

UNITED STATES OF AMERICA,  
Plaintiff,

v.

DAVID SAMUEL MARTINEZ-VELEZ,  
Defendant.

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

Crim. No. 95-029 (JAF)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 21 U.S.C. § 848(h)(1) (A) and (B), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that in the event of the defendant's conviction for one or both of the intentional killings of Wilfredo Rivera-Rodriguez and Wilfredo Guzman-Morales, as charged in Counts Fifty-Seven and Fifty-Eight, respectively, of the Third Superseding Indictment, the Government will seek the sentence of death for each and both of the intentional killings of which the defendant is convicted.

The Government will seek to prove the following aggravating factors as the basis for imposition of the death penalty.

COUNT FIFTY-SEVEN

INTENTIONAL KILLING OF WILFREDO RIVERA-RODRIGUEZ

A. Statutory Aggravating Factor Enumerated under 21 U.S.C.

§ 848(n) (1) (A) through (D):

1. Intentional Acts to Take Life or Use Lethal Force.

The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section

848(n) (1) (C).

*See memo  
of 10/20/97  
JAF*

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CLERK OF COURT  
SAN JUAN, P.R.

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BY N	# 1861

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

1. **Conviction for Offense Punishable by Death or Life in Prison.** The defendant has been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute. Section 848(n)(2).

2. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

3. **Vulnerability of Victim.** The victim was particularly vulnerable due to old age, youth, or infirmity. Section 848(n)(9).

4. **Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same

trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

**COUNT FIFTY-EIGHT**

**INTENTIONAL KILLING OF WILFREDO GUZMAN-MORALES**

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. § 848(n) (1) (A) through (D):

**1. Intentional Acts to Take Life or Use Lethal Force.**

The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (2) through (12):

**1. Conviction for Offense Punishable by Death or Life in Prison.** The defendant has been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute. Section 848(n)(2).

**2. Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

**3. Distribution to Persons under 21.** The defendant committed the offense in relation to another offense involving the distribution of controlled substances to persons under 21. Section 848(n)(11).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. § 848 (h)(1)(B) and § 848(k):

1. **Future Dangerousness of the Defendant.** The probability that the defendant would commit criminal acts of violence in the future which would be a continuing and serious threat to society. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994).

2. **Convictions for Multiple Killings.** The defendant has been convicted of killing more than one person in the same trial. United States v. Pitera, 795 F. Supp. 546, 564, 573-77 (E.D.N.Y.), aff'd, 986 F.2d 499 (2d Cir. 1992).

Respectfully submitted,

JOHN C. KEENEY  
Acting Assistant Attorney General  
Criminal Division  
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THERESA M.B. VAN VLIET  
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By: 

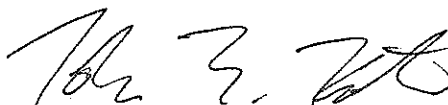
JOHN M. KATKO  
Trial Attorney  
Narcotic and Dangerous Drug Section  
Criminal Division  
United States Department of Justice

Dated: November 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of November, 1997, a true and correct copy of the foregoing notice of intent to seek the death penalty was delivered by hand or mailed via first class mail, postage prepaid thereon, to the following attorney of record:

Luis Medina-Torres  
Post Office Box 191191  
San Juan, Puerto Rico 00919-1191  
TEL (787) 765-3795  
FAX (787) 756-7087



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