

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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DISTRICT COURT
SAN JUAN, P.R.

UNITED STATES OF AMERICA, *

v. *

CRIMINAL NO. 99-044(SEC) *

HECTOR OSCAR ACOSTA MARTINEZ *
a/k/a Gordo, ET AL. *

RECEIVED
JAN 31 2000

**NOTICE OF INTENTION BY THE UNITED STATES TO SEEK
THE DEATH PENALTY FOR DEFENDANTS
HECTOR OSCAR ACOSTA MARTINEZ AND JOEL RIVERA ALEJANDRO**

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through its attorneys, Guillermo Gil, United States Attorney for the District of Puerto Rico and John Teakell; Assistant United States Attorney for said District, and respectfully state as follows:

1. That they are "attorneys for the government" as that term is defined in Federal Rule of Criminal Procedure 54(c) and as the term is used in Title 18, U.S.C. §3593(a). Further, that pursuant to Title 18, U.S.C. §3593(a), and Local Rule 428(11)(B)(3), and the Scheduling Order of this Court, the undersigned counsel very respectfully submit the instant Notice to the Court and counsel for the defendants in this case.

2. Further, that the United States believes that the circumstances of the below enumerated offenses are such that, following conviction, a sentence of death is justified with respect to defendants Hector Oscar Acosta Martinez and Joel Rivera Alejandro for the murder of Jorge Hernandez Diaz in violation Title 18, U.S.C. §§924(j), murder in relation to a crime of

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violence, and 1513(a)(1)(B), unlawful killing with the intent to retaliate, which each carry a possible sentence of death and which is described in Counts 2 and 3 respectively in the Superseding Indictment, for the reasons set forth below. The United States proposes to prove the following factors, outlined separately with respect to each defendant, as justifying a sentence of death with respect to those defendants.

**PROPORTIONALITY FACTORS
UNDER TITLE 18, U.S.C. §3591(A)(2)**

3. That defendant JOEL RIVERA ALEJANDRO intentionally killed the victim Jorge Hernandez Diaz. See Title 18, U.S.C. §3591(a)(2)(A). That he did so by intentionally inflicting serious bodily injury that resulted in the death of the victim Jorge Hernandez Diaz. See Title 18, U.S.C. §3591(a)(2)(B). Further, that the defendant JOEL RIVERA ALEJANDRO 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 the victim Jorge Hernandez Diaz died as a direct result of the act. See Title 18, U.S.C. §3591(a)(2)(C).

4. That HECTOR OSCAR ACOSTA MARTINEZ 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 the victim Jorge Hernandez Diaz died as a direct result of that act. See Title 18, U.S.C. §3591(a)(2)(C).

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**STATUTORY AGGRAVATING FACTORS
UNDER TITLE 18, U.S.C. §3592(c)**

5. Defendant HECTOR OSCAR ACOSTA MARTINEZ committed the offense in a heinous, cruel or depraved manner. See Title 18, U.S.C. §3592(c)(6).
6. Defendant HECTOR OSCAR ACOSTA MARTINEZ committed the offense in the expectation of the receipt of something of pecuniary value. See Title 18, U.S.C. §3592(c)(8).
7. Defendant JOEL RIVERA ALEJANDRO committed the offense in a heinous, cruel or depraved manner. See Title 18, U.S.C. §3592(c)(6).
8. Defendant JOEL RIVERA ALEJANDRO committed the offense in the expectation of the receipt of something of pecuniary value. See Title 18, U.S.C. §3592(c)(8).

NON-STATUTORY AGGRAVATING FACTORS

9. That defendant HECTOR OSCAR ACOSTA MARTINEZ committed the offense in such a vile manner to justify capital punishment. See Gregg v. Georgia, 428 U.S. 153 (1976).
10. That defendant HECTOR OSCAR ACOSTA MARTINEZ participated in the murder of Jorge Hernandez Diaz in retaliation for the family contacting law enforcement and not paying ransom demands.
11. That defendant HECTOR OSCAR ACOSTA MARTINEZ is likely to commit acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. See Simmons v. South Carolina, __ U.S. __, 114 S.Ct. 2187, 2193 (1994).
12. That defendant HECTOR OSCAR ACOSTA MARTINEZ caused injury, loss and

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harm by killing the victim, with a great impact on the victim's family because of the death. See Payne v. Tennessee, __ U.S. __, 111 S.Ct. 2597, 2608-09 (1991). Thus, the non-statutory factor of impact on the victim's family exists in this case.

13. That defendant JOEL RIVERA ALEJANDRO committed the offense in such a vile manner to justify capital punishment. See Gregg v. Georgia, 428 U.S. 153 (1976).

10. That defendant JOEL RIVERA ALEJANDRO participated in the murder of Jorge Hernandez Diaz in retaliation for the family contacting law enforcement and not paying ransom demands.

11. That defendant JOEL RIVERA ALEJANDRO is likely to commit acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. See Simmons v. South Carolina, __ U.S. __, 114 S.Ct. 2187, 2193 (1994).

12. That defendant JOEL RIVERA ALEJANDRO caused injury, loss and harm by killing the victim, with a great impact on the victim's family because of the death. See Payne v. Tennessee, __ U.S. __, 111 S.Ct. 2597, 2608-09 (1991). Thus, the non-statutory factor of impact on the victim's family exists in this case.

CONCLUSION

In accordance with Title 18, U.S.C. §3593(a) and in light of, *inter alia*, the above-described aggravating factors, the United States submits that a sentence of death is justified under the circumstances of the case with respect to defendants HECTOR OSCAR ACOSTA MARTINEZ and JOEL RIVERA ALEJANDRO. The Attorney General has authorized that the

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death penalty be sought in this case and a copy of the authorization is attached. Accordingly, the United States herein provides notice that, following conviction of any or all of said defendants, the United States will seek the sentence of death. WHEREFORE, the United States requests that the court and the defendants take notice of the above and for such other and further relief as is just and proper.

Respectfully submitted,

In San Juan, Puerto Rico this 25th day of January, 2000.

GUILLERMO GIL
UNITED STATES ATTORNEY




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CERTIFICATE OF SERVICE

This is to certify that on this the 25th day of January, 2000 that a true and correct copy of the foregoing Notice of Intention by the United States to Seek the Death Penalty For Defendants Hector Oscar Acosta Martinez and Joel Rivera Alejandro was served by first-class mail on all counsel of record in this case.



John R. Teakell
Assistant United States Attorney