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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA, )  
16 Plaintiff, )  
17 )  
18 v. )  
19 )  
20 **REDACTED DEFENDANT NO. 1, et al.,** )  
21 )  
22 Defendants. )  
23 \_\_\_\_\_ )

Criminal No. CR 05-00167 WHA

**AMENDED NOTICE OF INTENT TO  
SEEK THE DEATH PENALTY**

Date: March 9, 2007  
Court: Hon. William H. Alsup

24  
25 **NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

26 Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives  
27 notice that it believes that the circumstances of this case are such that, in the event that the  
28 defendant EDGAR DIAZ is convicted of a capital offense relating to the deaths of Beverly

1 Robinson, Kenya Taylor or Antoine Morgan, a sentence of death is justified and that the United  
2 States will seek the death penalty. Specifically, the United States will seek a sentence of death  
3 for Counts Ten, Twelve and Thirteen, which charge murder in aid of racketeering under 18  
4 U.S.C. § 1959(a)(1).

5 The Government proposes to prove the following factors as justifying a sentence of death  
6 for the offenses charged in Counts Ten, Twelve and Thirteen of the Second Superseding  
7 Indictment, the allegations of which are fully re-alleged and incorporated herein by reference:

8 **I. Count 10: The Murder of Beverly Robinson**

9 A. **Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)**

10 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

11 **The defendant, after participating in the “round-up” of the victim for the possible**  
12 **theft of a DBG community firearm, fired his weapon at the victim. When the victim**  
13 **fled from the group of DBG members, the defendant pursued him with his weapon**  
14 **while other DBG members continued to shoot at the victim.**

15 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §  
16 3591(a)(2)(B).

17 **See (1).**

18 (3) The defendant participated in an act, contemplating that the life of a person would be  
19 taken or intending that lethal force would be used in connection with a person, other than  
20 one of the participants in the offense, and the victim died as a direct result of the act. 18  
21 U.S.C. § 3591(a)(2)(C).

22 **See (1).**

23 (4) The defendant intentionally and specifically engaged in an act of violence, knowing  
24 that the act created a grave risk of death to a person, other than one of the participants in  
25 the offense, such that participation in the act constituted a reckless disregard for human  
26 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

1       **See (1).**

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

3       (1) The defendant, in the commission of the offense, or in escaping apprehension for the  
4       violation of the offense, knowingly created a grave risk of death to 1 or more persons in  
5       addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

6       **A witness or witnesses will testify that the defendant and his co-conspirators fired**  
7       **their weapons in close proximity to civilians, as well as public housing units where**  
8       **civilians resided, causing grave risk of death to those civilians by possible stray**  
9       **bullets.**

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

11       In addition to the statutory aggravating factors set forth above with regard to Count Ten,  
12       the Government will rely on the following non-statutory aggravating factor specific to that  
13       offense to justify a sentence of death:  
14

15       (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Beverly  
16       Robinson's family because of the victim's personal characteristics as an individual  
17       human being and the impact of his death upon the Beverly Robinson's family. *See Payne*  
18       *v. Tennessee*, 501 U.S. 808, 825-26 (1991).

19       **Several of the victim's family members will testify that they experienced severe**  
20       **feelings of depression after his death. Family members received counseling. One**  
21       **family member lost his/her job after the victim's death because he/she could not get**  
22       **out of bed to go to work for as long as a year's time. Other family members also**  
23       **had difficulties working and in their personal lives due to their feelings of**  
24       **depression. The family spent \$7,000 on the funeral for the victim.**

25       (2) **Participation in Additional Homicides.** The defendant participated in other  
26       homicides in addition to the murder of Beverly Robinson, namely the murders of Kenya  
27       Taylor and Antoine Morgan.  
28

1           **These acts are charged in the Second Superseding Indictment and discovery has**  
2           **been provided.**

3                           **II. Count 12: The Murder of Kenya Taylor**

4 A.           Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)

5           (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

6           **Evidence will demonstrate that defendant Diaz planned to kill Kenya Taylor due to**  
7           **a belief that Taylor had assisted in the killing of a co-conspirator of Diaz and**  
8           **member of the Down Below Gang. Defendant Diaz approached Taylor while armed**  
9           **and assisted in shooting Taylor with a handgun while a co-defendant shot Taylor**  
10           **with an assault rifle. These actions killed Taylor.**

11           (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §  
12           3591(a)(2)(B).

