

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:04CR283-A
	)	
OSCAR ALEXANDER GARCIA- ORELLANA,	)	Judge Gerald Bruce Lee
also known as "Gato,"	)	
	)	
Defendant.	)	

**NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH**

The United States of America, through its attorney, Paul J. McNulty, the United States Attorney for the Eastern District of Virginia, and his assistants, Ronald L. Walutes, Jr. and Patricia T. Giles, hereby notifies the Court, the defendant, OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," and his counsel, that in the event of the defendant's conviction on any of Counts One, Two, Three, Four and Five, wherein the defendant is charged with Conspiracy to Tamper with a Witness or an Informant in violation of Title 18, United States Code, Section 1512(k), Conspiracy to Retaliate against a Witness or an Informant in violation of Title 18, United States Code, Section 1513(e), Killing a Person Aiding a Federal Investigation in violation of Title 18, United States Code, Sections 2 and 1121(a)(2), Tampering with a Witness or an Informant in violation of Title 18, United States Code, Sections 2 and 1512(a)(1), and Retaliating against a Witness or an Informant in violation of Title 18, United States Code, Sections 2 and 1513(a)(1), the government will seek the sentence of death, in that the

circumstances of the offenses are such that a sentence of death is justified.

**A. Statutory Threshold Findings Enumerated in 18 U.S.C. § 3591(a)(2)(A) through (D).**

The government will seek to prove the following threshold findings as the basis for imposition of the death penalty in relation to Counts One, Two, Three, Four and Five of the Indictment:

1. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” intentionally killed Brenda Paz, also known as “Smiley.” 18 U.S.C. § 3591(a)(2)(A).

2. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” intentionally inflicted serious bodily injury that resulted in the death of Brenda Paz, also known as “Smiley.” 18 U.S.C. § 3591(a)(2)(B).

3. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Brenda Paz, also known as “Smiley,” died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Brenda Paz, also known as “Smiley,” died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

5. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,”

was more than eighteen (18) years of age at the time of the murder of Brenda Paz, also known as “Smiley.” 18 U.S.C. §3591(a).

**B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c)(1) through (16).**

The government will seek to prove the following statutory aggravating factors as the basis for imposition of the death penalty in relation to Counts One, Two, Three, Four and Five of the Indictment:

1. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to Brenda Paz, also known as “Smiley.” 18 U.S.C. § 3592(c)(6).

2. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” committed the offense after substantial planning and premeditation to cause the death of Brenda Paz, also known as “Smiley.” 18 U.S.C. § 3592(c)(9).

**C. Other Non-Statutory Aggravating Factors Identified under 18 U.S.C. § 3593(a) and (c).**

The government will seek to prove the following non-statutory aggravating factors as the basis for imposition of the death penalty in relation to Counts One, Two, Three, Four and Five of the Indictment:

1. While illegally in the United States, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” a citizen of El Salvador, has engaged in a pattern of criminal activity including, but not limited to, the following:

(a) On or about May 22, 2002, defendant OSCAR ALEXANDER GARCIA-

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ORELLANA, also known as "Gato," was found guilty of Unauthorized Use of a Vehicle.

(b) On or about December 30, 2003, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," sold cocaine to a confidential informant. On or about May 25, 2004, GARCIA-ORELLANA pled guilty to Distribution of a Controlled Drug.

(c) On or about January 6, 2004, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," sold cocaine to a confidential informant.

(d) On or about January 14, 2004, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," sold cocaine to a confidential informant.

(e) On or about January 30, 2004, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," sold cocaine to a confidential informant. On or about May 25, 2004, defendant GARCIA-ORELLANA pled guilty to Distribution of a Controlled Drug.

2. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," was a member of a criminal street gang as defined by 18 U.S.C. § 521(a), namely the Mara Salvatrucha, also known as "MS-13." As a member of MS-13, defendant GARCIA-ORELLANA agreed to engage in acts of violence, including murder and aggravated assaults. Defendant GARCIA-ORELLANA was a senior member of MS-13, and one of the few members of the Modesto Locos Salvatrucha, or "MDLS," clique of MS-13.

3. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," poses a future danger based upon the probability that he would commit criminal acts of violence that would constitute a continuing threat to society as demonstrated by, but not limited to, the following:

(a) While in custody at the Fairfax County Detention Facility, defendant OSCAR

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ALEXANDER GARCIA-ORELLANA, also known as “Gato,” stated a desire to harm an individual whom he believed had cooperated with law enforcement.

(b) While in custody at the Fairfax County Detention Facility, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” threatened to order the murder of someone outside of the facility while defendant GARCIA-ORELLANA was still in custody.

(c) While in custody at the Fairfax County Detention Facility, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” continued to conduct and influence MS-13 gang business occurring inside and outside of the correctional institution.

(d) While in custody at the Fairfax County Detention Facility, defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” along with two other members of MS-13, assaulted another inmate.

(e) Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” murdered Brenda Paz, also known as “Smiley,” while on supervised probation for his conviction for Unauthorized Use of a Vehicle, as alleged in paragraph 1(a).

4. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” murdered Brenda Paz, also known as “Smiley,” while knowing that she was pregnant at the time of her murder.

5. Defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as “Gato,” committed Counts One, Two, Three, Four and Five of the Indictment to prevent Brenda Paz, also known as “Smiley,” from and to retaliate against her for assisting in the investigation and prosecution of co-defendant Denis Rivera for the murder of Joaquin Diaz, and in the investigation of other MS-13 members for their criminal activity.

6. The impact of the loss of Brenda Paz, also known as "Smiley," on her family is an aggravating factor.

The government further gives notice that, in support of the imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as described in the Indictment as they relate to the background and character of defendant OSCAR ALEXANDER GARCIA-ORELLANA, also known as "Gato," his moral culpability, and the nature and circumstances of the offense charged in Counts One, Two, Three, Four and Five of the Indictment.

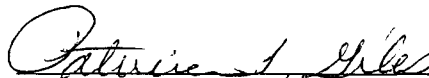
Respectfully submitted,

PAUL J. McNulty  
UNITED STATES ATTORNEY

By:



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Certificate of Service

The undersigned hereby certifies that on the 1<sup>st</sup> day of October, 2004, a copy of the Government's Notice of Intent to Seek a Sentence of Death was mailed and faxed to the following attorneys for the defendants:

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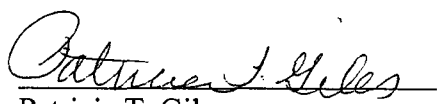
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