect an indigent's rights. *See* Acts 1963, No. 526, §§1-2.

The 1963 statute was not limited to the trial stage; it applied broadly to cases "involving the life and liberty of those charged with or convicted of serious criminal offenses." *Id.* §6. Thus, counsel would be provided in "proceedings for habeas corpus and coram nobis or other post conviction remedies, and in appeals." *Id.* The State would pay attorney fees at a rate set by the court in consultation with the bar

association, and courts would "adopt and promulgate" rules with "force and effect of law" for carrying out the Act. *Id.* §§9-10.

Over the years, Alabama has consistently improved and expanded upon its mechanism for providing indigent defense. To that end, the Legislature regularly updates Chapter 15 of Title 12 of the Code of Alabama, which contains exhaustive procedures and standards for the appointment and compensation of counsel. In 2011, the Legislature created the Office of Indigent Defense Services (OIDS) as a division of the Alabama Department of Finance. OIDS administers a comprehensive system of indigent defense, adopting statewide standards to ensure "that every indigent defendant represented receives the fullest measure of due process required by law."[1] In 2015, OIDS promulgated regulations covering a variety of topics, including the minimum qualifications for appointed attorneys. Ala. Admin. Code §355-9-1. OIDS publishes rules and standards, processes claims for attorney fees and costs, and provides resources and guidance to courts across the State.

I. Alabama has a mechanism for appointing and compensating counsel in capital postconviction proceedings brought by indigent prisoners.

A. Alabama has a mechanism for appointing counsel in capital postconviction proceedings. 28 U.S.C. §2265(a)(1)(A). Indeed, Alabama goes further, providing postconviction counsel whenever a petitioner has been convicted of a "serious" offense, and his "life and liberty" are at stake. Ala. Code §15-12-23(a). In each case, the judge "shall determine," *id.* §15-12-5(a), whether the defendant desires but cannot afford counsel, and counsel is needed to protect his rights, *id.* §15-12-23(a);

[1] Ala. Dep't of Fin., *Indigent Defense Services*, finance.alabama.gov/indigent-defense.

accord Ala. R. Crim. P. 32.7(c); Ala. R. Crim. P. 6.1 cmts. (noting that "Rule 32.7(c) provides for appointment of counsel at post-conviction level when the court determines 'that counsel is necessary to assert or protect the rights of the petitioner'"). "In determining the fact of indigency," a court "may require an investigation and report by a district attorney, public defender, sheriff, probation officer, or other officer of the court." Ala. Code §15-12-5(c).

When warranted, the court may "appoint counsel through an indigent defense system approved by [OIDS]." Ala. Code §15-12-23(a). Each judicial circuit in the State has been required to maintain a system—for example, using "appointed counsel, contract counsel, or public defenders or a combination of any of these." Ala. Admin. Code §355-9-1-.08(1); *see also id.* at §355-9-1-.08(1)(a)-(j) (detailing attorney qualifications); *id.* at §355-9-.11 (minimum qualifications and requirements for a public defender); *id.* at §355-9-.12 (standards for establishing a contract system). Under the rules, "[w]henever counsel is appointed, the court shall enter an order to that effect." Ala. R. Crim. P. 6.4(a).

In capital cases specifically, the Fair Justice Act (FJA) makes the appointment of new postconviction counsel for an indigent defendant both mandatory and immediate:

> In all cases where the defendant is deemed indigent or as the trial judge deems appropriate, the trial court, *within 30 days* of the entry of the order pronouncing the defendant's death sentence, *shall appoint* the defendant a separate counsel for the purposes of post-conviction relief under this section.

Ala. Code §13A-5-53.1(b) (emphasis added). Since the FJA took effect in 2017, the "right to counsel during postconviction proceedings" has become effectively

"automatic" in capital cases. *Cf. Lane v. State*, CR-2022-0720, 2024 WL 5182373, at *12 (Ala. Crim. App. Dec. 20, 2024); *see also infra* p.5 n.3. (Already, courts were required to appoint new counsel for an indigent entitled to counsel on appeal when trial counsel withdraw, Ala. R. Crim. P. 6.4(d), and the FJA made the process equally seamless for the appointment of postconviction counsel.)

