

m Noto	7671	Date	# of pages ▶
Post-Ite Fax Note		From	Aton
THM OT		100.TR	100 Kine
Co/Dept.		Phone #	- CC
Phone #			WIT
Fex#		Fax #	

Peter Schoen!

IN THE DISTRICT COURT OF THE UNITED STATES

20 JUN 21 福田: 25

### FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	
Plaintiff,	
vs.	CRIMINAL NO. 95-538-MV
JOHN ACOSTA,	(
Defendant.	,

# NOTICE OF INTENT TO SEEK DEATH PENALTY AS TO DEFENDANT JOHN ACOSTA

The United States of America notifies the Court and defendant JOHN ACOSTA under 18 U.S.C. § 3591(a)(2), 18 U.S.C. § 3592(c), and 18 U.S.C. § 3593(a), that if defendant is convicted for one or more of the murders of Patrick Garcia and Eugene Bryant, as charged by Counts Five and Seven of the Second Superseding Indictment, the Government will seek the sentence of death for JOHN ACOSTA as to each offense.

As required by 18 U.S.C. §§ 3593(a), (d), and (e), the United States will introduce evidence establishing beyond a reasonable doubt:

- a. One of the statutory aggravating factors set forth by 18 U.S.C. § 3591(a)(2), and
- b. One or more of the statutory aggravating factors set forth by 18 U.S.C. §§ 3592(c)(1)-(16).

As permitted by 18 U.S.C. §§ 3593(a) and (d), the United States will also seek to prove the non-statutory aggravating factors set forth in paragraphs 4, 9, and 10 of this

§§ 3591 through 3593.

Notice. The United States believes that the circumstances of each offense are such that, if the defendant JOHN ACOSTA is convicted, a sentence of death is justified under 18 U.S.C.

エンセンノリニセンセ・ファ

This Notice lists the statutory and non-statutory aggravating factors that the Government will seek to prove separately with respect to Count Five (for the murder of Patrick Garcia), and Count Seven (for the murder of Eugene Bryant). The non-statutory aggravating factor that applies to JOHN ACOSTA in connection with any of these offenses is set forth once, in paragraph 10 of this Notice.

### AS TO COUNT FIVE ONLY:

### MURDER OF PATRICK GARCIA

### Statutory Factors under 18 U.S.C. § 3591(a)(2):

- 1. JOHN ACOSTA intentionally participated in an act, contemplating that the life of Patrick Garcia would be taken or intending that lethal force would be used in connection with Patrick Garcia, who was not one of the participants in the offense, and Patrick Garcia died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).
- 2. In the alternative, JOHN ACOSTA intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to Patrick Garcia, who was not one of the participants in the offense, such that participation in

the act constituted a reckless disregard for human life, and Patrick Garcia died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

### Statutory Factors under 18 U.S.C. \$\$ 3592(c)(1)-(16):

JOHN ACOSTA, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to Patrick Garcia. 18 U.S.C. § 3592(c)(5).

### Non-Statutory Factor Under 18 U.S.C. § 3593(a):

CONTENTS OF TEAT FIXOR REPORTOR HE ST. ....

Victim Impact. JOHN ACOSTA devastated the family of Patrick Garcia by murdering Patrick Garcia. Family members miss their son and brother and grieve over his death. Even is the As TO COUNT SEVEN ONLY:

## MURDER OF EUGENE BRYANT

### Statutory Factors under 18 U.S.C. § 3591(a)(2):

- 5. JOHN ACOSTA intentionally killed Eugene Bryant. U.S.C.  $\S$  3591(a)(2)(A).
- In the alternative, JOHN ACOSTA intentionally inflicted serious bodily injury that resulted in the death of Eugene Bryant. 18 U.S.C. § 3591(a)(2)(B).
- 7. In the alternative, JOHN ACOSTA intentionally participated in an act, contemplating that the life of Eugene Bryant would be taken or intending that lethal force would be used in connection with Eugene Bryant, who was not one of the participants in the offense, and Eugene Bryant died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

### Statutory Factors under 18 U.S.C. §§ 3592(c)(1)-(16):

- 8. JOHN ACOSTA, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to Eugene Bryant. 18 U.S.C. § 3592(c)(5).

  Non-Statutory Factor Under 18 U.S.C. § 3593(a):
- 9. <u>Victim Impact</u>. By murdering Eugene Bryant, JOHN ACOSTA caused the family of Eugene Bryant to suffer, especially Eugene Bryant's mother.

### FOR THE MURDERS

### OF PATRICK GARCIA

### AND EUGENE BRYANT, OR ANY OF THEM

### Non-Statutory Factor Under 18 U.S.C. § 3593(a):

- continuing, serious threat to the lives and safety of others.

  His future dangerousness is shown by his commission of offenses as resulting in multiple deaths, by his commission of other acts of the violence or potential violence, by his low potential for the rehabilitation, by his lack of remorse for violent acts he has committed, and by his threats of violence to others, as described in the following subparagraphs.
- a. JOHN ACOSTA has engaged in acts of violence or potential violence in addition to the murders of Patrick Garcia and Eugene Bryant. These include, but are not limited to:
- (1) On or about March 15, 1995, JOHN ACOSTA conspired to murder African Americans. Swe me a lives

- (2) On or about March 15, 1995, JOHN ACOSTA attempted to murder Brian Thomason and DeEarl Pounds.
- (3) On or about June 17, 1994, JOHN ACOSTA carried and used a firearm during and in relation to a drug trafficking crime, as charged in Count Seventy of the Second Superseding Indictment.
- b. JOHN ACOSTA has a low potential for rehabilitation. This is shown by facts including, but not limited to:
- (1) JOHN ACOSTA committed the acts charged in the Second Superseding Indictment after being convicted on or about May 7, 1990 of Taking a Vehicle Without Owner's Consent in Los Angeles Superior Court, Los Angeles, California and serving a term of imprisonment for that offense. JOHN ACOSTA was paroled from prison on or about January 13, 1991, and on or about April 22, 1991, JOHN ACOSTA's parole was revoked.
- c. JOHN ACOSTA lacks remorse for his violent acts. This is shown by facts including, but not limited to:
- (1) After JOHN ACOSTA murdered Patrick Garcia on December 26, 1994, JOHN ACOSTA stated that "we" shot at Frankie, but hit Pat Garcia. Instead of expressing concern over Garcia's death when he was not the target, JOHN ACOSTA said that "Surenos take care of business."
- d. JOHN ACOSTA has made threats of violence against others. These include, but are not limited to:

- (1) Prior to murdering Eugene Bryant, JOHN ACOSTA and codefendants Vincent Najar and Uriel Bustamante threatened to kill Brian Thomason.
- (2) Prior to murdering Eugene Bryant on March 15, 1995, JOHN ACOSTA threatened to kill "all the niggers on the street."

Respectfully submitted,

JOHN J. KELLY

United States Attorney

Thomas L. English

Assistant United States Attorney

Stephen R. Kotz

Assistant United States Attorney

P. O. Box 607

Albuquerque, New Mexico 87103-0607

(505) 766-3341

I CERTIFY that true copies of the foregoing NOTICE were served on the following counsel of record for JOHN ACOSTA this <u>21st</u> day of June, 1996:

Mark Donatelli, Esq. Peter Schoenburg, Esq. Gail Evans, Esq.

Thomas L. English Stephen R. Kotz

Assistant U.S. Attorneys N:\UDD\SKOTZ\SUR\accosta.DFN