

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff,

v.

ANDRES COLON-MIRANDA, Defendant.

Crim. No. 95-029 (JAF)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 21 U.S.C. § 848(h)(1) (A) and (B), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that in the event of the defendant's conviction for one or more of the intentional killings of Reynaldo Pacheco-Aponte, Ricardo Rivera-Dide, Samuel Serrano-Bermudez, Wilfredo Rivera-Rodriguez, Wilfredo Guzman-Morales, and Rafael Cotto-Fontes, as charged in Counts Fifty-Three through Fifty-Five, Fifty-Seven, Fifty-Eight, and Sixty-Two, respectively, of the Third Superseding Indictment, the Government will seek the sentence of death for each and all of the intentional killings of which the defendant is convicted.

The Government will seek to prove the following aggravating factors as the basis for imposition of the death penalty.

COUNT FIFTY-THREE

INTENTIONAL KILLING OF REYNALDO PACHECO-APONTE

A. Statutory Aggravating Factor Enumerated under 21 U.S.C.

§ 848(n) (1) (A) through (D):

1. Intentional Acts to Take Life or Use Lethal Force.

The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the

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victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n)(2) through (12):

1. **Grave Risk of Death to Additional Persons.** In committing the offense or in escaping apprehension for a violation of Section 848(e), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 848(n)(5).

2. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

3. **Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848(h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same

trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

COUNT FIFTY-FOUR

INTENTIONAL KILLING OF RICARDO RIVERA-DIDE

A. Alternative Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):

1. **Intentional Killing.** The defendant intentionally killed the victim. Section 848(n)(1)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury which resulted in the death of the victim. Section 848(n)(1)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

1. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

2. **Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

COUNT FIFTY-FIVE

INTENTIONAL KILLING OF SAMUEL SERRANO-BERMEDEZ

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n) (1) (C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

1. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n) (8).

2. **Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

COUNT FIFTY-SEVEN

INTENTIONAL KILLING OF WILFREDO RIVERA-RODRIGUEZ

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. § 848(n)(1)(A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n)(2) through (12):

1. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

2. **Vulnerability of Victim.** The victim was particularly vulnerable due to old age, youth, or infirmity. Section 848(n)(9).

3. **Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

COUNT FIFTY-EIGHT

INTENTIONAL KILLING OF WILFREDO GUZMAN-MORALES

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. § 848(n)(1)(A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.**

The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n)(2) through (12):

1. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

2. **Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848(h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

COUNT SIXTY-TWO

INTENTIONAL KILLING OF RAFAEL COTTO-FUENTES

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.**

The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n) (1) (C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

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

In committing the offense or in escaping apprehension for a violation of Section 848(e), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 848(n) (5).

2. **Substantial Planning and Premeditation.**

The defendant committed the offense after substantial planning and premeditation. Section 848(n) (8).

3. **Distribution to Persons under 21.**

The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n) (11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848 (h) (1) (B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted, in the same trial, of killing more than one person. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

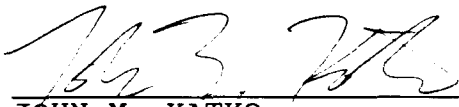
3. **Obstruction of Justice.** The victim was killed in an effort by the defendant to obstruct justice by preventing the victim from cooperating with law enforcement authorities. See 18 U.S.C. §§ 1510, 1512, and 1513.

Respectfully submitted,

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Criminal Division
United States Department of Justice

THERESA M.B. VAN VLIET
Chief
Narcotic and Dangerous Drug Section
Criminal Division
United States Department of Justice

By:



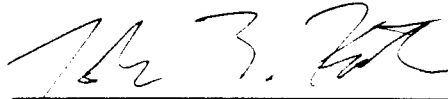
JOHN M. KATKO
Trial Attorney
Narcotic and Dangerous Drug Section
Criminal Division
United States Department of Justice

Dated: March 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 1997, a true and correct copy of the foregoing notice of intent to seek the death penalty was delivered by hand or mailed via first class mail, postage prepaid thereon, to the following attorney of record:

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