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CLERK OF COURT  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FILED

9 UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) No. CR 99-83(A)-DOC  
12 )  
Plaintiff, ) GOVERNMENT'S NOTICE OF INTENT  
13 ) TO SEEK THE DEATH PENALTY  
v. ) AGAINST DEFENDANT MARIO  
14 ) CASTILLO  
MARIO CASTILLO, aka WHISPER, )  
15 )  
Defendant. )  
16 )

17 NOTICE OF INTENT TO SEEK THE DEATH PENALTY

18 The United States of America, pursuant to 18 U.S.C.  
19 § 3593(a), notifies the Court and defendant MARIO CASTILLO, aka  
20 WHISPER, that the Government believes the circumstances of the  
21 offenses charged in Counts Five, Six, Seven, Twenty-Three,  
22 Twenty-Four and Twenty-Five of the First Superseding Indictment  
23 are such that, in the event of a conviction, a sentence of death  
24 is justified under Chapter 228 (Sections 3591 through 3598) of  
25 Title 18 of the United States Code, and that the Government will  
26 seek the sentence of death for the following offenses: the murder  
27 of Richard Serrano in aid of racketeering, in violation of Title  
8 18, United States Code, Section 1959(a) 1) [Count Five] and/or

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1 through the use of a firearm, in violation of Title 18, United  
2 States Code, Sections 924(c), (j) [Count Twenty-Three]; the murder  
3 of Jose Martin Gutierrez in aid of racketeering, in violation of  
4 Title 18, United States Code, Section 1959(a)(1) [Count Six]  
5 and/or through the use of a firearm, in violation of Title 18,  
6 United States Code, Sections 924(c), (j) [Count Twenty-Four]; and  
7 the murder of Enrique Delgadillo in aid of racketeering in  
8 violation of Title 18, United States Code, Section 1959(a)(1)  
9 [Count Seven] and/or through the use of a firearm, in violation  
10 of Title 18, United States Code, Sections 924(c), (j) [Count  
11 Twenty-Five], each of which carries a possible sentence of death.

12 The Government proposes to prove the following factors as  
13 justifying a sentence of death.

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

16 1. **Intentionally Killing the Victim.**

17 The defendant intentionally killed Richard Serrano [Counts 5 and  
18 23], Jose Martin Gutierrez [Counts 6 and 24] and Enrique  
19 Delgadillo [Counts 7 and 25]. Section 3591(a)(2)(A).

20 2. **Intentionally Inflicting Serious Bodily Injury**  
21 **Resulting in Death.**

22 The defendant intentionally inflicted serious bodily injury that  
23 resulted in the death of Richard Serrano [Counts 5 and 23], Jose  
24 Martin Gutierrez [Counts 6 and 24] and Enrique Delgadillo [Counts  
25 7 and 25]. Section 3591(a)(2)(B).

26 3. **Intentional Acts to Take Life or Use Lethal Force.**

27 The defendant intentionally participated in an act, contemplating  
3 that the life of a person would be taken or intending that lethal

1 force would be used in connection with a person, other than one  
2 of the participants in the offense, and Richard Serrano [Counts 5  
3 and 23], Jose Martin Gutierrez [Counts 6 and 24] and Enrique  
4 Delgadillo [Counts 7 and 25], died as a direct result of the act.  
5 Section 3591(a)(2)(C).

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

8 The following statutory aggravating factors apply to each of  
9 Counts 5, 6, 7, 23, 24 and 25.

10 1. **Grave Risk of Death to Additional Persons**

11 The defendant, in the commission of the offense or in escaping  
12 apprehension for the offense, knowingly created a grave risk of  
13 death to one or more persons in addition to the victim of the  
14 offense. Section 3592(c)(5).

15 2. **Substantial Planning and Premeditation.**

16 The defendant committed the offense after substantial planning  
17 and premeditation to cause the death of a person, Richard  
18 Serrano. Section 3592(c)(9).

19 3. **Multiple Killings or Attempted Killings.**

20 The defendant intentionally killed or attempted to kill more than  
21 one person in a single criminal episode. Section 3592(c)(16).