The process also has a variety of failsafe measures. If a petitioner's entitlement to counsel is not clear, a court may appoint counsel for the very "purpose of helping the court determine [the petitioner's] indigency." *State v. Baker*, 172 So. 3d 860, 863 (Ala. Crim. App. 2015). If a defendant resists an appointment, courts must ensure "the defendant knowingly, intelligently, and voluntarily desires to forgo" counsel, Ala. R. Crim. P. 6.1(b), and may appoint "standby counsel" "out of an abundance of caution," *e.g.*, *State v. Abernathy*, 394 So. 3d 1109, 1111 (Ala. Crim. App. 2024). A court must "inform the defendant that the waiver may be withdrawn and counsel appointed … at any stage of the proceedings." Ala. R. Crim. P. 6.1(b). Finally, if appointed counsel fails to file a timely petition for postconviction relief, courts can appoint "new and different counsel" and reset the prisoner's filing deadline. Ala. Code §13A-5-53.1(f)(3).

In the event that the court makes a "determination of … nonindigency," a prisoner can move for reconsideration based on new information or a change in circumstances. Ala. R. Crim. P. 6.3(c).[2] "A motion for redetermination of indigency may be made at any subsequent stage of the proceedings; it is not a one-time

[2] Although "Rule 32 postconviction proceedings are considered civil in nature," they "are governed by the Rules of *Criminal* Procedure." *Ex parte Jenkins*, 972 So. 2d 159, 162 (Ala. 2005) (citing Ala. R. Crim. P. 32.4).

determination." Ala. R. Crim. P. 6.3 cmt. If a petitioner is dissatisfied with a trial court's ruling, he can seek immediate review through a writ of mandamus, or he can appeal the order after final judgment. Although it is exceedingly rare for a request for postconviction counsel to be denied,[3] a finding of nonindigency more commonly occurs when a petitioner tries to avoid paying filing fees, *i.e.*, to proceed *in forma pauperis*. In that context, the appellate courts "routinely" reverse nonindigency rulings. *Ex parte Cook*, 202 So. 3d 316, 323-24 & n.7 (Ala. 2016) (Moore, C.J., concurring in part) (collecting cases); *see also Ex parte Hurth*, 764 So. 2d 1272 (Ala. 2000) (mandamus directing trial court to grant *in forma pauperis* status); *Ex parte Hamm*, 785 So. 2d 1126, 1128 (Ala. 2000) (same). Mandamus may be available even in the absence of a final ruling from the trial court on the petitioner's indigency. *Ex parte Ward*, 957 So. 2d 449, 454 (Ala. 2006).

The Alabama Supreme Court has said that "[t]o impose any financial consideration between an indigent prisoner and the exercise of his right to sue for his liberty is to deny that prisoner equal protection of the laws." *Ex parte Hurth*, 764 So. 2d at 1274. Accordingly, the State will sometimes support mandamus or reversal where a trial court erred in denying indigency status. *See, e.g.*, *Ex parte Ferrell,* 819 So. 2d 83, 83 (Ala. Crim. App. 2001); *Ex parte Anderson*, 161 So. 2d 507, 508 (Ala. Ct. App. 1964). And in recent years, the State has routinely filed motions

[3] According to a brief filed by the Equal Justice Initiative, "*every* death row prisoner in Alabama who has timely filed a Rule 32 petition [for postconviction relief] has been appointed counsel when counsel has been requested. The State of Alabama has *always* ensured that death row prisoners have counsel during Rule 32 proceedings once they timely filed their petition and requested counsel." Br. of Appellant, *Lane v. State*, CR-2022-0720, 2022 WL 22258774, at *15-16 (Ala. Crim. App. filed Oct. 19, 2022) (emphasis added).

