

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

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U.S. DISTRICT COURT
SAN JUAN, P.R.

UNITED STATES OF AMERICA,
Plaintiff,

v.

IVAN D. GUTIERREZ GARCIA
Defendant.

CASE NO. 09-190m

UNDER SEAL

UNITED STATES' NOTICE OF INTENT TO SEEK THE DEATH PENALTY

TO THE HONORABLE COURT:

COMES NOW the United States of America, pursuant to Title 18, United States Code Section 3593(a), by and through its undersigned counsel, and notifies the Court and Defendant **IVAN D. GUTIERREZ GARCIA** that the Government believes the circumstances of the offense charged in Count One of the Criminal Complaint is such that, in the event of a conviction, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek the sentence of death for this offense: carjacking resulting in death, in violation of 18 U.S.C. § 2119, which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death with regard Count One:

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

1. **Intentional Killing.** The Defendant intentionally killed the victim. 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 the victim. 18 U.S.C. § 3591(a)(2)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The Defendant 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 the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

4. **Intentional Engagement in an Act of Violence, Knowing that the Act Created a Grave Risk of Death to a Person.** The Defendant 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 the victim died as a direct result of the act. 18 U.S.C. §3591(a)(2)(D).

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

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

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

3. **Substantial Planning and Premeditation.** The Defendant committed the offense after substantial planning and premeditation to cause the death of a person. 18 U.S.C. § 3592(c)(9).

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

1. **Victim Impact Evidence.** The victim, Santiago, left behind three children, a mother and father and three siblings. He was the oldest child and opted to move in with his mother sometime after his divorce because he did not want her to be alone. His mother and father were divorced many years ago, but they have a cordial relationship. Santiago had been living with his mother for the past 4-5 years before his death. He had a good reputation in the community and was known to help his friends financially. He was resourceful and found ways to earn a living when he found himself unemployed. He was a member of a local church, though he did not attend regularly. Santiago's loss has had a tremendous impact on his family and friends.

2. **Future Dangerousness.** Subject Gutierrez had no known means of employment and evidence of his prior arrests and convictions would suggest he stole vehicles to maintain a drug habit. He has prior offenses for vehicle and vehicle parts theft and aggravated assault with a deadly weapons. Subject was charged, though not convicted, of aggravated domestic violence and domestic violence. Clearly, he exhibits a pattern of violent behavior. Further, defendant has a history of drug abuse.

3. **Murder To Facilitate Another Crime.** Gutierrez committed the murder of Santiago in order to facilitate other crimes, robbery and car theft.

4. **Continuing Pattern of Violence.** The Defendant has engaged in a

continuing pattern of violence, attempted violence, and threatened violence, including, at least, the crimes alleged against the Defendant in the Indictment and the crimes of which the Defendant was previously convicted, to wit: stealing vehicle parts in two separate cases and aggravated assault and possession of a deadly.

5. **Low Rehabilitative Potential.** The Defendant has demonstrated a low potential for rehabilitation as evidenced by his repeated acts of misconduct.

A. **Characteristics of the Victim.** At the time of his death, the victim was a 36-year-old father of three, who enjoyed a strong relationship with his family.

B. **Impact of the Offense on the Victim's Family.** The victim's family has suffered severe and irreparable harm.

C. **Lack of Remorse.** The Defendant has demonstrated a lack of remorse for the capital offense committed in this case. Gutierrez freely admitted the subject murder and carjacking to a friend as they were having drinks at a bar a few hours after he committed the criminal acts.

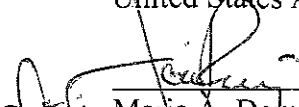
The United States further gives notice that in support of imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as described in the Indictment as they relate to the background and character of the defendant, **IVAN D. GUTIERREZ GARCIA**, his moral culpability, and the nature and circumstances of the offenses charged in the Indictment.

WHEREFORE, the United States very respectfully requests that its compliance with 18 U.S.C. § 3593 and Local Rules of the U. S. District Court for the District of Puerto Rico, Rule 144.2 be Noted.


RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 5th day of March 2009.

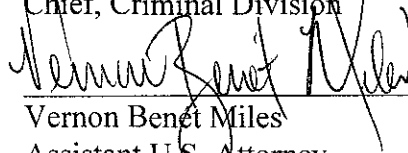
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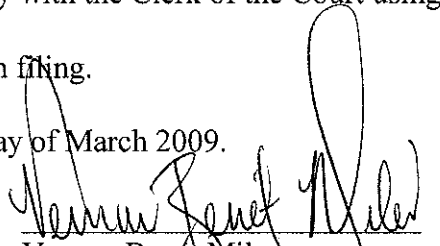


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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this date I filed the foregoing United States' Notice Of Intent To Seek The Death Penalty with the Clerk of the Court using the CM/ECF system, which will send notification of such filing.

In San Juan, Puerto Rico, this 5th day of March 2009.


Vernon Benet Miles
Assistant United States Attorney