

**IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
vs.)	Criminal No. 2:20CR00017
)	
)	
SAMUEL SILVA)	

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 its undersigned counsel, and notifies the Court and the Defendant in the above-captioned case, SAMUEL SILVA, that the Government believes the circumstances of the offense charged in Count One of the Indictment are such that, in the event of a conviction, a sentence of death is justified, and that the Government will seek the sentence of death for this offense: Title 18, United States Code, Section 1111 which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death under the offense charged in Count One of the Indictment, the allegations of which are fully realleged and incorporated herein by reference:

- A. SAMUEL SILVA was then 18 years of age or older at the time of his commission of the offense.
- B. Statutory Intent Factors Enumerated Under Title 18, United States Code, Section 3591(a)(2).
 - i. SAMUEL SILVA intentionally killed Abraham Aldana, pursuant to 18 U.S.C. Section 3591(a)(2)(A);

- ii. SAMUEL SILVA intentionally inflicted serious bodily injury that resulted in the death of Abraham Aldana, pursuant to 18 U.S.C. Section 3591(a)(2)(B);
- iii. SAMUEL SILVA intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force be used in connection with a person, other than one of the participants in the offense, and Abraham Aldana died as a direct result of the act, pursuant to 18 U.S.C. Section 3591(a)(2)(C); and
- iv. SAMUEL SILVA 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 Abraham Aldana died as a direct result of the act, pursuant to 18 U.S.C. Section 3591(a)(2)(D).

C. Aggravating Factors Enumerated under Title 18, United States Code, Section 3592

- i. SAMUEL SILVA has previously been convicted of Federal or State offenses punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm against another person, pursuant to 18 U.S.C. Section 3592(c)(2), which are:
 - a. 1995—Shooting from a Motor Vehicle; Aggravated Assault with a Deadly Weapon (Thirteenth Judicial District Court, Los Lunas, NM; Docket No. VA-94-129-CR);
 - b. 1995—Aggravated Battery with a Deadly Weapon (Thirteenth Judicial District Court, Los Lunas, NM; Docket No. VA-95-040-CR);
 - c. 2000—Attempted Murder (Firearm Enhancement); Shooting at/from a Motor Vehicle; Possession of a Firearm/Destructive Device by a Felon; Kidnapping (Firearm Enhancement); Aggravated Assault with a Deadly Weapon (Firearm Enhancement); Resisting, Evading or Obstructing an Officer (Thirteenth Judicial District, Los Lunas, NM; Docket No. D-1314-CR-199900162);
 - d. 2017—Attempted Carjacking; Using, Carrying, Possessing and Brandishing a Firearm During and in Relation to and in Furtherance of a Crime of Violence (United States District Court for the District of New Mexico, Case No. 1:14CR04067-001JAP)¹

¹ These convictions also qualify under infliction of, or attempted infliction of serious bodily injury or death upon another person pursuant to 18 U.S.C. Section 3592(c)(4).

- ii. SAMUEL SILVA committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim, pursuant to 18 U.S.C. Section 3592(c)(6).
- iii. SAMUEL SILVA committed the offense after substantial planning and premeditation to cause the death of a person, pursuant to 18 U.S.C. Section 3592(c)(9).

D. Non-Statutory Aggravating Factors Enumerated under 18 U.S.C. 3593(a)(2)

The non-statutory aggravating factors which the Government will seek to prove as the basis for the death penalty which are applicable to the homicide and to the defendant under Count One are as follows.

- i. The Defendant, SAMUEL SILVA has exhibited future dangerousness, which is based upon the probability that he would commit acts of violence and constitute a continuing threat to the lives and safety of others. In addition to the capital offense charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, SAMUEL SILVA has engaged in a continuing pattern of charged and uncharged violent conduct, has threatened others with violence, has demonstrated lack of remorse, and/or has demonstrated a low rehabilitative potential, including, but not limited to one or more of the following:
 - a. SAMUEL SILVA is currently serving a 564-month sentence for federal carjacking and firearms convictions from the District of New Mexico, case number 1:14CR04067-001JAP, date of conviction, on or about February 22, 2017. That conviction involved SILVA's invasion of a 66-year-old woman's home, tying her up, brandishing a .45 caliber pistol at the victim, and demanding items of value, including the keys to her car. After SILVA fled the scene of the first victim's home, SILVA ran to a second victim's home (Victim 2), and attempted to enter it. When Victim 2 refused and attempted to retrieve his own handgun, SILVA confronted him and demanded the keys to the pickup truck in Victim 2's driveway. Before Victim 2 could comply with SILVA's demand, SILVA shot Victim 2 in the lower left leg. SILVA then dragged Victim 2 by his hair to the kitchen where he took the keys to the truck. SILVA acted to obstruct justice in that case, conspiring with other gang members to convince witnesses not to testify against him and/or have them killed.
 - b. Both before and after the homicide of Abraham Aldana, charged in the Indictment, SAMUEL SILVA has occupied a leadership position in a violent gang, the Sindicato de Nuevo Mexico (SNM). Through his connection in the SNM, SILVA has been involved in various violent crimes

for many years. For instance, in or around August 2000, SILVA participated in the prison homicide of Matthew Cavalier with other SNM members because SNM members believed Cavalier had cooperated in the investigation of another individual. Specifically, SILVA grabbed and held Cavalier's chest and arms while other then-SNM members held Cavalier's legs and choked him with a ligature. Although SILVA was originally charged with this prison homicide, another individual, who had participated in the homicide, pleaded guilty and SILVA's charges were dismissed.

- c. The instant homicide of Abraham Aldana, as charged in the Indictment, was a gang-related homicide, which had to be approved by gang leadership within the prison. During the homicide, SAMUEL SILVA gagged Aldana and stabbed him over 100 times, leaving the metal shank he used in the attack in the base of Aldana's head. SILVA, conversely, sustained no significant injuries during the attack.
- d. SAMUEL SILVA has committed various acts of uncharged violence, including, but not limited to: providing violence and enforcement for an illicit narcotics operation when he was out of prison in New Mexico; shooting Chris Rodriguez; committing robberies; and committing other shootings.
- e. SAMUEL SILVA has not expressed remorse for his violent acts, including, but not limited to, the murders of Aldana or Cavalier, at the time of the murders or subsequently.

The government gives further notice that in support of 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, his moral culpability and the nature and circumstances of the offense of conviction.

Respectfully submitted,

s/ Daniel P. Bubar
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Government's Notice of Intent to Seek the Death Penalty has been electronically filed by CM/ECF system which will send notification of such filing to defendant's counsel, on this 4th day of December, 2020.

s/Daniel P. Bubar
Acting United States Attorney