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May 15, 2026

The Honorable Todd Blanche
Acting Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

Re: Comments on proposed rulemaking titled "Certification Process for State Capital Counsel Systems" by the Attorneys General of the State of Alabama and 15 Other States; Docket No. OAG198; AG Order No. 6678-2026

Dear Acting Attorney General Blanche,

Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Ohio, South Carolina, South Dakota, and Texas strongly support the proposed rulemaking. In enacting the Antiterrorism and Effective Death Penalty Act of 1996, Congress recognized that federal habeas review of state convictions intrudes on state sovereignty and forestalls justice, especially in capital cases. Chapter 154 sought to address the unique incentive of capital defendants to prolong the judicial process. Yet for thirty years, Chapter 154's special procedures have never been used—despite that many States qualify for them and despite that the problem of judicial delay has only grown worse.

The Department's current regulations are part of the problem. In 2005, Congress took the power to certify under Chapter 154 from the federal courts because they had "set[ ] the bar … so high as to deter states from [even] attempting … to seek certification." 73 Fed. Reg. 75327, 75332 (Dec. 11, 2008); *Spears v. Stewart*, 283 F.3d 992 (9th Cir. 2002). At the same time, Congress clarified that there shall be "no requirements for certification … other than those expressly stated" in the statute. 28 U.S.C. § 2265(a)(3). The Department added new requirements anyway, 78 Fed. Reg. 58160 *et seq.* (Sept. 23, 2013), mistaking "how statutory interpretation works," *see* 50 Op. O.L.C. __, at *3 (Feb. 18, 2025), reproducing the Ninth Circuit's errors, and venturing well beyond the agency's role "to implement the certification *procedure*," 28 U.S.C. § 2265(b) (emphasis added). The Department had no right to hold Chapter 154 hostage in an effort to "micromanage" state judiciaries. 50 Op. O.L.C. at *4.

The proposed rulemaking would not only realign the certification process with the statutory text and design; it would help "restore" the promise of swift justice for

the most heinous crimes. *Restoring the Death Penalty and Protecting Public Safety*, Exec. Order No. 14164 (Jan. 20, 2025). The undersigned States strongly support it.[1]

DISCUSSION

I. Delay is endemic to federal habeas review of state capital cases.

The Department reports that "the average time on death row" is "21 years." 91 Fed. Reg. 12526. That number is larger for many States, especially those that have faced significant method-of-execution litigation, those that have had difficulty securing lethal-injection drugs due to pressure campaigns, and those with well-heeled death-penalty abolition groups in their States. The State of Alabama, for instance, has executed multiple prisoners in recent years who had spent over *three decades* in custody.[2] This, despite state law that a capital murderer "shall be executed … no[ ] more than 100 days from the date of sentence." Ala. Code § 15-18-82(a).

Federal habeas review is the primary impediment to timely enforcement of the death penalty. Not long ago, if a judge took "18 months [to decide] …, you would think there's some merit to the underlying claim." *Cf.* Oral Arg. Tr. 19 (Kennedy, J.), *Maples v. Thomas*, No. 10-63 (Oct. 4, 2011). But now many States would be grateful for the expedition if a court rejected even the most frivolous petition in two years. *See* M. Falkoff, *The Hidden Costs of Habeas Delay*, 83 U. Colo. L. Rev. 339, 391 (2012) (observing that in the slowest districts, a quarter of *non-capital* habeas cases take longer than two years). In capital cases, extreme delays have become "typical," *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019), despite federal law requiring that district courts "*shall expedite* the consideration of any action brought under chapter 153." 28 U.S.C. § 1657, *inc'g by ref.* § 2241 *et seq.* (emphasis added).

AEDPA's amendments to Chapter 153 addressed one kind of delay by forcing most prisoners to file within a year of the end of state proceedings. 28 U.S.C. § 2244(d)(1). Before 1996, prisoners could more easily sandbag—withholding claims for strategic reasons until a date of their choosing. But at least in the pre-AEDPA

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[1] Some of the undersigned States have pending applications for Chapter 154 certification, and it is their understanding that the Department intends to review their requests under the preexisting regulations. *See, e.g.*, Ltr. from Ass't Att'y Gen. Daniel Burrows to Att'y Gen. Dave Yost (Mar. 27, 2026), www.justice.gov/olp/media/1438806/dl?inline. States with pending applications support the rulemaking, but they also meet the current regulations, 28 C.F.R. §§26.20-.23, and they urge the Department to approve their requests as soon as practicable.

