

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:04CR283-A
)	
DENIS RIVERA,)	Judge Gerald Bruce Lee
also known as "Conejo,")	
)	
Defendant.)	

NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH

The United States of America, through its attorney, Paul J. McNulty, the United States Attorney for the Eastern District of Virginia, and his assistants, Ronald L. Walutes, Jr. and Patricia T. Giles, hereby notifies the Court, the defendant, DENIS RIVERA, also known as "Conejo," and his counsel, that in the event of the defendant's conviction on any of Counts One, Two, Three, Four and Five, wherein the defendant is charged with Conspiracy to Tamper with a Witness or an Informant in violation of Title 18, United States Code, Section 1512(k), Conspiracy to Retaliate against a Witness or an Informant in violation of Title 18, United States Code, Section 1513(e), Killing a Person Aiding a Federal Investigation in violation of Title 18, United States Code, Sections 2 and 1121(a)(2), Tampering with a Witness or an Informant in violation of Title 18, United States Code, Sections 2 and 1512(a)(1), and Retaliating against a Witness or an Informant in violation of Title 18, United States Code, Sections 2 and 1513(a)(1), the government will seek the sentence of death, in that the circumstances of the offenses are such that a sentence of death is justified.

A. Statutory Threshold Findings Enumerated in 18 U.S.C. § 3591(a)(2)(C) and (D).

The government will seek to prove the following threshold findings as the basis for imposition of the death penalty in relation to Counts One, Two, Three, Four and Five of the Indictment:

1. Defendant DENIS RIVERA, also known as “Conejo,” 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 Brenda Paz, also known as “Smiley,” died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

2. Defendant DENIS RIVERA, also known as “Conejo,” 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 Brenda Paz, also known as “Smiley,” died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

3. Defendant DENIS RIVERA, also known as “Conejo,” was more than eighteen (18) years of age at the time of the murder of Brenda Paz, also known as “Smiley.” 18 U.S.C. §3591(a).

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c)(1) through (16).

The government will seek to prove the following statutory aggravating factors as the basis for imposition of the death penalty in relation to Counts One, Two, Three, Four and Five of the Indictment:

1. Defendant DENIS RIVERA, also known as “Conejo,” has previously been convicted

of another Federal offense resulting in the death of Joaquin Diaz, for which a sentence of life imprisonment or a sentence of death was authorized by statute, namely Title 18, United States Code, Section 1111 (Premeditated Murder) in United States v. Denis Rivera, also known as "Conejo," Criminal Number 02-CR-376-A. 18 U.S.C. § 3592(c)(3).

2. Defendant DENIS RIVERA, also known as "Conejo," committed the offense after substantial planning and premeditation to cause the death of Brenda Paz, also known as "Smiley." 18 U.S.C. § 3592(c)(9).

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

The government will seek to prove the following non-statutory aggravating factors as the basis for imposition of the death penalty in relation to Counts One, Two, Three, Four and Five of the Indictment:

1. Defendant DENIS RIVERA, also known as "Conejo," engaged in a pattern of juvenile criminal activity since the age of twelve (12) including, but not limited to, the following:

(a) On or about November 16, 1995, defendant DENIS RIVERA, also known as "Conejo," assaulted a student at Hammond Middle School in Alexandria, Virginia.

(b) On or about February 17, 1998, defendant DENIS RIVERA, also known as "Conejo," shoplifted clothing from a store in Alexandria, Virginia.

(c) On or about June 3, 1999, defendant DENIS RIVERA, also known as "Conejo," vandalized a fence in a condominium community in Alexandria, Virginia.

Additionally, defendant RIVERA attempted to intimidate the individual who reported the vandalism.

(d) On or about September 20, 1999, defendant DENIS RIVERA, also known as “Conejo,” participated in a physical altercation with a rival gang in Alexandria, Virginia.

(e) On or about March 29, 2000, defendant DENIS RIVERA, also known as “Conejo,” while on suspension from school, boarded a school bus at Minnie Howard Middle School and brandished a four-inch knife at another student in Alexandria, Virginia.