13           **See (1) above.**

14           (3) The defendant participated in an act, contemplating that the life of a person would be  
15           taken or intending that lethal force would be used in connection with a person, other than  
16           one of the participants in the offense, and the victim died as a direct result of the act. 18  
17           U.S.C. § 3591(a)(2)(C).

18           **See (1) above.**

19           (4) The defendant intentionally and specifically engaged in an act of violence, knowing  
20           that the act created a grave risk of death to a person, other than one of the participants in  
21           the offense, such that participation in the act constituted a reckless disregard for human  
22           life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

23           **See (1) above.**

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

25           (1) The defendant committed the offense after substantial planning and premeditation to  
26           cause the death of a person. 18 U.S.C. § 3592(c)(9).  
27  
28

1 **Evidence will demonstrate that defendant Diaz received orders to kill Kenya Taylor**  
2 **prior to the date of the homicide. During the intervening time period, defendant**  
3 **Diaz planned to kill Taylor and began looking for an opportunity. Defendant Diaz**  
4 **further lured Taylor to an appropriate location for the killing.**

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

6 In addition to the statutory aggravating factors set forth above with regard to Count  
7 Twelve, the Government will rely on the following non-statutory aggravating factor specific to  
8 that offense to justify a sentence of death:

9 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the Kenya  
10 Taylor's family because of the victim's personal characteristics as an individual human  
11 being and the impact of his death upon the Kenya Taylor's family. *See Payne v.*  
12 *Tennessee*, 501 U.S. 808, 825-26 (1991).

13 **Family members will testify regarding the following losses caused by the death of**  
14 **Kenya Taylor – fear of going outside, restrictions on children's activity, lack of trust**  
15 **for people, therapy, not going out after dark, relocation to more expensive**  
16 **neighborhood, fear of the defendants and their families, not inviting others into**  
17 **their homes, anger, anxiety, grief, sleep loss, nightmares, loss of appetite,**  
18 **depression, fatigue, and crying uncontrollably.**

19 (2) **Participation in Additional Homicides.** The defendant participated in other  
20 homicides in addition to the murder of Kenya Taylor, specifically the murders of Beverly  
21 Robinson and Antoine Morgan.

22 **These acts are charged in the Second Superseding Indictment and discovery has**  
23 **been provided.**

24 **III. Count 13: The Murder of Antoine Morgan**

25 A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)

26 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).  
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1 **Evidence will demonstrate that the defendant approached the victim and fired his**  
2 **gun at the victim three times. The medical examiners report will show that the**  
3 **victim was struck with three gunshot wounds: one to the back of the head, one to the**  
4 **upper back, and one to the forearm. The defendant intended to kill the victim due**  
5 **to a belief that the victim was involved with the murder of co-conspirator of the**  
6 **defendant and member of the Down Below Gang.**

7 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §  
8 3591(a)(2)(B).

9 **See (1) above.**

10 (3) The defendant participated in an act, contemplating that the life of a person would be  
11 taken or intending that lethal force would be used in connection with a person, other than  
12 one of the participants in the offense, and the victim died as a direct result of the act. 18  
13 U.S.C. § 3591(a)(2)(C).

14 **See (1) above.**

15 (4) The defendant intentionally and specifically engaged in an act of violence, knowing  
16 that the act created a grave risk of death to a person, other than one of the participants in  
17 the offense, such that participation in the act constituted a reckless disregard for human  
18 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

19 **See (1) above.**

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

21 (1) The defendant committed the offense after substantial planning and premeditation to  
22 cause the death of a person. 18 U.S.C. § 3592(c)(9).