[2] In 2025, Alabama executed Anthony Boyd, guilty of a 1993 murder, *Attorney General Steve Marshall's Statement on the Execution of Convicted Murderer Anthony Todd Boyd*, Oct. 23, 2025, www.alabamaag.gov/attorney-general-steve-marshalls-statement-on-the-execution-of-convicted-murderer-anthony-todd-boyd/; Gregory Hunt, guilty of a 1988 murder, *Attorney General Steve Marshall Issues Statement on the Execution of Convicted Murderer Gregory Hunt*, June 10, 2025, www.alabamaag.gov/attorney-general-steve-marshall-issues-statement-on-the-execution-of-convicted-murderer-gregory-hunt/; and Demetrius Frazier, guilty of a 1991 murder, *Attorney General Steve Marshall Statement on the Execution of Convicted Murderer Demetrius Frazier*, Feb. 6, 2025, www.alabamaag.gov/attorney-general-steve-marshall-statement-on-the-execution-of-convicted-murderer-demetrius-frazier/.

days, five years of delay was considered presumptively prejudicial, and States could move to dismiss for laches. *See, e.g.*, *Spalding v. Aiken*, 460 U.S. 1093, 1095 & n.1 (1983) (statement of Burger, C.J.); *Hill v. Linahan*, 697 F.2d 1032, 1035 & n.3 (11th Cir. 1983); Rule 9(a), Rules Governing § 2254 Cases, advisory committee's note (1976 amend.). Today, the exact same length of delay can occur *after* a habeas petition is filed, and there is next to nothing States can do about it.[3]

Generally speaking, States cannot carry out executions until the first round of federal habeas is completed. In *Barefoot v. Estelle*, the Supreme Court held that while a prisoner's first petition is pending, "a court of appeals, where necessary to prevent the case from becoming moot by the petitioner's execution, should grant a stay of execution." 463 U.S. 880, 893-84 (1983). In *Lonchar v. Thomas*, the Court extended the rule such that a district court "must issue a stay to prevent the case from becoming moot" if the court "cannot dismiss [the prisoner's first] petition on the merits before the scheduled execution." 517 U.S. 314, 320 (1996). Because summary dismissal is exceedingly rare, merely filing a petition effectively triggers an automatic stay. As a result, habeas review has become an "obstacle to execution" such that many States "set an execution date" only "after the United States Supreme Court has denied certiorari." *McNair v. Allen*, 515 F.3d 1168, 1175-76 (11th Cir. 2008).

II. Delay imposes costs on States, victims, the public, and prisoners.

As the Supreme Court has said time and again, "the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). As for the State's interest, "[f]rom the beginning of our country, criminal law enforcement has been primarily a responsibility of the States." *Kansas v. Garcia*, 140 S. Ct. 791, 806 (2020). Mere *review* of state convictions in federal court "intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). It "frustrates both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998) (citation modified). Federal habeas review has become largely insensitive to the State's "powerful and legitimate interest in punishing the guilty," *id.* at 556 (quoting *Herrera v. Collins,* 506 U.S. 390, 403, 417 (1993)), so prisoners receive painstaking review even in cases where "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).

[3] Some States have responded to undue delay by seeking mandamus relief from the courts of appeals—to varying degrees of success. *See, e.g.*, Order, *In re Mitchell*, No. 24-4032 (6th Cir. Oct. 8, 2025), DE 15-1 at 1, 4 (denying mandamus in "case [that] lingered in the federal district court for over a quarter century"); Petition, *In re Warden*, No. 26-10668 (11th Cir. Mar. 4, 2026), DE1-1 at 1 (seeking mandamus to compel ruling after sixteen years).

