

The following factors apply to Counts 1 and 2:

I. Statutory Threshold Findings

The government will seek to prove the following threshold findings as the basis for imposition of the death penalty:

- a. Larry Lujan was 18 years of age or older at the time of the offense charged in Count 1 (18 U.S.C. § 3591(a));
- b. Larry Lujan intentionally killed Dana Joe Grauke II (18 U.S.C. § 3591(a)(2)(A));
- c. Larry Lujan intentionally inflicted serious bodily injury that resulted in the death of Dana Joe Grauke II (18 U.S.C. § 3591(a)(2)(B));
- d. Larry Lujan intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Dana Joe Grauke II died as a direct result of the act (18 U.S.C. § 3591(a)(2) (C)); and
- e. Larry Lujan 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 Dana Joe Grauke II died as a direct result of the act (18 U.S.C. § 3591(a)(2)(D)).

The following factors apply to Counts 1 and 2:

II. Statutory Aggravating Factors

The government will seek to prove the following statutory aggravating factors as the basis for imposition of the death penalty in relation to the Indictment:

- a. Larry Lujan caused the death of Dana Joe Grauke II during the commission of another crime, namely kidnapping under 18 U.S.C. § 1201 (18 U.S.C. § 3592(c)(1));
- b. Larry Lujan committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the person (18 U.S.C. § 3592(c)(6));
- c. Larry Lujan committed the offense after substantial planning and premeditation to cause the death of Dana Joe Grauke II (18 U.S.C. § 3592(c)(9)); and
- d. Larry Lujan committed the offense against the victim, Dana Joe Grauke II, who was particularly vulnerable due to infirmity (18 U.S.C. § 3592(c)(11)).

III. Non-Statutory Aggravating Factors

The government will seek to prove the following non-statutory aggravating factors as the basis for imposition of the death penalty in relation to the Indictment:

- (a) **Obstruction of justice.** Larry Lujan killed the victim in an effort to prevent the communication of information by any person to any law enforcement officer of the United States relating to the commission of kidnaping or drug trafficking, Federal offenses.
- (b) **Future dangerousness.** Larry Lujan represents a continuing danger to the lives and safety of other persons. Larry Lujan is likely to commit criminal acts of violence in the future that would constitute a continuing and serious threat to the lives and safety of others, as evidenced by, at least, one or more of the following:

- (1) **Continuing pattern of violence.** Larry Lujan 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 of the crime of committing a double homicide for which the defendant has been charged by the State of New Mexico.
- (2) **Low rehabilitative potential.** Larry Lujan has demonstrated a low potential for rehabilitation as evidenced by his repeated acts of institutional misconduct while in the custody of various state and local correction or detention agencies, or the United States Marshal's Service.
- (3) **Lack of remorse.** Larry Lujan has demonstrated a lack of remorse for killing Dana Joe Grauke II, as demonstrated by the defendant's statements following the offenses alleged in the Indictment.
- (c) **Victim impact evidence:** As reflected by the victim's personal characteristics as an individual human being and the impact of the offense on the victim and the victim's family, the defendant caused loss, injury, and harm to the victim and the victim's family (see Payne v. Tennessee, 501 U.S. 808, 825-27 (1991)).

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, **LARRY LUJAN**, his moral culpability, and the nature and circumstances of the offenses charged in the Indictment.

Dated: July 12, 2007

Respectfully submitted,

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Electronically filed 7/12/07 by
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I hereby certify that on July 12, 2007,
I electronically filed the foregoing with
the Clerk of the Court using the CM/ECF
system which will send notification to the
following: Robert Kinney and Marc Robert,
Office of the Federal Public Defender, Billy
Blackburn Brian A. Pori, Jess Lilley and Michael
Stout.

/s/
MARIA Y. ARMIJO
Assistant U.S. Attorney