prompting courts to appoint postconviction counsel soon after the entry of a death sentence. *See, e.g.*, *State v. Perez*, CC-2023-002829, DE142 (Mobile Cnty. Cir. Ct. Mar. 29, 2024) (filed eleven days after sentencing); *State v. Williams*, CC-2022-000210, DE148 (Russell Cnty. Cir. Ct. Apr. 30, 2024) (same); *State v. Mitchell*, CC-2020-000001, DE948 (Conecuh Cnty. Cir. Ct. June 26, 2024) (filed one day after sentencing); *State v. Brown*, CC-2021-002762, DE164 (Madison Cnty. Cir. Ct. Jan. 19, 2024) (filed seven days after sentencing).[4]

B. Alabama has a mechanism for compensating and paying counsel appointed to represent indigents. By statute, appointed counsel "shall be entitled" to a fee approved by OIDS. Ala. Code §§15-12-21(d), 15-12-22(c)(1), 15-12-23(d). Rates vary based on the stage of proceeding, and the Legislature periodically revisits them. *See, e.g.*, Act 2024-161; Act 2011-678; Act 99-427. The current schedule provides $120 per hour for trial work in a capital case, Ala. Code §15-12-21 (eff. Oct. 1, 2024); $85 per hour for an appeal, *id.* §15-12-22; and $70 per hour for postconviction proceedings, *id.* §15-12-23. There is no limit on the total fee for capital trials, *id.* §15-12-21(d)(1), and for postconviction proceedings, OIDS may waive the $1,500 fee limit "for good cause shown," *id.* §15-12-23(d). Counsel are also "entitled to be reimbursed for any nonoverhead expenses reasonably incurred in the representation of his or her client," such as the costs of "experts, investigators, and

[4] The State has strong reason to honor its promise to provide counsel to indigent petitioners facing capital sentences. For one, any interruption in representation can cause a delay, which "for its span, is a commutation of a death sentence to one of imprisonment." *Bowles v. DeSantis*, 934 F.3d 1230, 1248 (11th Cir. 2019). For another, a failure to appoint counsel can sometimes render the postconviction process "ineffective to protect the rights of the applicant," excusing the prisoner's duty to exhaust state remedies before seeking habeas corpus in federal court. 28 U.S.C. §2254(b)(1)(B)(ii); *see, e.g.*, *Hollis v. Davis*, 941 F.2d 1471, 1475 (11th Cir. 1991); *Slater v. Chatman*, 147 F. App'x 959 (11th Cir. 2005).

others rendering indigent defense services to be used by counsel." *Id.* §15-12-23(d); *cf.* Ala. R. Crim. P. 6.4(g). "Simple computation allows a general assessment of the remuneration postconviction capital counsel may be afforded in [Alabama.] … [Given] the number of hours in a full year of work is 2000" and Alabama's "maximum hourly rate of [$70], postconviction counsel … would receive [$140,000 for a year's work." *Cf.* 85 Fed. Reg. 20705, 20713-14 (Apr. 14, 2020).

It is easy for appointed counsel to receive compensation for their services and reimbursement for expenses. OIDS has a one-page claim form available online,[5] which is submitted to OIDS, reviewed and approved, and then sent for processing to the State Comptroller (also within the Alabama Department of Finance). *See* Ala. Code §§15-12-21(f), 15-12-22(c), 15-12-23(e). OIDS has established regulations adding further details and guidance on the reimbursement process. *See, e.g.*, Ala. Admin. Code §355-9-1-.04 (time limits for fee declarations; permitting interim billing); *id.* §355-9-1-.05 (providing for reconsideration in the event of a dispute); *id.* §355-9-1-.06 (billing standards); *id.* §355-9-1-.07 (regarding the employment of experts, court reporters, and investigators). Attorneys dissatisfied with their compensation can seek relief from the Board of Adjustment, which has a history of approving fee petitions for amounts in excess of statutory limits.[6]

This mechanism satisfies 28 U.S.C. §2265, the plain text of which "requires only … 'compensation'" and "payment of … expenses" with "no qualifier[s]," "leaving

[5] *See, e.g.*, Form AFD-5, Attorney's Fee Declaration, OIDS (rev. Oct. 2024) finance.alabama.gov/media/0e1oxlfv/afd-5-adult-after-10-1-2024.pdf.