Delaying the enforcement of criminal sentences also undermines "the criminal law's retributive and deterrent functions," *Thompson*, 523 U.S. at 555, making society more dangerous. Worse still, federal courts will readily attribute error to state judgments *decades* after the crime, causing violent convicts to "go free merely because the evidence needed to conduct a retrial has become stale or is no longer available." *Edwards v. Vannoy*, 593 U.S. 255, 263 (2021). Delay does not improve a prisoner's habeas petition, but it may "reward the accused" with the unearned benefits of the "[p]assage of time, erosion of memory, and dispersion of witnesses." *Engle v. Isaac*, 456 U.S. 107, 127-28 (1982).

The victims of crime, their friends, and their family members often suffer enormously when justice is delayed. "In part, capital punishment is an expression of society's moral outrage," which "is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976). Federal delay sends the message that "organized society is unwilling or unable to impose upon criminal offenders the punishment they 'deserve.'" *Id.* Without "an assurance of real finality," society and the victims often cannot "move forward knowing the moral judgment will be carried out." *Thompson*, 523 U.S. at 556. "To unsettle these expectations is to inflict a profound injury[.]" *Id.* at 556; *accord Bowles v. DeSantis*, 934 F.3d 1230, 1247 (11th Cir. 2019). And every day of delay exacerbates those harms by "extend[ing] the ordeal of trial for both society and the accused." *Isaac*, 456 U.S. at 127.

Defendants with worthwhile habeas claims are also harmed by delay. If an inmate's conviction violates the Constitution, then every day that passes due to judicial delay does him a disservice. *Cf. Jackson v. City of Cleveland*, 64 F.4th 736, 748 (6th Cir. 2023); *Bleitner v. Welborn*, 15 F.3d 652, 653 (7th Cir. 1994); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978) ("The writ … is reduced to a sham if the trial courts do not act within a reasonable time."). Some jurists have posited that *delay itself* can make capital punishment "cruel and unusual." *See, e.g.*, *Foster v. Florida*, 537 U.S. 990 (2002) (Mem.) (Breyer, J., dissenting); *Lackey v. Texas*, 514 U.S. 1045 (1995) (Mem.) (Stevens, J., dissenting); *but see Knight v. Florida*, 528 U.S. 990 (1999) (Mem.) (Thomas, J., concurring). Delay in capital cases benefits no one except prisoners with meritless claims; they receive an unjust windfall.

III. Congress enacted Chapter 154 to curb delay and promote federalism, but the Department has erected obstacles to certification.

The whole point of AEDPA was "to reduce delays in the execution of state and federal criminal sentences, particularly in capital cases." *Woodford v. Garceau*, 538 U.S. 202, 206 (2003); *accord Shoop v. Twyford*, 596 U.S. 811, 818 (2022) (same). But however effective Chapter 153 has been in reducing intrusions into state justice, it was not enough. Fortunately, Congress anticipated as much, enacting Chapter 154 as an additional check on federal habeas review in capital cases. Unfortunately, no State has been able to enjoy its benefits. The undersigned States support the

Department's deregulatory effort to restore the bargain Congress envisioned in Chapter 154 and its amendment.

After the federal courts stymied state efforts to make use of Chapter 154 in the late 1990s and early 2000s, "these special procedures for capital cases appear[ed] to be a candidate for the habeas history books." John H. Blume, *AEDPA: The Hype and the Bite*, 91 Cornell L. Rev. 259, 274-75 (2006); *accord* 73 Fed. Reg. 75327, 75332 (Dec. 11, 2008). But in 2006, Congress stepped in again—assigning certification duties to the Attorney General, 28 U.S.C. § 2265(a)(1), and clarifying that he could not add "requirements … other than those expressly stated" in the statute, 28 U.S.C. § 2265(a)(3). Nonetheless, the Office of Legal Counsel soon asserted that the Attorney General had "interpretive authority" to add new requirements so long as he first finds "ambiguity" or "[un]defined" language in the statute. 33 Op. O.L.C. 402, 408, 411 (2009) (citing *Chevron v. Nat. Res. Def. Council,* 467 U.S. 837 (1984)), *withdrawn* 2025 OLC Opinion, 50 Op. O.L.C. __ (Feb. 18, 2025). With these new powers declared, the Attorney General added new conditions by defining the terms "appointment" and "indigent"; requiring that competency standards "reasonably assure a level of [certain] proficiency"; and requiring that States set compensation "to ensure the availability for appointment of counsel who meet State standards of competency" as defined by the regulations. 73 Fed. Reg. 58160, 58183. The Department did not heed comments that the regulations would "unduly limit[ ] State discretion." *E.g.*, 73 Fed. Reg. 58170, 58712. And while purporting to clarify the statute, the regulations introduced vagueness to what were "clear and familiar concepts." 91 Fed. Reg. 12528.