23 **Evidence will demonstrate that a co-conspirator stated a belief that the victim was**  
24 **related to or involved in the murder of an associate of the Down Below Gang. That**  
25 **co-conspirator issued an order to kill the victim in retaliation to all DBG members.**  
26 **That order was issued prior to the killing of the victim. During the intervening time**  
27  
28

1 **period, defendant Diaz planned to kill Morgan and began looking for an**  
2 **opportunity to carry out that plan. Defendant Diaz further lured Morgan to an**  
3 **appropriate location for the killing. Defendant Diaz gave a signal prior to the**  
4 **killing for other individuals to leave the area where he killed Morgan.**

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

6 In addition to the statutory aggravating factors set forth above with regard to Count  
7 Thirteen, the Government will rely on the following non-statutory aggravating factors  
8 specific to that offense to justify a sentence of death:

9 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Antoine  
10 Morgan's family because of the victim's personal characteristics as an individual human  
11 being and the impact of his death upon the Antoine Morgan's family. *See Payne v.*  
12 *Tennessee*, 501 U.S. 808, 825-26 (1991).

13 **Family members will testify regarding the following losses caused by the death of**  
14 **Antoine Morgan – severe depression requiring mental health counseling, financial**  
15 **loss, sleeplessness, paranoia, and failing physical health.**

16 (2) **Participation in Additional Homicides.** The defendant participated in other  
17 homicides in addition to the murder of Antoine Morgan, specifically the murders of  
18 Beverly Robinson and Kenya Taylor.

19 **These acts are all charged in the Second Superseding Indictment, and discovery has**  
20 **been provided on all alleged crimes.**

21 **IV. Counts 10, 12 and 13: Other, Non-Statutory, Aggravating Factors Identified under 18**

22 **U.S.C. § 3593(a)(2)**

23 In addition to the statutory aggravating factors set forth above, the Government will rely  
24 on the following non-statutory aggravating factors to justify a sentence of death as to counts Ten,  
25 Twelve and Thirteen of the Second Superseding Indictment:

26 (1) **Participation in Additional Serious Acts of Violence.** The defendant participated  
27  
28

1 in other serious acts of violence in addition to the murders of Beverly Robinson, Kenya  
2 Taylor and Antoine Morgan. These serious acts of violence are as follows: on or about  
3 November 19, 2002, the defendant fired six shots at Marvin Evans on a Municipal  
4 Railway bus; on or about April 4, 2004, the defendant robbed Prentiss Belton; on or  
5 about May 20, 2004, the defendant attempted to shoot Monique Jones; on or about  
6 September 13, 2004, the defendant fired a 7.62mm assault rifle at members of a rival  
7 gang, known as Towerside; on or about September 25, 2004, the defendant and other  
8 defendants drove to an area near the unit block of Latona Street in San Francisco,  
9 California for the purpose of shooting and killing rival gang members; on or about  
10 September 29, 2004, the defendant and another defendant drove to the Hunters Point area  
11 of San Francisco, California and attempted to shoot Jamar Nelson; on or about October 1,  
12 2004, the defendant ordered an unindicted co-conspirator to go to the territory of a rival  
13 gang and to shoot and kill rival gang members; on or about October 30, 2004, the  
14 defendant and another defendant attempted to kill Gowan McLin and Avery Clark with  
15 7.62mm assault rifles.  
16

17 **These acts are all charged in the Second Superseding Indictment, and discovery has**  
18 **been provided on all alleged crimes.**

19 (2) **Obstruction of Justice.** The defendant participated in a conspiracy to murder Jamar  
20 Jackson, a potential witness against him and other members of the Down Below Gang.

21 **This act has been charged in this Second Superseding Indictment, and discovery has**  
22 **been provided.**

23 (3) **Leadership Role in a Criminal Enterprise.** The defendant belonged to the Down  
24 Below Gang – an “enterprise,” as defined by 18 U.S.C. § 1961(4) – from at least April  
25 1998 up to the date of the Second Superseding Indictment. In the structure of the  
26 enterprise, the defendant was below codefendants Emile Fort, a/k/a "Twin," and a  
27 redacted defendant, but still had a leadership role.  
28



1           **The defendant could give orders to certain members of DBG, who were expected to**  
2           **listen to him. He was, however, expected to follow the orders of Fort, Gregory**  
3           **Jackson (while he was alive), and redacted defendant #1, all of whom ranked higher**  
4           **than he in DBG hierarchy. The defendant could exercise his leadership role over**  
5           **lesser members of DBG by directing their violent activities.**

6           **(4) Future Dangerousness of the Defendant.** The defendant represents a continuing  
7           danger to the lives and safety of other persons. The defendant is likely to commit  
8           criminal acts of violence in the future that would constitute a continuing and serious  
9           threat to the lives and safety of others, as evidenced by the following:

10           (a) Continuing Pattern of Violence: The defendant has engaged in a continuing pattern of  
11           violence, attempted violence, and threatened violence, namely the crimes alleged against  
12           defendant in the Indictment.