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

24 1. **Future Dangerousness of the Defendant.**

25 The defendant is likely to commit criminal acts of violence in  
26 the future that would constitute a continuing and serious threat  
27 to the lives and safety of others, as evidenced by, at least, one  
28 or more of the following:

1 a. Other Acts of Violence.

2 The defendant has committed, attempted to commit, and/or  
3 threatened to commit other acts of violence, in addition to the  
4 capital offenses committed in this case and the statutory factors  
5 alleged in this Notice, including, at least, the crimes alleged  
6 against defendant in the First Superseding Indictment and the  
7 following crimes and acts:

8 i. Conduct related to defendant's May 3, 1994 arrest for  
9 possession/purchase cocaine base for sale (Cal. Pen.  
10 Code § 11351.5)

11 ii. Conduct related to defendant's July 16, 1994 arrest for  
12 negligent discharge of a firearm (Cal. Pen. Code §  
13 246.3)); carrying a loaded weapon (Cal. Pen. Code  
14 § 12031(a)); and carrying a concealed weapon (Cal. Pen.  
15 Code § 12025(a))

16 iii. Conduct related to defendant's September 4, 1994 arrest  
17 for being a minor in possession of a firearm (Cal. Pen.  
18 Code § 12101(a))

19 iv. Conduct related to defendant's September 28, 1994  
20 conviction for carrying a concealed weapon (Cal. Pen.  
21 Code § 12025(a)(2))

22 v. Conduct related to defendant's January 30, 1997 arrest  
23 for possession of a loaded firearm with prior  
24 convictions (Cal. Pen. Code § 12031.5(a)) and carrying  
25 a concealed firearm (Cal. Pen. Code § 12025)

26 vi. Conduct related to defendant's January 6, 1998  
27 conviction for possession/purchase of cocaine base for  
28 sale (Cal. Pen. Code 11351.5) and related arrest on

1 September 26, 1997 for 11351.5 and possession of a  
2 firearm by convicted felon (Cal. Pen. Code § 12021(a))

3 vii. Conduct related to defendant's May 7, 1998 arrest for  
4 assault with a deadly weapon, not a firearm, with force  
5 likely to create great bodily injury (Cal. Pen. Code §  
6 245(a)(1))

7 viii. Conduct related to defendant's April 15, 1999 arrest  
8 for possession/purchase of cocaine base for sale (Cal.  
9 Pen. Code § 11351.5)

10 ix. Conduct related to defendant's October 30, 1999 arrest  
11 for battery on a peace officer (Cal. Pen. Code §  
12 243(B))

13 b. Affiliation with Mexican Mafia and  
14 Participation in Gang-Related Acts of  
15 Violence.

16 As a result of the defendant's affiliation with the Mexican Mafia  
17 and participation in gang-related acts of violence, he would pose  
18 a continuing danger to others, including other inmates, prison  
19 guards and those outside of prison, if incarcerated. The  
20 government will rely both on evidence presented during the guilt  
21 phase and additional evidence to be presented at any penalty  
22 phase concerning the Mexican Mafia's activities in state and  
23 federal jails and prisons.

24 c. Lack of Remorse.

25 The defendant has demonstrated a lack of remorse for the capital  
26 offenses committed in this case, by statements to Max Torvisco  
27 following the murder.

1                   2.    **Uncharged Murder**

2    The defendant has been involved in another murder which is not  
3    reflected in his criminal record, specifically the murder of  
4    Angel Salas on September 15, 1997.

5                   3.    **Victim Impact**

6    The government will present evidence concerning the effect of the  
7    offense on the victims and the victims' families, including  
8    victim impact statements identifying the victims of the offense  
9    and the extent and scope of the injury and loss suffered by the  
10   victims and the victims' families, and any other relevant  
11   information.

12   DATE: March 19, 2001

Respectfully submitted,

13                   ALEJANDRO N. MAYORKAS  
14                   United States Attorney

15                   JOHN S. GORDON  
16                   Assistant United States Attorney  
17                   Chief, Criminal Division

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20                   Assistant United States Attorney  
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