[6] *See, e.g.*, Appellants' Opening Brief, *Butler v. Parks*, No. 1190043, 2020 WL 1080384, at *7 (Ala. Feb. 3, 2020) (citing affidavit of OIDS Director Roberts).

determination of the level of compensation to the states." 73 Fed. Reg. 75327, 75331 (Dec. 11, 2008); *but see* 33 Op. O.L.C. 402, 419-21 (2009) (defending the U.S. Attorney General's prerogative "to evaluate the adequacy of attorney compensation" despite "no language specifically authorizing" it). But even under the Justice Department's stricter 2013 rule, Alabama's rate for postconviction counsel is "presumptively adequate" because it "is comparable to … [that] of appointed counsel in State appellate … proceedings in capital cases." 28 C.F.R. §26.22(c)(1)(iii) (2013). By reimbursing other expenses reasonably incurred, such as investigators and experts, Alabama's system also satisfies the Attorney General's interpretation of "reasonable litigation expenses." 28 C.F.R. §26.22(d) (2013). In any event, Alabama's mechanism should be "deemed adequate" because it is "reasonably designed to ensure the availability for appointment of counsel who meet State standards of competency." *Id.* §26.22(c)(2). And, as a matter of fact, almost no one facing a death sentence proceeds unrepresented in postconviction cases in Alabama. *See supra* n.3.

Thus, Alabama "has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners who have been sentenced to death." 28 U.S.C. § 2265(a)(1)(A).

II. Alabama provides standards of competency for the appointment of counsel in capital postconviction proceedings.

The Office of Indigent Defense Services has adopted attorney qualifications for appointed counsel in every kind of case—from capital murder to traffic

violations. These qualifications are "mandatory." Ala. Admin. Code §335-9-1-.08. For capital murder trials, OIDS maintains a statewide roster of attorneys certified to accept appointments.[7] Under the regulation, postconviction proceedings are treated as appeals, and to be appointed for an appeal, an attorney must:

> 1. Be a member in good standing with the Alabama State Bar, and
>
> 2. Must complete a minimum of six (6) hours per year of continuing legal education credits, approved by the Alabama State Bar, in criminal law beginning after the attorney is appointed or selected.
>
> […]
>
> [And] an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney … [which] should take into account the following factors:
>
> 1. The amount of appellate experience possessed by the attorney; and
>
> 2. The degree of familiarity with the Rules of Appellate Procedure, Rules of Professional Conduct and the current criminal practice and procedure in Alabama.

Id. §335-9-1-.08(1)(a), (j). Additionally, appointed counsel must manage their caseloads "to give each client the time and attention necessary to ensure effective representation." *Id.* §355-9-1-.10. Attorneys doing appeals and postconviction work should limit their caseloads to "[t]hirty-six (36) appeals to an appellate court considering a case on a record and on briefs per attorney per year." *Id.* §355-9-1-.10(f). Public defenders must meet even stricter experience and residency requirements. *Id.* §355-9-1-11.

[7] Memorandum from Chris E. Roberts, OIDS Director, to Ala. Judiciary & Attorneys Receiving Appointments as Lead or Associate Counsel in Capital Murder Cases: *Required Attorney Qualifications for Capital Murder Appointments* (June 11. 2018), finance.alabama.gov/media/iomhzdbd/capitalmurderattorneyqualifications.pdf.

Trial courts can apply additional standards of competency for appointed attorneys in capital cases, and historically, many have done so.[8] For example, in 2005, the Alabama Association of Circuit Court Judges adopted the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.[9] "The purpose of their adoption … is so that an optimum standard can be set" for capital defense work in Alabama. *Id.* The association resolved to "adhere[] … as closely as is practical" to the ABA's guidelines on "the qualification and experience of defense counsel appointed in capital cases." *Id.* In turn, the ABA recommends that "every attorney representing a capital defendant" is licensed, has "demonstrated a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases," and has satisfied certain training requirements.[10] The ABA has specific guidelines applicable to postconviction counsel in capital cases, *id.* at 1079-80, including a section of commentary on seeking collateral relief in state and federal court, *id.* at 1085-87.