13           **The defendant has been arrested at least three separate times for adult offenses and**  
14           **five times for juvenile offenses between 1999 and 2005. These prior offenses**  
15           **included three separate arrests for attempted murder, participating in a criminal**  
16           **street gang, carjacking, conspiracy, and many narcotics offenses, and many**  
17           **possessions of firearms, a silencer, and ammunition. The defendant has previously**  
18           **been incarcerated in juvenile hall and San Francisco County jail.**

19           (b) Lack of Remorse: The defendant has demonstrated a lack of remorse for the capital  
20           offenses committed in this case, as indicated by defendant's statements and actions  
21           during the course of and following the offenses alleged in the Indictment.

22           **Evidence will demonstrate that just prior to killing Kenya Taylor, defendant Diaz**  
23           **bragged to Taylor that he had killed Antoine Morgan. The defendant has never**  
24           **demonstrated any remorse or regret for any crime he has committed, including the**  
25           **capital crimes.**

26           (c) Low rehabilitative potential: The defendant has demonstrated a low potential for  
27  
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1 rehabilitation as evidenced by his longstanding involvement in criminal activities,  
2 including drug trafficking and violence, leading up to the capital offenses charged in the  
3 Indictment.

4 **See (a) above**

5 (d) Membership in a criminal enterprise: The defendant has demonstrated an allegiance  
6 to and active membership in the Down Below Gang, a criminal enterprise falling within  
7 the definition of 18 U.S.C. § 1962(d).

8 **See (3) above**  
9

10 Dated: March 9, 2007

11 Respectfully submitted,  
12 SCOTT N. SCHOOLS  
13 United States Attorney

14 /s/  
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17 WILLIAM FRENTZEN  
18 Assistant United States Attorneys  
19 KRISTA TONGRING  
20 Trial Attorney, Department of Justice  
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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA, )  
 14 Plaintiff, )  
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 16 v. )  
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 18 **REDACTED DEFENDANT NO. 1, et al.,** )  
 19 )  
 20 Defendants. )

Criminal No. CR 05-00167 WHA

**NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

Date: July 7, 2006  
Court: Hon. William H. Alsup

**NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

22  
 23 Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives  
 24 notice that it believes that the circumstances of this case are such that, in the event that the  
 25 defendant EDGAR DIAZ is convicted of a capital offense relating to the deaths of Beverly  
 26 Robinson, Kenya Taylor or Antoine Morgan, a sentence of death is justified and that the United  
 27 States will seek the death penalty. Specifically, the United States will seek a sentence of death  
 28

1 for Counts Ten, Twelve and Thirteen, which charge murder in aid of racketeering under 18  
2 U.S.C. § 1959(a)(1).

3 The Government proposes to prove the following factors as justifying a sentence of death  
4 for the offenses charged in Counts Ten, Twelve and Thirteen of the Second Superseding  
5 Indictment, the allegations of which are fully realleged and incorporated herein by reference:  
6

7  
8 **I. Count 10: The Murder of Beverly Robinson**

9 A. **Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)**

10 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

11 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §  
12 3591(a)(2)(B).

13 (3) The defendant participated in an act, contemplating that the life of a person would be  
14 taken or intending that lethal force would be used in connection with a person, other than  
15 one of the participants in the offense, and the victim died as a direct result of the act. 18  
16 U.S.C. § 3591(a)(2)(C).

