

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.-

S3 00 Cr. 761 (JSR)

DIEGO RODRIGUEZ, et al., :

Defendants. :

- - - - - x

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

COMES NOW the United States of America, pursuant to 18 U.S.C. § 3593(a) and 21 U.S.C. § 848(h), by and through MARY JO WHITE, United States Attorney for the Southern District of New York, and notifies the Court and the defendant, DIEGO RODRIGUEZ, in the above-captioned case that the Government believes the circumstances of the offenses charged in Counts Four and Eight of Indictment S3 00 Cr. 761 (JSR) are such that, in the event of the defendant's conviction of one or more of these offenses, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and Section 848 of Title 21 of the United States Code and that the Government will seek the sentence of death for these offenses, namely, Count Four, Murder in Aid of Racketeering resulting in the death of Edwin Santiago, in violation of Title 18, United States Code, Sections 1959(a)(1) and 2, and Count Eight, Murder in Connection With a Drug Trafficking Crime, in violation of Title 21, United States Code, Section 848(e)(1)(A) resulting in the death of Edwin

Santiago, each of which carries a possible sentence of death.

The Government proposes to prove the following factors to justify a sentence of death:

COUNT FOUR

THE MURDER OF EDWIN SANTIAGO IN AID OF RACKETEERING

A. Statutory Proportionality Factors Enumerated under 18

U.S.C. § 3591(a)(2)(A)-(D).

Pursuant to Title 18, United States Code, Section 3591(a)(2), the Government will rely on the following preliminary factors to establish the defendant's eligibility for the death penalty:

1. **Intentional Killing.** The defendant intentionally killed Edwin Santiago. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Edwin Santiago. Section 3591(a)(2)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The defendant 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 Edwin Santiago died as a direct result of the act. Section 3591(a)(2)(C).

4. **Intentional Acts in Reckless Disregard for Life.** The defendant 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 Edwin Santiago died as a direct result of the act. Section 3591(a)(2)(D).

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

Pursuant to Title 18, United States Code, Section 3592(c), the United States will rely on the following statutory aggravating factors as justifying a sentence of death:

1. **Heinous, Cruel, or Depraved Manner of Committing Offense.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 3592(c)(6).

2. **Procurement of Offense by Payment.** The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 3592(c)(7).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism. Section 3592(c)(9).

**C. Other, Non-Statutory, Aggravating Factors Identified under 18 U.S.C. § 3593(a)(2).**

Pursuant to Title 18, United States Code, Section

3593(a), the United States will rely on the following non-statutory aggravating factors as justifying a sentence of death:

1. **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 501 U.S. 808, 825-26 (1991). The victim's characteristics as an individual and the impact of the death upon the victim's family included one or more of the following:

(a) at the time of his death, Edwin Santiago was a registered informant for the New York City Police Department.

(b) the family of the victim has suffered injury, harm, and loss as a result of the victim's death, including but not limited to the following: because of the condition of the body, the parents of Edwin Santiago were required to submit DNA samples to identify their son.

2. **Obstruction of Justice.** The defendant committed the offense with the intent to prevent the victim from, or retaliate against the victim for, providing information and assistance to law enforcement authorities regarding the investigation or prosecution of the commission of another offense. See 18 U.S.C. §§ 1121(a)(2), 1510, 1512(a)(1), 1513(a)(1); U.S.S.G. § 3C1.1.

3. **Obstruction of Justice.** During the course of the

racketeering enterprise, the defendant planned to make false incriminating statements to law enforcement authorities regarding a New York City Police Detective.

4. **Contemporaneous Convictions.** In addition to being convicted of the murder of Edwin Santiago, the defendant was convicted of participating in a conspiracy to distribute and possess with intent to distribute cocaine and heroin.

5. **Firearms Violations.** While engaging in a racketeering enterprise, the defendant stored firearms at the scene of the murder.

6. **Prior Convictions.** On or about December 29, 1980, the defendant was convicted of burglary in the third degree; on or about February 10, 1983, the defendant was convicted of assault in the first degree; on or about October 29, 1987, the defendant was convicted of criminal possession of a controlled substance in the seventh degree; and on December 13, 1989, the defendant was convicted of criminal possession of a weapon.

**COUNT EIGHT**

**THE MURDER OF EDWIN SANTIAGO IN CONNECTION TO A DRUG TRAFFICKING CRIME.**

**A. Statutory Aggravating Factors Enumerated under 21 U.S.C. § 848(n) (1) - (12).**

Pursuant to Title 21, United States Code, Section 848(n), the United States will rely on the following statutory

aggravating factors as justifying a sentence of death:

1. **Intentional Killing.** The defendant intentionally killed Edwin Santiago. Section 848(n)(1)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Edwin Santiago. Section 848(n)(1)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that Edwin Santiago be killed or that lethal force would be employed against Edwin Santiago, which resulted in the death of Edwin Santiago. Section 848(n)(1)(C).

4. **Intentional Acts in Reckless Disregard for Life.** The defendant intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense, which resulted in the death of Edwin Santiago. Section 848(n)(1)(D).

5. **Procurement of Offense by Payment.** The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 848(n)(6).

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

7. **Heinous, Cruel, or Depraved Manner of Committing Offense.** The defendant committed the offense in an especially

heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 848(n)(12).

**B. Other, Non-Statutory, Aggravating Factors Identified.**

In addition to the statutory aggravating factors set forth above, the Government will rely on the following non-statutory aggravating factors to justify a sentence of death:

1. **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 501 U.S. 808, 825-26 (1991). The victim's characteristics as an individual and the impact of the death upon the victim's family included one or more of the following:

(a) at the time of his death, Edwin Santiago was a registered informant for the New York City Police Department.

(b) the family of the victim has suffered injury, harm, and loss as a result of the victim's death, including but not limited to the following: because of the condition of the body, the parents of Edwin Santiago were required to submit DNA samples to identify their son.

2. **Obstruction of Justice.** The defendant committed the offense with the intent to prevent the victim from, or to retaliate against the victim for, providing information and assistance to law enforcement authorities regarding the

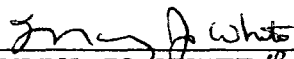
investigation or prosecution of the commission of another offense. See 18 U.S.C. §§ 1121(a)(2), 1510, 1512(a)(1), 1513(a)(1); U.S.S.G. § 3C1.1.

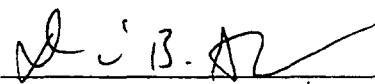
3. **Obstruction of Justice.** During the course of a racketeering enterprise, the defendant planned to make false incriminating statements to law enforcement authorities regarding a New York City Police Detective.

4. **Contemporaneous Convictions.** In addition to being convicted of the murder of Edwin Santiago, the defendant was convicted of participating in a conspiracy to distribute and possess with intent to distribute cocaine and heroin.

5. **Prior Convictions.** On or about December 29, 1980, the defendant was convicted of burglary in the third degree; on or about February 10, 1983, the defendant was convicted of assault in the first degree; on or about October 29, 1987, the defendant was convicted of criminal possession of a controlled substance in the seventh degree; and on December 13, 1989, the defendant was convicted of criminal possession of a weapon.

Respectfully submitted,

  
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MARY JO WHITE  
United States Attorney

By:   
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DAVID B. ANDERS/TIFFANY ERWIN  
Assistant United States Attorneys

Dated: October 26, 2001



