

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

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|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 98-00311-01-CR-W-GAF |
| |) | |
| EDWIN R. HINESTROZA, |) | |
| |) | |
| Defendant. |) | |

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, by Todd P. Graves, United States Attorney, Jeffrey Valenti, Gregg R. Coonrod, and Kathleen D. Mahoney, Assistant United States Attorneys, all for the Western District of Missouri, pursuant to Title 18, United States Code, Section 3593(a), and notifies the Court and the defendant, Edwin R. Hinestroza, that in the event the defendant is convicted of either Count Two or Count Three of the indictment, both alleging the intentional killing of Julian Colon, the government will seek a sentence of death as to each count for which a sentence of death is authorized.

The United States believes that the circumstances of each charged offense are such that a sentence of death is justified under Chapter 228 of Title 18 of the United States Code and will seek to prove the following aggravating factors as the basis for imposition of the death penalty:

A. Age Qualifying Factor Pursuant to Title 18, United States Code, Section 3591(a)

1. Edwin Hinestroza was not less than eighteen (18) years of age at the time Julian Colon was murdered. [18 U.S.C. § 3591(a)].

B. Threshold Eligibility Factors Enumerated Pursuant to Title 18, United States Code, Section 3591(a)(2)(A) through (D)

1. Edwin R. Hinestroza intentionally killed Julian Colon. [18 U.S.C. § 3591(a)(2)(A)].
2. Edwin Hinestroza intentionally inflicted serious bodily injury which resulted in the death of Julian Colon. [18 U.S.C. § 3591(a)(2)(B)].
3. Edwin Hinestroza intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants of the offense, and Julian Colon died as a direct result of the act. [18 U.S.C. § 3591(a)(2)(C)].
4. Edwin Hinestroza intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Julian Colon died as a direct result of the act. [18 U.S.C. § 3591(a)(2)(D)].

C. Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Section 3592(c)(1) through (16)

1. Edwin Hinestroza committed the murder in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Julian Colon. [18 U.S.C. § 3592(c)(6)].
2. Edwin Hinestroza procured the commission of the murder by payment, or promise of payment, of anything of pecuniary value, that is, the payment of money. [18 U.S.C. § 3592(c)(8)].
3. Edwin Hinestroza committed the murder after substantial planning and premeditation to cause the death of a person. [18 U.S.C. § 3592(c)(9)].
4. Edwin Hinestroza intentionally attempted to kill more than one person in a single criminal episode. [18 U.S.C. § 3592(c)(16)].

D. Non-Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Sections 3592(c) and 3593(a)

1. Edwin Hinestroza poses a threat of future dangerousness, based upon the probability that he would commit criminal acts of violence that would constitute a continuing threat to society, as evidenced for example, by one or more of the following, among others:
 - (a) Edwin Hinestroza has displayed a complete lack of remorse for the killing of Julian Colon;

- (b) Edwin Hinestroza used physical force and threats of violence to collect drug debts and enforce discipline within his drug organization;
- (c) Edwin Hinestroza fled from justice on the night of the offense and remained a fugitive from justice for in excess of five (5) years; and
- (d) When Edwin Hinestroza was ultimately arrested on February 3, 2004, he was still in the business of trafficking narcotics, as evidenced by his possession of:
 - (i) in excess of eight (8) kilograms of cocaine;
 - (ii) approximately thirty (30) ounces of heroin;
 - (iii) approximately \$81,000 in United States Currency; and
 - (iv) a semi-automatic handgun. [18 U.S.C. § 3592(c)]

2. Edwin Hinestroza caused injury, harm, and loss to Julian Colon, Julian Colon's family, including his daughter born after his murder, and Julian Colon's friends, as demonstrated by Julian Colon's personal characteristics as an individual human being. *Payne v. Tennessee*, 111 S.Ct. 2597, 2608-09 (1991). The United States will present information concerning the effect of the offense on the above parties, which may include oral testimony, a victim impact statement, and/or demonstrative

exhibits which detail the extent and scope of the injury and loss suffered by Julian Colon, his family, including his daughter born after his murder, his friends, and any other person or persons who suffered a loss upon Julian Colon's murder. [18 U.S.C. § 3593(a)].

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served this 4th day of May 2005, by electronic notice on those parties having entered their appearance under the Electronic Filing System (ECF), and by U.S. Mail, postage prepaid, on those parties having requested notice by conventional service.

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