

DMB:WAB:caz

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA**

v.

**JULIO OTERO**

**CRIMINAL NO. 3:CR-96-005  
(Chief Judge Rambo)**

**FILED  
HARRISBURG, PA**

**AUG 8 1997**

**MARY E. DIANDREA, CLERK  
Per Deputy Clerk**

**NOTICE OF INTENT  
TO SEEK THE DEATH PENALTY**

**I. TITLE 21 HOMICIDE**

AND NOW this 8th day of August 1997, comes David M. Barasch, United States Attorney for the Middle District of Pennsylvania, by William A. Behe, Assistant United States Attorney, on behalf of the United States of America who, pursuant to 21 U.S.C. § 848(h)(1)(A) and (B), notifies the Court and the Defendant in the above-captioned case that in the event of conviction for intentionally killing Jose "Junior" Burgos, as alleged in Count XVI of the Fifth Superseding Indictment, the United States will seek the sentence of death.

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

**A. Alternative Statutory Aggravating Factors Enumerated Under 21 U.S.C. § 848(n)(1)(A) through (D):**

1. The Defendant intentionally engaged in conduct intending that Jose "Junior" Burgos be killed and that lethal force be employed against Jose "Junior" Burgos, which resulted in Burgos' death. Section 848(n)(1)(C).

2. The Defendant intentionally engaged in conduct which the Defendant knew would create a grave risk of death to Jose "Junior" Burgos and which resulted in the death of the victim. Section 848(n)(1)(D).

**B. Statutory Aggravating Factors Enumerated Under 21 U.S.C. § 848(n)(2)-(12):**

1. The Defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 848(n)(6).

2. The Defendant committed the offense as consideration for the receipt, or in the expectation of receipt, of anything of pecuniary value. Section 848(n)(7).

3. The Defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

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

1. Future dangerousness: the probability that the Defendant would commit criminal acts of violence in the future that would constitute a continuing and serious threat to society, based upon evidence including but not limited to one or more of the following:

a. The Defendant inflicted physical and psychological abuse upon Jose "Junior" Burgos, and the Defendant encouraged others to do the same, resulting in Burgos being beaten, bound hand and foot with duct tape, and repeatedly stabbed over a period of time before he was killed.

b. On March 11, 1988, the Defendant committed felony crimes involving the unlawful delivery of a controlled substance, to wit, heroin, and criminal conspiracy to deliver heroin which resulted in his conviction on November 1, 1988 in the Dauphin County Court of

Common Pleas of these crimes. (2179 CD 1988).

c. On February 15, 1992, the Defendant beat and robbed Antonio Mercedes which resulted in his conviction on August 19, 1992 in the Dauphin County Court of Common Pleas of these crimes. (983 CD 1992).

d. The Defendant committed the aforementioned felony crimes of robbery and criminal conspiracy while on parole for a charge of theft by receiving stolen property, to wit: a stolen handgun.

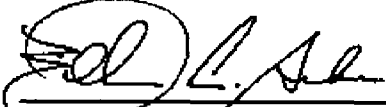
e. When arrested on February 28, 1996 in Rhode Island on the instant drug charges, the Defendant said he would have killed the arresting officers if he had a gun.

f. The Defendant had Larry Antonio "Tony" Haines killed on September 28, 1995 in an effort by the Defendant to obstruct justice, tamper with a witness, and to retaliate for Haines' cooperation with law enforcement authorities and to avoid the Defendant's own apprehension and prosecution, and did so after substantial premeditation.

2. Victim impact evidence: the family of the victim has suffered injury and loss as a result of the victim's death. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991).

Respectfully submitted,

DAVID M. BARASCH  
UNITED STATES ATTORNEY



WILLIAM A. REHE  
ASSISTANT U.S. ATTORNEY

Dated: August 8, 1997

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	CRIMINAL NO. 3:CR-96-005
	)	(CHIEF JUDGE RAMBO)
v.	)	
	)	
JULIO ORTERO and	)	
FELIX ORTIZ-VELEZ	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 8th day of August 1997, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE(S)  
Frank W. Nocito, Esquire  
63 Pierce Street  
Kingston, PA 18704

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*Cynthia A. Zimmerman*  
CYNTHIA A. ZIMMERMAN  
Paralegal Assistant