

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

JOSE M. SANTIAGO, a/k/a "King
Monkey," a/k/a "King Mono," et al.

Defendants.

S4 98 Cr. 290 (CM)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 18 U.S.C. § 3593(a), by and through MARY JO WHITE, United States Attorney for the Southern District of New York, and notifies the Court and the defendant, JOSE M. SANTIAGO, a/k/a "King Monkey," a/k/a "King Mono," in the above-captioned case that the Government believes the circumstances of the offense charged in Count Two of the fourth superseding Indictment are such that, in the event of the defendant's conviction of this offense, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek the sentence of death for the offense set forth in Count Two, murder in aid of racketeering, resulting in the death of Efraim Torres, in violation of Title 18, United States Code, Sections 2 and 1959(a)(1), which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

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 Efraim Torres. 18 U.S.C. § 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Efraim Torres. 18 U.S.C. § 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 Efraim Torres died as a direct result of the act. 18 U.S.C. § 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 Efraim Torres died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

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

1. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, or in escaping apprehension for the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

2. **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. 18 U.S.C. § 3592(c)(9).

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

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, 824-26 (1991). This evidence will include, among other things, testimony describing the stalking of the victim in the days prior to his murder, and his being shot in front of his wife and children at the insistence of the defendant.

Respectfully submitted,

Mary Jo White
MARY JO WHITE *AKK*
UNITED STATES ATTORNEY

Cynthia Keefe Dunne
Cynthia Keefe Dunne
Assistant United States Attorney

Dated: February 4, 2000