Accordingly, there exist "standards of competency for the appointment of counsel" in Alabama postconviction proceedings brought by indigent prisoners who

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[8] As a result of the 2006 amendments to 28 U.S.C. §2261, there is no "requirement, express or implied, that any particular organ of government establish the mechanism for … providing standards of competency—States may act through their legislatures, their courts, through agencies such as judicial councils, or even through local governments." 33 Op. O.L.C. at 416-17 (quoting 152 Cong. Rec. 2446 (Mar. 2, 2006) (statement of sponsor Sen. Kyl)).

[9] Ala. Ass'n Cir. Ct. Judges, Memorandum (Jan. 21, 2005), www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/Standards/State/alabama-resolution-for-aba-guidelines-2007.pdf.

[10] Am. Bar Ass'n, *Guidelines for the Appointment and Performance of Capital Counsel in Death Penalty Cases* §5.1, *reprinted in* 31 Hofstra L. Rev. 913, 961-62 (2003). Previously, the ABA emphasized "quantitative measures of attorney experience," but it now "focuses on counsel's ability to provide high quality legal representation." *Id.* at 962. "Superior post-conviction death penalty defense representation has often been provided by members of the private bar who did not have prior experience in the field but who did have a commitment to excellence." *Id.* at 964 n.111.

have been sentenced to death. 28 U.S.C. §2265(a)(1)(C). That is all that is needed for certification by the plain text of the statute. *Id.* §2265(a)(3) ("There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter."); *see also* 73 Fed. Reg. at 75329 ("Chapter 154 does not involve the Attorney General in assessing or setting standards for the performance of defense counsel in state postconviction proceedings. Rather, the Attorney General's role is limited …, [and] the Attorney General has no discretion in defining the requirements that states must satisfy to achieve chapter 154 certification."); *cf.* 28 C.F.R. §26.22 (2008) (allowing just "any attorney … to represent indigent capital defendants … would not meet the requirement").

In 2009, the Office of Legal Counsel interpreted the statute, relying on *Brand X* deference, *Chevron* deference, and legislative history to conclude that the Attorney General has "interpretive authority" "to provide a reasonable interpretation of the word 'competent.'" 33 Op. O.L.C. at 408, 408 n.3, 411. Having announced such ambiguity,[11] OLC glossed over the plain meaning and structure of Chapter 154 to confer new powers on the Attorney General at the expense of the States.[12] Regardless, Alabama satisfies the rule that followed because its standards

[11] The unreasoned assertion of ambiguity is belied by OLC's statement *in the same opinion* that applying "traditional tools of statutory construction" could yield a fair definition of "competent counsel." *Id.* at 418 & n.7.

[12] OLC's opinion strained the text in more ways than one. For instance, reading Chapter 154 to permit a federal standard of competency would make superfluous the requirement that States have their own standards, 28 U.S.C. §2265(a)(1)(C). In other words, why would state standards matter to Congress if the States would be held to a federal standard anyway? Further, any attempt to define a federal benchmark (such as the 2013 rule) is not "cooperative federalism," *contra* 33 Op. O.L.C. at 410, but rather executive overreach. The 2013 rule sought to micromanage state justice systems just like federal courts had been doing before the 2006 amendments. *Id.* at 414 n.5 (collecting cases); *see also id.* at 415 (conceding that the "sponsors … intended to bring about an important change").

"reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases." 28 C.F.R. §26.22(b)(2) (2013). Among other things, OIDS mandates that Alabama courts consider a potential appointee's "amount of appellate experience" and "familiarity with … current criminal practice and procedure," Ala. Admin. Code §355-9-1-.08(1)(j). And those factors may be informed in practice by the ABA Guidelines for capital cases, which were adopted by the Alabama Association of Circuit Court Judges. While Alabama does not *require* a certain number of years of practice before an attorney's appointment (which may be what the Department meant by its first criterion for "presumptively adequate" standards), the result is the same: even a "presumptively adequate" system may permit "counsel whose background, knowledge, or experience would otherwise enable them to properly represent the petitioner," 28 C.F.R. §26.22(b)(1)(i) (2013). Consistent with the ABA Guidelines, *see supra* n.9, which OLC has endorsed in this context, Op. O.L.C. at 418 n.7, 420, Alabama has chosen a case-by-case assessment of postconviction counsel's abilities rather than a blunt quantitative measure.