17 (4) The defendant intentionally and specifically engaged in an act of violence, knowing  
18 that the act created a grave risk of death to a person, other than one of the participants in  
19 the offense, such that participation in the act constituted a reckless disregard for human  
20 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

22 (1) The defendant committed the offense after substantial planning and premeditation to  
23 cause the death of a person. 18 U.S.C. § 3592(c)(9).

24 (2) The defendant, in the commission of the offense, or in escaping apprehension for the  
25 violation of the offense, knowingly created a grave risk of death to 1 or more persons in  
26 addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).  
27  
28

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

2 In addition to the statutory aggravating factors set forth above with regard to Count Ten,  
3 the Government will rely on the following non-statutory aggravating factor specific to that  
4 offense to justify a sentence of death:

5 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Beverly  
6 Robinson's family because of the victim's personal characteristics as an individual human  
7 being and the impact of his death upon the Beverly Robinson's family. See Payne v.  
8 Tennessee, 501 U.S. 808, 825-26 (1991).

9 (2) **Participation in Additional Homicides.** The defendant participated in other  
10 homicides in addition to the murders of Beverly Robinson, including the murders of  
11 Kenya Taylor and Antoine Morgan.

12 **II. Count 12: The Murder of Kenya Taylor**

13 A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)

14 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

15 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §  
16 3591(a)(2)(B).

17 (3) The defendant participated in an act, contemplating that the life of a person would be  
18 taken or intending that lethal force would be used in connection with a person, other than  
19 one of the participants in the offense, and the victim died as a direct result of the act. 18  
20 U.S.C. § 3591(a)(2)(C).

21 (4) The defendant intentionally and specifically engaged in an act of violence, knowing  
22 that the act created a grave risk of death to a person, other than one of the participants in  
23 the offense, such that participation in the act constituted a reckless disregard for human  
24 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).  
25  
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1 B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c)

2 (1) The defendant committed the offense after substantial planning and premeditation to  
3 cause the death of a person. 18 U.S.C. § 3592(c)(9).

4 (2) The defendant committed the offense in an especially heinous, cruel, or depraved  
5 manner in that it involved torture or serious physical abuse to the victim. 18 U.S.C. §  
6 3592(c)(6).

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

8 In addition to the statutory aggravating factors set forth above with regard to Count  
9 Twelve, the Government will rely on the following non-statutory aggravating factor specific to  
10 that offense to justify a sentence of death:

11 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the Kenya  
12 Taylor's family because of the victim's personal characteristics as an individual human  
13 being and the impact of his death upon the Kenya Taylor's family. See Payne v.  
14 Tennessee, 501 U.S. 808, 825-26 (1991).

15 (2) **Participation in Additional Homicides.** The defendant participated in other  
16 homicides in addition to the murder of Kenya Taylor, including the murders of Beverly  
17 Robinson and Antoine Morgan.  
18

19 **III. Count 13: The Murder of Antoine Morgan**

20 A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)

21 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

22 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §  
23 3591(a)(2)(B).

24 (3) The defendant participated in an act, contemplating that the life of a person would be  
25 taken or intending that lethal force would be used in connection with a person, other than  
26 one of the participants in the offense, and the victim died as a direct result of the act. 18  
27

1 U.S.C. § 3591(a)(2)(C).

2 (4) The defendant intentionally and specifically engaged in an act of violence, knowing  
3 that the act created a grave risk of death to a person, other than one of the participants in  
4 the offense, such that participation in the act constituted a reckless disregard for human  
5 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

7 (1) The defendant committed the offense after substantial planning and premeditation to  
8 cause the death of a person. 18 U.S.C. § 3592(c)(9).

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

10 In addition to the statutory aggravating factors set forth above with regard to Count  
11 Thirteen, the Government will rely on the following non-statutory aggravating factors specific to  
12 that offense to justify a sentence of death:

13 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Antoine  
14 Morgan's family because of the victim's personal characteristics as an individual human  
15 being and the impact of his death upon the Antoine Morgan's family. See Payne v.  
16 Tennessee, 501 U.S. 808, 825-26 (1991).

17 (2) **Participation in Additional Homicides.** The defendant participated in other  
18 homicides in addition to the murder of Antoine Morgan, including the murders of Beverly  
19 Robinson and Kenya Taylor.