If States were "deter[red]" by the hostile judicial decisions a decade prior, 73 Fed. Reg. 75332, they had no reason to believe they would find a more receptive audience in the Attorney General after the 2013 Regulations. This was the opposite of what Congress intended. As a result, no State has been certified aside from Arizona—for a brief moment. And the Department's decision not to defend its certification of Arizona—though premised in part on Arizona's lack of cooperation—sent the message to other States not to try.

IV. Invoking *Chevron* deference and bad statutory interpretation, the 2013 Regulations added unlawful "requirements" and exceeded the Attorney General's statutory authority to set "procedure."

As the Department recognized in 2013: "Had Congress … believed that more specific guidance was necessary, it could have amended the statutory scheme to specify more detailed requirements that State mechanisms must meet when it transferred the certification function to the Attorney General—but Congress did not do so." 73 Fed. Reg. 58172. Somehow the Department still drew the wrong inference. Congress's decision not "to specify more detailed requirements" was not an invitation for the Department to do so. In fact, Congress unambiguously directed the Department *not* to add conditions to certification. 28 U.S.C. § 2265(a)(3). The 2013 Regulations rest on undisciplined statutory interpretation, bygone assumptions

about deference to administrative agencies, and an apparent desire to make certification more difficult. They should be repealed in their entirety.

"As always, we start with the statutory text," *Garland v. Cargill*, 602 U.S. 406, 415 (2024), and here the text is unambiguous. The Attorney General's role is to "determine" whether a State has "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"; when such mechanism was established; and whether the State has standards for competency. 28 U.S.C. § 2265(a)(1). The Attorney General has regulatory authority to "implement" this "procedure" but cannot add "requirements for certification … other than those expressly stated." 28 U.S.C. § 2265(a)-(b).

That's it. There is no call for the Department to lend its "expertise" to the statutory scheme. *Contra* 33 Op. O.L.C. at 411. There is no "gap for the agency to fill." *Contra id.* There is no indication that Congress even thought the Department should define its terms, which are not "ambiguous" in any event. The Department had no statutory license to supplant choices Congress left to the States with its own.

The 2009 OLC Opinion went awry when it identified "delegated authority" to define terms, "establish a federal minimum standard of counsel competency," and "assess whether [compensation] is adequate" to "ensur[e] that the state mechanism *will result* in the appointment of counsel." 33 Op. O.L.C. at 404 (emphasis added). It is axiomatic that an agency must have "authority delegated by Congress," *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1998), and there is no textual support for the agency's asserted authority here, which the Department conceded. 33 Op. O.L.C. at 408 ("assum[ing]" Department authority in the "absence" of direction as to competency standards); *id.* at 420 (noting "there is no language specifically authorizing the Attorney General to evaluate" compensation). Generally, when Congress "expressly" directs an agency to certain factors, its language "should not be read as implicitly allowing the [a]gency to consider [other factors] anyway." *Michigan v. EPA*, 576 U.S. 743, 755-56 (2015); *cf. Raleigh & G.R. Co. v. Reid*, 80 U.S. 269, 270 (1871) ("[W]hen a statute limits a thing to be done in a particular mode, it includes a *negative* of any other mode."). Lacking textual support, the Department turned to *Brand X* and *Chevron* for the view that "ambiguities … are delegations." 33. Op. O.L.C. at 408-09 (taking the "absence of … explicit direction" to be a "significant" factor in favor of agency power); *accord* 78 Fed. Reg. 58166. The Department's expansive reasoning cannot withstand scrutiny for three reasons.

