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FEB 24 2004  
CLERK U S DISTRICT COURT  
DISTRICT OF ARIZONA  
BY S DEPUTY

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5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 United States of America

9 Plaintiff,

10 v.

11 Luis Cisneros, et al.,

12 Defendants.

CR-03-730-PHX-ROS

**NOTICE OF INTENT TO SEEK  
DEATH PENALTY AS TO  
DEFENDANT PAUL EPPINGER**

13  
14 The United States of America notifies the Court and defendant PAUL EPPINGER, under  
15 Chapter 228 (Sections 3591-3598) of Title 18, United States Code, that if defendant is convicted  
16 of one or more of the intentional killings of Jose Moreno, Sr., and Jose Moreno, Jr., as charged in  
17 Counts Five through Eight, Eleven, and Thirteen through Sixteen of the First Superseding  
18 Indictment, the United States will seek the sentence of death for PAUL EPPINGER as to each  
19 offense.

20 The United States will seek to prove as to defendant PAUL EPPINGER, for each of the  
21 above-listed counts:

- 22 (1) One or more of the statutory proportionality factors set forth by Section  
23 3591(a)(2)(A)-(D) of Title 18, and  
24 (2) One or more of the statutory aggravating factors set forth by Sections  
25 3592(c)(1)-(16) of Title 18.

26 As permitted by Sections 3593(a) and (d) of Title 18, the United States will also seek to prove  
27 certain non-statutory aggravating factors as set forth in this Notice. The United States believes  
28 that the circumstances of the offenses charged in any of the above-listed counts are such that, if

1 the defendant is convicted, a sentence of death is justified under Chapter 228 of Title 18 of the  
2 United States Code.

3 The United States will seek to prove the following factors as justifying a sentence of death  
4 as to each of the above-listed counts.

5 A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)(A)-(D).

6 1. **Intentional Killing.** The defendant intentionally killed the victim named in the  
7 respective count of the First Superseding Indictment. 18 U.S.C. § 3591(a)(2)(A).

8 2. **Intentional Act to Take Life or Use Lethal Force.** The defendant  
9 intentionally participated in an act, contemplating that the life of a person would be taken or  
10 intending that lethal force would be used in connection with a person, other than one of the  
11 participants in the offense, and the victim named in the respective count of the First Superseding  
12 Indictment died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

13 3. **Intentional Act in Reckless Disregard for Life.** The defendant intentionally  
14 and specifically engaged in an act of violence, knowing that the act created a grave risk of death to  
15 a person, other than one of the participants in the offense, such that participation in the act  
16 constituted a reckless disregard for human life and the victim named in the respective count of the  
17 First Superseding Indictment died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

18 B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c).

19 1. **Previous Conviction of Violent Felony Involving Firearm.** The defendant  
20 has previously been convicted of a State offense punishable by a term of imprisonment of more  
21 than one year, involving the use or attempted or threatened use of a firearm against another  
22 person. 18 U.S.C. § 3592(c)(2).

23 2. **Commission of the Offense for Pecuniary Gain.** The defendant committed  
24 the killing of the victim named in the respective count of the First Superseding Indictment as  
25 consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.  
26 18 U.S.C. § 3592(c)(8).

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3. **Substantial Planning and Premeditation.** The defendant committed the killing of the victim named in the respective count of the First Superseding Indictment after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

4. **Multiple Killings or Attempted Killings.** The defendant killed or attempted to kill more than one person in a single criminal episode. 18 U.S.C. § 3592(c)(16).

C. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. § 3593(a)(2).

1. **Participation in Additional Uncharged Murders, Attempted Murders, or Other Serious Acts of Violence.** The defendant participated in the murders of Thomas James, Raul Sanchez, David Gano, Benny Hernandez, and Carol Romero.

2. **Obstruction of Justice.** The victim named in the respective count of the First Superseding Indictment was killed in an effort by the defendant to obstruct justice, tamper with a witness, or in retaliation for cooperating with authorities.

3. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of other persons, including, but not limited to, inmates and correctional officers in an institutional correctional setting, as evidenced by the offenses charged in the First Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice. See *Simmons v. South Carolina*, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the First Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances that demonstrate the defendant's future dangerousness include: his making of specific threats of violence; his long-term pattern of violent criminal conduct; his specific admissions of violence; his continuous efforts to obstruct justice and threaten or kill witnesses; his demonstrated low rehabilitative potential; his demonstrated lack of remorse for his criminal activities which have caused significant damage to multiple communities, numerous victims, and their families; and his membership in and leadership of the New Mexican Mafia, a prison gang that seeks to control the criminal activity inside the Arizona State Prison system and in gang-controlled neighborhoods in urban Arizona communities, which criminal activity the gang

1 enforces through threats of violence and actual violence including aggravated assault, attempted  
2 murder, and murder.

3           4. **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Jose  
4 Moreno, Sr., and Jose Moreno, Jr., and their family as demonstrated by the victims' personal  
5 characteristics as individual human beings and the impact of the death upon the victims' families.  
6 See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991). The United States will present  
7 information concerning the effect of the offenses on Jose Moreno, Sr., and Jose Moreno, Jr., and  
8 their family, which may include oral testimony, a victim impact statement that identifies Jose  
9 Moreno, Sr., and Jose Moreno, Jr. as victims of the offenses and the extent and scope of the injury  
10 and loss suffered by Jose Moreno, Sr., and Jose Moreno, Jr., their family, and any other relevant  
11 information.

12           The United States further gives notice that in support of imposition of the death penalty, it  
13 intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the  
14 offenses of conviction as described in the First Superseding Indictment as they relate to the  
15 background and character of the defendant, PAUL EPPINGER, his moral culpability, and the  
16 nature and circumstances of the offenses charged in the First Superseding Indictment.

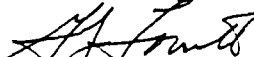
17           Respectfully submitted,

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1 I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed first class to  
2 the following counsel of record this 25<sup>th</sup> day of FEBRUARY, 2004.

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