20 **IV. Counts 10, 12 and 13: Other, Non-Statutory, Aggravating Factors Identified under 18**

21 **U.S.C. § 3593(a)(2)**

22 In addition to the statutory aggravating factors set forth above, the Government will rely  
23 on the following non-statutory aggravating factors to justify a sentence of death as to counts Ten,  
24 Twelve and Thirteen of the Second Superseding Indictment:  
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1 (1) **Participation in Additional Serious Acts of Violence.** The defendant participated in  
2 other serious acts of violence in addition to the murders of Beverly Robinson, Kenya  
3 Taylor and Antoine Morgan. These serious acts of violence include, but are not limited  
4 to, the following: on or about November 19, 2002, the defendant fired six shots at Marvin  
5 Evans on a Municipal Railway bus; on or about April 4, 2004, the defendant robbed  
6 Prentiss Belton; on or about May 20, 2004, the defendant attempted to shoot Monique  
7 Jones; on or about September 13, 2004, the defendant fired a 7.62mm assault rifle at  
8 members of a rival gang, known as Towerside; on or about September 25, 2004, the  
9 defendant and other defendants drove to an area near the unit block of Latona Street in  
10 San Francisco, California for the purpose of shooting and killing rival gang members; on  
11 or about September 29, 2004, the defendant and another defendant drove to the Hunters  
12 Point area of San Francisco, California and attempted to shoot Jamar Nelson; on or about  
13 October 1, 2004, the defendant ordered an unindicted co-conspirator to go to the territory  
14 of a rival gang and to shoot and kill rival gang members; on or about October 30, 2004,  
15 the defendant and another defendant attempted to kill Gowan McLin and Avery Clark  
16 with 7.62mm assault rifles.  
17

18 (2) **Contemporaneous Criminal Conduct.** In addition to being convicted of the  
19 murders of Beverly Robinson, Kenya Taylor and Antoine Morgan, the defendant was  
20 engaged in other criminal conduct, included but not limited to enterprise crimes, violent  
21 crimes, drug offenses, firearm offenses, and witness tampering.  
22

23 (3) **Obstruction of Justice.** The defendant participated in a conspiracy to murder Jamar  
24 Jackson, a potential witness against him and other members of the Down Below Gang.

25 (4) **Leadership Role in a Criminal Enterprise.** The defendant belonged to the Down  
26 Below Gang – an “enterprise,” as defined by 18 U.S.C. § 1961(4) – from at least April  
27 1998 up to the date of the Second Superseding Indictment. In the structure of the  
28



1 enterprise, the defendant was below codefendants Emile Fort, a/k/a "Twin," and a  
2 redacted defendant, but still had a leadership role.

3 (5) **Future Dangerousness of the Defendant.** The defendant represents a continuing  
4 danger to the lives and safety of other persons. The defendant is likely to commit criminal acts of  
5 violence in the future that would constitute a continuing and serious threat to the lives and safety  
6 of others, as evidenced by, at least, one or more of the following:

7 (a) Continuing Pattern of Violence: The defendant has engaged in a continuing pattern of  
8 violence, attempted violence, and threatened violence, including, at least, the crimes  
9 alleged against defendant in the Indictment.

10 (b) Lack of Remorse: The defendant has demonstrated a lack of remorse for the capital  
11 offenses committed in this case, as indicated by defendant's statements and actions during  
12 the course of and following the offenses alleged in the Indictment.

13 (c) Low rehabilitative potential: The defendant has demonstrated a low potential for  
14 rehabilitation as evidenced by his longstanding involvement in criminal activities,  
15 including drug trafficking and violence, leading up to the capital offenses charged in the  
16 Indictment.

17 (d) Membership in a criminal enterprise: The defendant has demonstrated an allegiance to  
18 and active membership in the Down Below Gang, a criminal enterprise falling within the  
19 definition of 18 U.S.C. § 1962(d).  
20  
21

22 Dated: July 7, 2006

23 Respectfully submitted,  
24 KEVIN V. RYAN  
25 United States Attorney

26 \_\_\_\_\_  
27 /s/  
28 PHILIP J. KEARNEY  
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Trial Attorney, Department of Justice