2. Defendant DENIS RIVERA, also known as “Conejo,” while a student in the Alexandria City school system, repeatedly engaged in misconduct that resulted in multiple suspensions.

3. Defendant DENIS RIVERA, also known as “Conejo,” has engaged in a pattern of criminal activity as an adult including, but not limited to, the following:

(a) On or about June 4, 2002, defendant DENIS RIVERA, also known as “Conejo,” brandished a pistol at two brothers, ages thirteen and fourteen, and chased them outside of their apartment complex. When the youths’ father intervened, defendant RIVERA pointed the pistol at the father’s head and pulled the trigger, however, the pistol malfunctioned. On or about January 8, 2003, defendant RIVERA was convicted of Attempted Malicious Wounding, Use of a Firearm, and Brandishing a Firearm.

(b) On or about June 9, 2002, defendant DENIS RIVERA, also known as “Conejo,” along with other members of the Mara Salvatrucha, also known as “MS-13,” secured pistols, went to the Cameron Commons apartment complex in Alexandria, Virginia, used bandanas to hide their face, and shot into a crowd of rival gang members congregating in the parking lot. As a result, defendant RIVERA, along with other members of MS-13, wounded three men. On or about February 6, 2003, defendant RIVERA was found guilty of Malicious

Wounding, Use of a Firearm in Commission of a Felony, Participation in an Act of Violence for a Criminal Street Gang, and Illegally Wearing a Mask.

(c) On or about June 10, 2002, defendant DENIS RIVERA, also known as “Conejo,” shot an individual while in the presence of Brenda Paz, also known as “Smiley.” On or about July 22, 2003, defendant RIVERA was found guilty of the offense of Maiming.

(d) On or about September 6, 2002, defendant DENIS RIVERA, also known as “Conejo,” pled guilty to Receiving Stolen Goods Over \$200 and Hit and Run stemming from an incident on or about March 18, 2002 where the defendant crashed a stolen vehicle into a light pole.

(e) On or about January 8, 2003, defendant DENIS RIVERA, also known as “Conejo,” pled guilty to three counts of forgery stemming from an incident on or about August 5, 2001 where defendant RIVERA provided a false name and date of birth to law enforcement, and signed court documents with the false name.

4. Defendant DENIS RIVERA, also known as “Conejo,” was a member of a criminal street gang as defined by 18 U.S.C. § 521(a), namely the Mara Salvatrucha, also known as “MS-13.” As a member of MS-13, defendant RIVERA agreed to engage in acts of violence, including murder, malicious woundings, and aggravated assaults. Defendant RIVERA was the leader of the Big Gangsters Locos Salvatrucha, or “BGLS,” clique of MS-13.

5. Defendant DENIS RIVERA, also known as “Conejo,” poses a future danger based upon the probability that he would commit criminal acts of violence that would constitute a continuing threat to society as demonstrated by, but not limited to, the following:

(a) Between or about May 1, 2003 and June 15, 2003, while in custody at the

Arlington County Detention Center, defendant DENIS RIVERA, also known as “Conejo,” did agree and conspire with juvenile members of MS-13 to escape from the detention facility. In one recorded conversation with a juvenile member of MS-13, defendant RIVERA stated that the deputies were old and did not wear body armor. In a second recorded conversation with another juvenile member of MS-13, defendant RIVERA asked the juvenile to shoot a deputy if necessary to assist in the escape. On or about January 8, 2004, defendant RIVERA pled guilty to Conspiracy to Escape and two counts of Recruiting a Juvenile into a Gang.

(b) While in custody and facing charges for the murder of Joaquin Diaz, defendant DENIS RIVERA, also known as “Conejo,” wrote numerous letters and made telephone calls to members of MS-13 identifying witnesses against him and directing that members of MS-13 take steps against the witnesses.

(c) While in custody and facing charges for the murder of Joaquin Diaz, defendant DENIS RIVERA, also known as “Conejo,” indicated a desire to harm individuals whom he believed were cooperating with the government.

(d) While in custody and facing charges for the murder of Joaquin Diaz, defendant DENIS RIVERA, also known as “Conejo,” ordered the murder of Brenda Paz, also known as “Smiley.”

