

RPD:JGM  
F. #2004R02323

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

NOTICE OF INTENT TO  
SEEK THE DEATH PENALTY

- against -

04 CR 939 (S-2) (LDW)

WILVER R. LOPEZ,  
also known as "Wilber Rene  
Jovel-Lopez" and "Conde,"

Defendant.

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Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives notice that it believes that the circumstances of this case are such that, in the event that the defendant WILVER R. LOPEZ, also known as "Wilber Rene Jovel-Lopez" and "Conde," is convicted of either of the capital offenses relating to the death of victim Genaro Venegas, a sentence of death is justified and that the United States will seek the death penalty. Specifically, the United States will seek a sentence of death for Count Three of the Second Superseding Indictment, which charges murder in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and 2, and Count Nine of the Second Superseding Indictment, which charges causing death through the use of a firearm in violation of 18 U.S.C. §§ 924(j)(1) and 2.

Pursuant to 18 U.S.C. § 3591(a)(2), the United States will rely on the following preliminary factors to establish the defendant's eligibility for the death penalty:

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

2. The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591(a)(2)(B).

3. The defendant intentionally participated in one or more acts, 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 Genaro Venegas died as a direct result of the act or acts. 18 U.S.C. § 3591(a)(2)(C).

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

Pursuant to 18 U.S.C. § 3592(c), the United States will rely on the following statutory aggravating factor as justifying a sentence of death:

1. 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).

In addition to the statutory aggravating factor set forth above, the United States will rely on the following non-statutory aggravating factors to justify a sentence of death pursuant to 18 U.S.C. § 3593(a)(2):

1. The defendant killed Genaro Venegas in an effort to obstruct justice, tamper with a witness, and as retaliation for cooperating with authorities.

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 and friends. Payne v. Tennessee, 501 U.S. 808, 824-27 (1991). The United States will present information concerning the effect of the offense on the victim and his family and friends, which may include oral testimony, victim impact statements, and the extent and scope of the injury and loss suffered by the victim, his family and friends, and any other relevant information.

3. 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 Second Superseding Indictment, as they relate to the background and character of the defendant WILVER R. LOPEZ, also known as "Wilber Rene Jovel-Lopez" and "Conde," his moral culpability, and the nature and circumstances of the offenses charged in the Second Superseding Indictment.

Dated: July 31, 2006  
Central Islip, New York

Respectfully submitted,

  
ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY

cc: Russell T. Neufeld, Esq.  
Peter J. Tomao, Esq.