First, *Loper Bright* ended the "presumption that Congress, when it left ambiguity," intended the agency to exercise "discretion." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 398 (2024). Even where there is ambiguity, it must be "resolve[d]" using "every tool" available to yield "the best reading of the statute." *Id.* at 400. "In the business of statutory interpretation, if it is not the best, it is not permissible." *Id.* That's fatal for the 2013 Regulations not only because they were at war with the text, but because they relied on an assumption of delegated power that the Department is no longer entitled to make. It was error to interpret the statute

"just as agency officials regularly do in other contexts under the … *Chevron* framework." 33 Op. O.L.C. at 411.

It was especially erroneous to invoke *Chevron* where the agency has no "special" knowledge or experience with the subject matter. *Loper Bright*, 603 U.S. at 373. Here, for example, the Department brings nothing special to the decision whether a State appoints "competent" counsel in state post-conviction proceedings. And if there were any doubt, Congress provided for "de novo" review of certification decisions, 28 U.S.C. § 2265(c)(3), which undercuts the assumption that Congress housed the certification decision with the Attorney General out of deference to agency expertise.

Second, the Department's rationale was self-contradictory. On the one hand, to comply with the statute, the Department could not adopt "requirements" not "expressly stated" in the statute. 28 U.S.C. § 2265(a)(3). On the other hand, to invoke *Chevron* deference, the Department had to identify "statutory gap[s]", 33 Op. O.L.C. at 409, 411, to be filled with "the formulation of policy." *Loper Bright*, 603 U.S. at 397. But if the Department had been making policy with the 2013 Regulations, then it surely *was* adopting "requirements" in violation of section 2265(a)(3). At best, Congress's disclaimer should have indicated to the Department that it had not been delegated a substantive role; at worst, the Department's reliance on *Chevron* was a concession that it was engaged in a task forbidden by the statute.

Third, the Department erred in finding ambiguity where none exists. OLC called the word "competent" ambiguous without explanation or textual analysis. 33 Op. O.L.C. at 408. Just because a term is not "defined" does not render it ambiguous. *Id.* The agency seemed to "throw up [its] hands because 'Congress's instructions [had]' supposedly 'run out.'" *Loper Bright*, 603 U.S. at 400. That's no way to interpret a statute, and it's inherently arbitrary because it allowed the Department to invent its own "gaps." In its final rule, for example, the Department implied that the word "appointment" was "ambiguous," which it used to justify requiring States provide for *timely* appointments. 78 Fed. Reg. 58166. But there was no *ambiguity* in the statute about whether timeliness is required. It's not. An agency does not accrue interpretive powers simply by asking a question that the statute does not answer directly.

As a consequence of its erroneous methodology, the Department concluded that it had the power to "specify and apply a substantive Federal standard that State mechanisms must meet to satisfy chapter 154's requirements for certification." 78 Fed. Reg. 58181. But the text forbids "requirements for certification" not "expressly stated" in the statute. 28 U.S.C. § 2265(a)(3). Any "substantive" lawmaking by the agency—adding conditions that States "must meet"—is a requirement for certification and therefore unlawful. Interpreting the statute to permit the creation of new conditions, moreover, would raise concerns under the non-delegation doctrine, which the Department can avoid by cabining its asserted discretion to "the ascertainment of facts," rather than attempting to answer for the Nation what is good lawyering or good pay in state capital post-conviction cases. *Cf. Synar v. United States*, 626 F. Supp. 1374, 1387, 1389 (D.D.C.), *aff'd*, 478 U.S. 714, (1986).

In light of the Department's limited role in determining whether a qualifying mechanism exists, rather than supervising indigent defense in state court, the proposal to certify by adjudication makes a great deal of sense. 91 Fed. Reg. 12528-12529. The Department does not have "sufficient experience" with Chapter 154 certification decisions to justify "hard and fast rule[s]." *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947). And the variety of state mechanisms for appointing post-conviction counsel suggests there may be wisdom in proceeding "on a case-to-case basis." *Id.* at 203.