III. Alabama's qualifying mechanism was established by 2016.

Since 1963, Alabama has had "a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners who have been sentenced to death." 28 U.S.C. §2265(a)(1)(A). But the State appreciates that the Department of Justice has understood "the phrase 'competent counsel' in section 2265(a)(1)(A) … as a reference to the standards of counsel that the states are

required to adopt by section 2265(a)(1)(C)." 73 Fed. Reg. at 75331. That reading makes the date for certification depend on when the State first adopted *both* an appointment mechanism *and* standards of competency.[13]

For half a century, the indigent-defense statutes in Alabama contained no express competency standards for appointed counsel, public defenders, and contract counsel, which were left to local control. Each judicial circuit handled appointments based on the needs of the circuit and the membership of the local bar. According to the authors of the 2006 amendments to Chapter 154 (and the Office of Legal Counsel), those acts of "local governments" could count for certification. 33 Op. O.L.C. at 417 (quoting Sen. Kyl); *see also* 85 Fed. Reg. at 20717 (crediting a State's "customary practice" toward "satisfaction of chapter 154's requirements"). But there are 41 circuit courts in Alabama, and it may be difficult to ascertain the standards applied by each of them decades ago.

Consequently, the State requests certification effective January 4, 2016, the date on which Alabama's current statewide standards were "established" by

[13] With respect, the Attorney General may decide to reconsider its prior interpretation, which is in tension with the structure of the statute. Section 2265(a)(1) has three elements. The Attorney General must determine (A) whether the State "established a mechanism," (B) when the "mechanism described in subparagraph (A) was established," and (C) whether the State "provides standards of competency." The placement of the date inquiry after (A), referencing only (A), suggests that the time when such standards (C) were adopted is not relevant. Moreover, the determination in (A) is phrased in the past tense, whereas (C) asks in the present tense whether the State currently *provides* standards of competency. *Cf. Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022) (applying the "meaningful-variation canon"). If Congress had wanted the Attorney General to decide also when the standards of competency were adopted, it could have easily said so. Further, despite the overall thrust of OLC's 2009 opinion, it provides some support for Alabama's reading, describing "three distinct and independent determinations," 33 Op. O.L.C. at 407, which could not be true if (A) incorporated (C) by reference.

In any event, Alabama's mechanism should be certified with an effective date of 2016 under the Department's 2008 reading of the statute.

regulation. 28 U.S.C. §2265(a)(1)(B); *see supra* §II; Ala. Admin. Code §355-9-1-.08 (filed Nov. 18, 2015; eff. Dec. 23, 2015; operative Jan. 4, 2016).

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AEDPA reflects Congress's judgment that sovereign States offering fulsome avenues for postconviction relief should not be required to defend lawful convictions and sentences against redundant collateral attacks in federal court. Unfortunately, it is still too common that decades of "waste and futility" follow cases in which "every lawyer, every judge and every juror was fully convinced of the defendant's guilt from the beginning to the end." Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 145 n.12 (1970); *see also* 85 Fed. Reg. at 20719 ("[T]he average delay between imposition and execution of a capital sentence has increased, standing at around 20 years (243 months) at the end of 2017."). Victims, survivors, their loved ones, and the American public deserve a better justice system. Certifying Alabama for AEDPA's special habeas corpus procedures would be a step in the right direction.

CONCLUSION

Alabama satisfies the requirements for certification under 28 U.S.C. §2265.

Respectfully submitted,

STEVE MARSHALL
Attorney General

EDMUND G. LACOUR JR.
Solicitor General

ROBERT M. OVERING
Deputy Solicitor General

STATE OF ALABAMA
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36104
(334) 242-7300
Edmund.LaCour@AlabamaAG.gov

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