

Brothers plead not guilty in cartel case | Pair may be tried with alleged leader

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Two brothers accused of running day-to-day operations for the Arellano Felix cartel in Tijuana and Mexicali pleaded not guilty in San Diego federal court yesterday and may be tried with the accused head of the organization.

Ismael and Gilberto Higuera Guerrero oversaw the importation of tons of cocaine and marijuana from Mexico into the United States, and kidnapped, tortured and killed cartel rivals in the process, prosecutors said.

The brothers were among 15 people extradited from Mexico 1 1/2 weeks ago in an effort to battle lawlessness along the border and in Mexican prisons.

Two others extradited with them were also in court yesterday, accused drug smuggler Jesus Hector Palma Salazar, who authorities say left the Arellano Felix cartel and went on to lead the rival Sinaloa drug cartel, and Jose Albert Marquez, indicted in 2002 on drug charges, but also suspected of being the Arellano Felix cartel's link to the Mexican Mafia prison gang.

Mexican authorities have indicated more extraditions are likely. At least four others indicted in San Diego are in Mexican jails, including accused cartel leader Francisco Javier Arellano Felix's brother, Benjamin.

The Higuera brothers are scheduled to appear before U.S. District Judge Larry Alan Burns on Monday, along with Francisco Javier Arellano Felix and a man authorities said was his No. 2 man.

Burns last week rejected a June 2008 trial date and has been pushing to have Arellano go to trial this year.

Defense lawyers say that's near impossible.

"This thing is more complicated than anything I've seen in my life," said Arellano lawyer Mark Adams. "We're working as fast as we can."

Adams said it will take a long time to sift through 60,000 pages of investigative documents, 500,000 intercepted radio communications, plus several years worth of wiretapped telephone conversations.

The arrival of two new defendants could complicate matters further, but it could spare Arellano the death penalty.

For one thing, Burns -- or the prosecutors -- may push to have all the accused tried at the same time, legal observers said.

"He's been known to jam people into one big trial," said Shaun Martin, a criminal law professor at the University of San Diego.

"Explaining the structure of the organization is so hard and takes so much time that judges are pressured to put as many defendants together as they can."

Prosecutors haven't announced how they would like to proceed.

Arellano and his suspected right-hand man, Manuel Arturo Villarreal Heredia, were captured by U.S. agents aboard a boat Aug. 14 and have been charged with crimes that, if convicted, could lead to the death penalty.

Prosecutors said Arellano and Villarreal were behind the beheadings of three police officers and a civilian in Rosarito Beach last year.

U.S. Attorney General Alberto Gonzales eventually will decide whether San Diego federal prosecutors will pursue the death penalty.

As part of that decision, Gonzales must consider the maximum penalty faced by other people accused of similar activity in the same case.

The Higuera brothers were extradited by Mexico on a 2003 indictment in which the maximum penalty for any given count is 40 years in prison.

As part of the extraditions, U.S. officials agreed not to seek the death penalty against them nor add any charges beyond those they already are facing.

Prosecutors dismissed Arellano from that earlier indictment when a new indictment against him and Villarreal was filed late last year.

"The two indictments aren't totally dissimilar, but they do identify different acts and that makes it much harder to try these people together," Martin said.

Another problem is that, except for Arellano, none of the others have had lawyers for very long.

Villarreal was appointed a lawyer Thursday. The Higuera brothers were given publicly funded lawyers yesterday, though it is unclear whether they will stay on the case.

"They're going to be facing the same situation, this voluminous number of documents," said Michael Crowley, a San Diego defense lawyer not involved with the case.

Crowley and other legal experts said it takes considerably longer to get ready for trial in death penalty cases because each step of the process will be reviewed by appellate courts, which can send the case back if it's not done correctly.

After reviewing the mountain of evidence and running their own investigation, defense lawyers argue to the attorney general why capital punishment isn't appropriate.

Then, if the attorney general decides to seek the death penalty, defense lawyers have to prepare for a two-part trial.

In the first phase, jurors are asked whether the person is guilty; in the second, whether the death penalty is called for.

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