As to the specific regulatory provisions under review, among the most egregious is the 2013 rule's decision to supplant state competency standards with "the Attorney General's judgment." 91 Fed. Reg. 12527. Even if the Department had been right that the text "alone" does not refer to "a state's standards of competency," 33 Op. O.L.C. at 408, the same conclusion can easily be drawn from the "broader context of the statute as a whole," *Fischer v. United States,* 603 U.S. 480, 486 (2024). One: the statute asks a binary question—"*whether* the State provides standards of competency." 28 U.S.C. § 2265(a)(1)(c) (emphasis added). There's no qualifier like "reasonable" or "robust" or any other indication that Congress believed there should be a federal floor defined by the Attorney General. Two: it would make little sense for Congress to let the Attorney General define competency standards while simultaneously demanding that States "provide[ ]" their own. *Id.* The former would make the latter superfluous for certification purposes. Three: the statute looks nothing like examples of "cooperative federalism," 33 Op. O.L.C. at 410, which "tak[e] a stick to the states," *Train v. Nat. Res. Def. Council*, 421 U.S. 60, 64 (1975), for example, by specifying a "national primary ambient air quality standard," 42 U.S.C. § 7410(a)(1). When Congress amended Chapter 154, it could have easily imposed a national standard of competence for state post-conviction cases. It did not. Instead, it forbade any "requirement[ ]" not found in the text. 28 U.S.C. § 2265(a)(3).

The statute does not allow the Department to add a federal floor for "compensation" either. 78 Fed. Reg. 58179. The Department inferred from Congress's alleged "determination" that "reliance on unpaid volunteers … is insufficient" that "inadequate compensation could similarly fall short in ensuring the availability of competent counsel for appointment." *Id.* Aside from relying on the Department's invented view of congressional purpose, this argument makes no sense. Chapter 154's special procedures apply only where "counsel was appointed pursuant to [the State's qualifying] mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent." 28 U.S.C. § 2261(b)(2). By the time of federal habeas, we already know whether counsel was appointed—and therefore "availab[le]"—to the petitioner. If not, then the special procedures do not apply, and there's no concern that a State would receive the benefits of Chapter 154 in a given case without holding up its end of the bargain. The Department seemed to assume Congress sought to "ensur[e]" appointments in *every* case, but that is not supported in the text. Nor is it necessary for the statutory scheme to work. States already have an incentive to make counsel "availab[le] … for appointment" because

if they do not, Chapter 154's special procedures will not apply. States are also best positioned to determine the level of compensation appropriate in their States.

Drawing on the same background principles of statutory interpretation and administrative law, the Department should proceed to rescind the remainder of the 2013 Regulations as well. The statute does not enable the Department to impose a "timel[iness]" requirement on States, nor can that element be found in any dictionary definition of the word "appointment." 78 Fed. Reg. 58183. The statute does not allow the Department to specify the kinds of "litigation expenses" that must be covered. 78 Fed. Reg. 58184. Finally, the statute does not allow the Department to force States to seek re-certification every five years. 78 Fed. Reg. 58181. None of this is supported by the text and structure of Chapter 154.

CONCLUSION

"There are no requirements for certification … other than those expressly stated" by Congress. 28 U.S.C. § 2265(a)(3). Because the Department's past regulations flouted the statutory text and exceeded the Attorney General's limited power to set "certification procedure," 28 U.S.C. § 2265(b), they must be rescinded. Doing so would begin to restore the promise of Chapter 154 as a way out of the interminable labyrinth that has come to characterize federal habeas, especially in capital cases. The States, the people, and the victims of the most heinous crimes "deserve better." *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019).

The States fully endorse the Department's proposed rulemaking and urge "prompt[ ]" certification decisions for States that satisfy the statutory requirements. Memorandum from Attorney General Pam Bondi to All Department Employees, *Re: Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions* (Feb. 5, 2025); *accord* Exec. Order No. 14164 § 4(b), 90 Fed. Reg. 8463 (Jan. 20, 2025).

Respectfully submitted,

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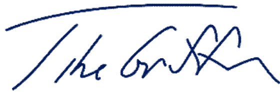

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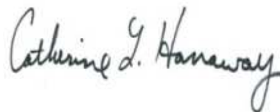

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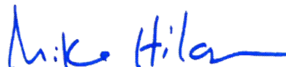

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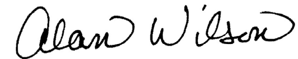

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