

JS:RPD
F. #2003R01236

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

NOTICE OF INTENT TO
SEEK THE DEATH PENALTY

- against -

03 CR 851 (S-2) (LDW)

JOSUE OTONIEL RUBI-GONZALEZ,

Defendant.

- - - - - X

Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives notice that it believes that the circumstances of this case are such that, in the event that the defendant JOSUE OTONIEL RUBI-GONZALEZ is convicted of the capital offense relating to the death of victim Jesus Valentin, a sentence of death is justified and that the United States will seek the death penalty. Specifically, the United States will seek a sentence of death for Count Five of the Second Superseding Indictment, which charges murder in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and 2.

Pursuant to 18 U.S.C. § 3591(a)(2), the United States will rely on the following preliminary factors to establish the defendant's eligibility for the death penalty:

1. The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

2. The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591(a)(2)(B).

3. The defendant intentionally participated in one or more acts, 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 Jesus Valentin died as a direct result of the act or acts. 18 U.S.C. § 3591(a)(2)(C).

4. The defendant intentionally and specifically engaged in one or more acts of violence, knowing that the act or acts created a grave risk of death to a person, other than one of the participants in the offense, such that participation in such act or acts constituted a reckless disregard for human life, and Jesus Valentin died as a direct result of such act or acts. 18 U.S.C. § 3591(a)(2)(D).

Pursuant to 18 U.S.C. § 3592(c), the United States will rely on the following statutory aggravating factor as justifying a sentence of death:

1. Heinous, cruel or depraved manner of committing the 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. 18 U.S.C. § 3592(c)(6).

In addition to the statutory aggravating factor set forth above, the United States will rely on the following non-statutory aggravating factors to justify a sentence of death pursuant to 18 U.S.C. § 3593(a)(2):

1. Victim Impact Evidence. The defendant caused injury, harm, and loss to the victim, the victim's family, and the victim's friends as demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family and friends. Payne v. Tennessee, 501 U.S. 808, 824-27 (1991). The United States will present information concerning the effect of the offense on the victim and his family and friends, which may include oral testimony, victim impact statements, and the extent and scope of the injury and loss suffered by the victim, his family and friends, and any other relevant information.

2. The United States 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 Second Superseding Indictment, as they relate to the background and character of the defendant JOSUE OTONIEL RUBI-

GONZALEZ, his moral culpability, and the nature and circumstances of the offenses charged in the Second Superseding Indictment.

Dated: January 27, 2006
Central Islip, New York

Respectfully submitted,

ROSLYNN R. MAUSKOPF
UNITED STATES ATTORNEY

cc: Anthony M. La Pinta, Esq.
Edward Jenks, Esq.

BY: Eric C. [Signature]
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. 0.136