

**DECLARATION REGARDING CASES IN
WHICH PRIOR DRUG CONVICTIONS HAVE BEEN
ALLEGED AS AGGRAVATING CIRCUMSTANCES**

1. I currently serve as the Director of the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Office of Defender Services of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.¹

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by internet news searches, by reviewing dockets and by downloading and obtaining indictments,

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases” *Id.* at 50.

pleadings of substance, notices of intent to seek or not seek the death penalty, and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated and is checked for accuracy by consulting with defense counsel. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

4. Prior drug-related convictions have been alleged as a statutory aggravating factor pursuant to 18 U.S.C. §3592 (c)(10)² or 18 U.S.C. §3592 (c)(12)³ as to twenty-seven (27) defendants whom the Attorney General authorized for a federal capital prosecution. Three defendants have had both the (c)(10) and (c)(12) factor alleged in the government's Notice of Intent to seek the death penalty.⁴ There have been ten (10) defendants who have had the

²18 U.S.C. §3592(c)(10) states:

Conviction for two felony drug offenses.— The defendant has previously been convicted of 2 or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

³18 U.S.C. §3592(c)(12) states:

Conviction for serious federal drug offenses.— The defendant had previously been convicted of violating title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise

⁴*United States v. Roy Green* (C.D. CA CR No. 98-337-CBM); *United States v. Carlos Caro* (W.D. VA No. 06 CR 00001) and *United States v. Edgar Garcia* (E.D. TX 1:09-CR-00015-MAC-KFG All).

(c)(10) factor alleged in the Notice of Intent.⁵ Additionally, there have been seventeen (17) defendants who have had the (c)(12) factor alleged in the Notice of Intent.⁶

5. Of the twenty-seven (27) defendants against whom either or both of the (c)(10) or (c)(12) factors were alleged, four were sentenced to death.⁷ Of those, only one was deemed eligible for the death penalty solely on the basis of prior drug convictions.⁸ The other three

⁵*United States v. Roy Green* (C.D. CA CR No. 98-337-CBM); *United States v. Robert Bolden, Jr.* (E.D. MO No. 4:02-CR 0557); *United States v. Thomas Smith* (W.D. MO No. 3:02 CR 05025); *United States v. William Baskerville* (D. NJ No 03-CR-836 (JAP)); *United States v. Raul Robledo* (C.D. CA No. 05 CR 578); *United States v. Azibo and Azikiwe Aquart* (D. CT No. 3:06CR160 (PCD)); *United States v. Carlos Caro* (W.D. VA No. 06 CR 00001); *United States v. Danny Damon Smith* (E.D. VA No. 3:07CR433) and *United States v. Edgar Garcia* (E.D. TX 1:09-CR-00015-MAC-KFG All).

⁶*United States v. Tim Holloway* (M.D. TN No. 3:96 CR 00004); *United States v. Roy Green* (C.D. CA CR No. 98-337-CBM); *United States v. Peter Rollock* (S.D. NY No. 97 CR 1293); *United States v. Guy Westmoreland and Deandre Lewis* (S.D. IL No. 98-CR-3022-WDS); *United States v. Dustin Higgs and Willis Haynes* (D. MD No. 98-0502); *United States v. Walter Church* (W.D. VA No. 00-CR-104); *United States v. Billy Cooper* (S.D. MS No. 01-CR-8); *United States v. Bryant Lakeith Wilson* (W.D. TN No. 01-CR-20041-DV); *United States v. Henry Michael Houston* (C.D. CA No. 02-00938-GHK); *United States v. Kevin Thomas Cassell* (W.D. VA No. 03-CR-13); *United States v. Kenneth McGriff* (E.D. NY No. 04-966); *United States v. George Lecco* (S.D. WV No. 2:05-00107); *United States v. Gerard Price* (E.D. NY No. 05-492); *United States v. Carlos Caro* (W.D. VA No. 06 CR 00001) and *United States v. Edgar Garcia* (E.D. TX 1:09-CR-00015-MAC-KFG All).

⁷*United States v. Dustin Higgs* (D. MD No. 98-0502); *United States v. Robert Bolden, Jr.* (E.D. MO No. 4:02-CR 0557); *United States v. Carlos Caro* (W.D. VA No. 06 CR 00001) and *United States v. Edgar Garcia* (E.D. TX 1:09-CR-00015-MAC-KFG All).

⁸*United States v. Carlos Caro* (W.D. VA No. 06 CR 00001). We have not been able to obtain the jury penalty findings in *United States v. Edgar Garcia* (E.D. TX 1:09-CR-00015-MAC-KFG All).

defendants that were sentenced to death had multiple statutory aggravators found.⁹

I declare under the penalty of perjury under the laws of the United States of America and 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief. Executed this 20th day of December, 2010.

Kevin McNally
Federal Death Penalty Resource Counsel

⁹*United States v. Dustin Higgs* (D. MD No. 98-0502) [(c)(2) violent gun felony, (c)(12) serious federal drug prior, (c)(16) multiple killings and (c)(1j) kidnapping]; *United States v. Robert Bolden, Jr.* (E.D. MO No. 4:02-CR 0557) [(c)(8) pecuniary gain and (c)(10) two felony drug priors] and *United States v. Edgar Garcia* (E.D. TX 1:09-CR-00015-MAC-KFG All) [**unknown**].