

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

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CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, PR

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DAVID GOMEZ-OLMEDA,)
a.k.a. "Junito King Cabra")
)
ANGEL FORTEZA-GARCIA)
a.k.a. "Bebe")
)
MIGUEL FORTEZA-GARCIA)
a.k.a. "Mike" a.k.a. "Mikey")
)
Defendants.)

CRIMINAL NO. 03-073-01 (JAF)

**NOTICE OF INTENT TO SEEK DEATH PENALTY AS TO
DEFENDANT DAVID GOMEZ-OLMEDA**

The United States of America notifies the Court and defendant **David Gomez-Olmeda** under Chapter 228 (Sections 3591-3598) of Title 18 United States Code, that if the defendant is convicted for the intentional killing of Antonio Velez-Garcia, as charged by Count Three of the First Superseding Indictment, the Government will seek the sentence of death for **David Gomez-Olmeda** as to this offense.

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

- a. One or more of the statutory proportionality factors set forth by 18 U.S.C. § 3591(a)(2)(A-D), 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 certain non-statutory aggravating factors set forth in this Notice. The United States believes that the circumstances of this charged offense are such that, if the defendant **David Gomez-Olmeda**

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is convicted, a sentence of death is justified under Chapter 228 of Title 18 of the United States Code.

The United States will seek to prove the following factors as justifying a sentence of death as to Count Three.

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

1. **Intentional Killing.** The defendant intentionally killed Antonio Velez-Garcia. 18 U.S.C. § 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Antonio Velez-Garcia. 18 U.S.C. § 3591(a)(2)(B).

3. **Intentional Act to Take Life or Use Lethal Force.** The defendant intentionally participated in an act, contemplating that the life of Antonio Velez-Garcia would be taken or intending that lethal force would be used in connection with Antonio Velez-Garcia, who was not one of the participants in the offense, and Antonio Velez-Garcia died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. **Intentional Act in Reckless Disregard for Life.** The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to Antonio Velez-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 Antonio Velez-Garcia died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

1. **Previous Conviction of Violent Felony Involving Firearm.** The defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm (as defined in 18 U.S.C. § 921) against another person, to wit: on August 27, 1997, the defendant was charged with first degree murder and weapons violations in state court case numbers FLA2000M0216

and FVI2000G0098; he subsequently pled guilty to involuntary manslaughter and on May 3, 2001, he was sentenced to six years probation. 18 U.S.C. § 3592(c)(2).

2. **Heinous, Cruel, or Depraved Manner of Committing Offense.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Antonio Velez-Garcia. 18 U.S.C. § 3592(c)(6).

3. **Pecuniary Gain.** The defendant committed the killing of the victim as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value. 18 U.S.C. § 3592(c)(8).

4. **Substantial Planning and Premeditation.** The defendant committed the killing of the victim after substantial planning and premeditation to cause the death of Antonio Velez-Garcia. 18 U.S.C. § 3592(c)(9).

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

1. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of other persons, including, but not limited to, inmates and correctional officers in an institutional correctional setting. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to the capital offense charged in the First Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances that demonstrate the defendant's future dangerousness include: his continuing pattern of violent criminal conduct; his specific admissions of violence; his demonstrated low rehabilitative potential; his demonstrated lack of remorse; and his being a potential escape risk.

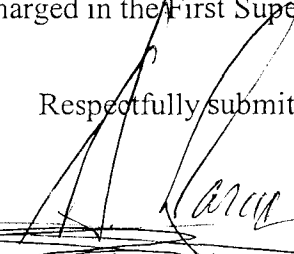
2. **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the victim, the victim's family, and the victim's friends as demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). The United States will present information concerning the effect of the offense on the victim and his/her family, which may include oral

testimony, a victim impact statement that identifies the person named in Count Three of the First Superseding Indictment as the victim of the offense, and the extent and scope of the injury and loss suffered by the victim, his family, and any other relevant information.

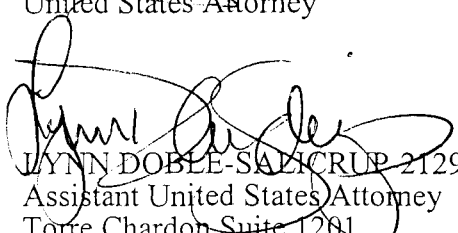
3. **Obstruction of Justice.** The defendant committed the offense with the intent to prevent the victim from or to retaliate against the victim for providing information and assistance to law enforcement authorities in regard to the investigation or prosecution of the commission or possible commission of another offense.

The Government further gives notice that in support of 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 First Superseding Indictment as they relate to the background and character of the Defendant, **David Gomez-Olmeda**, in his moral culpability, and the nature and circumstances of the offenses charged in the First Superseding Indictment.

Respectfully submitted,



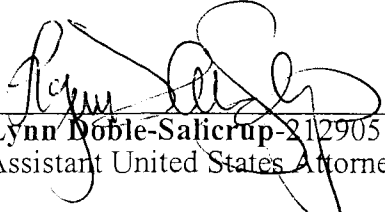
H.S. GARCIA
United States Attorney



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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this date true and exact copy of the foregoing motion has been delivered by hand and regular mail to defendant's counsel of record, as below indicated.


Lynn Doble-Salicrup-212905
Assistant United States Attorney

For Co-Defendant [1] David Gomez-Olmeda

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Office of the Attorney General
Washington, D. C. 20530

September 17, 2003

The Honorable H.S. Garcia
United States Attorney
District of Puerto Rico
Hato Rey, Puerto Rico 00918

Dear Mr. Garcia:

You are authorized to accept a guilty plea from Angel Forteza-Garcia and Miguel Forteza-Garcia under the terms delineated in your September 3, 2003, memorandum to Acting Assistant Attorney General Wray.

You are authorized to seek the death penalty against David Gomez-Olmeda.

The decision to seek or not to seek the death penalty against Norberto Jimenez-Rodriguez is deferred until he is available for trial.

As described in the United States Attorneys' Manual § 9-10.100, you may not enter into a plea agreement that requires withdrawal of the notice of intention to seek the death penalty without the prior approval of the Attorney General.

Sincerely,

John Ashcroft
Attorney General