(e) While in custody prior to and after his conviction for the murder of Joaquin Diaz, defendant DENIS RIVERA, also known as “Conejo,” continued to conduct and influence MS-13 gang business occurring inside and outside of the correctional institution.

(f) While in custody prior to and after his conviction for the murder of Joaquin Diaz, defendant DENIS RIVERA, also known as “Conejo,” has shown poor institutional

adjustment in that he has committed numerous disciplinary violations.

6. Defendant DENIS RIVERA, also known as “Conejo,” killed Joaquin Diaz in a vicious manner in that he repeatedly stabbed him in the face, chest, back, hands and forearms, and then severed his windpipe and removed part of his larynx while Joaquin Diaz was alive. After murdering Joaquin Diaz, defendant RIVERA bragged about the murder and showed no remorse.

7. Defendant DENIS RIVERA, also known as “Conejo,” ordered the murder of Brenda Paz, also known as “Smiley,” while knowing that she was pregnant at the time of her murder.

8. Defendant DENIS RIVERA, also known as “Conejo,” has demonstrated a lack of remorse toward the death of Brenda Paz, also known as “Smiley,” and instead has expressed delight in her death.

9. Defendant DENIS RIVERA, also known as “Conejo,” committed Counts One, Two, Three, Four and Five of the Indictment to prevent Brenda Paz, also known as “Smiley,” from and retaliate against her for assisting in the investigation and prosecution of defendant RIVERA for the murder of Joaquin Diaz, and in the investigation of other MS-13 members for their criminal activity.


10. The impact of the loss of Brenda Paz, also known as “Smiley,” on her family is an aggravating factor.

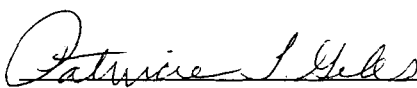
The government further gives notice that, in support of the imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as described in the Indictment as they relate to the background and character of the defendant, DENIS RIVERA, also known as “Conejo,” his moral culpability, and the nature and circumstances of the offense charged in Counts One, Two, Three,

Four and Five of the Indictment.

Respectfully submitted,

PAUL J. McNulty
UNITED STATES ATTORNEY

By: 
Ronald L. Walutes, Jr.
Assistant United States Attorney


Patricia T. Giles
Assistant United States Attorney

Certificate of Service

The undersigned hereby certifies that on the 1st day of October, 2004, a copy of the Government's Notice of Intent to Seek a Sentence of Death was mailed and faxed to the following attorneys for the defendants:

Robert L. Jenkins, Jr., Esquire
901 North Pitt Street
Suite 320
Alexandria, Virginia 22314
(703) 549-7211
fax: (703) 549-7701

Jerome P. Aquino, Esquire
221 South Alfred Street
Alexandria, Virginia 22314
(703) 549-1131
fax: (703) 549-5750

David P. Baugh, Esquire
223 South Cherry
Richmond, Virginia 23241-0137
(804) 643-8111
fax: (804) 225-8035

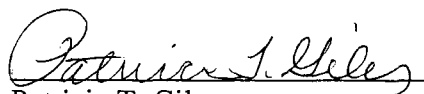
L. Felipe Restrepo, Esquire
239 South Camac Street
Philadelphia, Pennsylvania 19107
(215) 731-9500
fax: (215) 731-9907

Nina J. Ginsberg, Esquire
908 King Street
Suite 200
Alexandria, Virginia 22314-3019
(703) 684-4333
fax: (703) 548-3181

James C. Clark, Esquire
524 King Street (or P.O. Box 19888)
Alexandria, Virginia 22320
(703) 778-1433
fax: (703) 549-3335

Alexander N. Levay, Jr., Esquire
21 North King Street
Leesburg, Virginia 20176
(703) 777-6800
fax: (703) 777-8429

Frank Salvato, Esquire
1203 Duke Street
Alexandria, Virginia 22314
(703) 548-5000
fax: (703) 739-0179



Patricia T. Giles
Assistant United States Attorney