

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

MOHAMED RASHED DAOUD AL-'OWHALI,

Defendant.

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

S(7) 98 Cr. 1023 (LBS)

MARY JO WHITE
United States Attorney
Southern District of New York

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Assistant U. S. Attorney
(212) 637-1045

A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Killing.** The defendant intentionally killed the victim named in the respective count of the Indictment. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim named in the respective count of the Indictment. Section 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 the victim named in the respective count of the Indictment died as a direct result of the act. Section 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 the victim named in the respective count of the Indictment died as a direct result of the act. Section 3591(a)(2)(D).

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

1. **Death During Commission of Another Crime.** The death, and the injury resulting in death, of the victim named in the respective count of the Indictment, occurred during the commission or attempted commission of an offense under 18 U.S.C. 844(f) (bombing of property leased to the United States Government), 18 U.S.C. § 844(i) (destruction of property affecting foreign commerce by explosives), 18 U.S.C. § 1116 (killing of internationally protected persons), 18 U.S.C. § 2332 (terrorist acts abroad against United States nationals), and 18 U.S.C. § 2332a (use of weapon of mass destruction). Section 3592(c)(1).

2. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense named in the respective count of the Indictment. Section 3592(c)(5).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. Section 3592(c)(9).

4. **Multiple Killings or Attempted Killings.** The defendant intentionally killed or attempted to kill more than one

person in a single criminal episode. Section 3592(c)(16).

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

1. **Future Dangerousness of the Defendant.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the capital offenses charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has been extensively trained in intelligence techniques, assassination techniques, hostage taking, hijacking, and other means and methods of perpetrating acts of violence; has threatened law enforcement agents and their families with violence; has demonstrated low rehabilitative potential, lack of remorse, violent opposition to the American Government in all its forms, and a willingness to risk his own life to achieve his goal of killing Americans.

2. **Victim Impact Evidence.** As demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family, the defendant caused injury, harm, and loss to the victim named in the respective count of the Indictment and that victim's family. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury.** That, in committing the offense charged in the Indictment, and apart from the impact of the death of the victim named in the respective count of the Indictment as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic hardship, to numerous individuals who survived the offense.

4. **High Public Officials Serving Abroad.** That the intended victims included high-ranking public officials of the United States serving abroad and the offense was motivated by such status.

5. **Knowledge of Simultaneous Act of Terrorism.** That the defendant had advance knowledge that his actions were part of a coordinated plan to commit simultaneous terrorist attacks on United States nationals abroad, specifically, the defendant had prior knowledge of the planned simultaneous bombing of the United States Embassy in Dar es Salaam, Tanzania.

6. **Disruption to Important Governmental Functions.** That the bombings were intended to cause, and in fact did cause, tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Kenya in that embassy personnel (and facilities) carry out vital work on behalf of the United States government and its citizens,

including: facilitating economic and other aid to the Government of Kenya and its citizens; facilitating communication between the United States and Kenyan government officials concerning matters or mutual concern, including health, education and the economy; providing consular services to United States citizens residing or traveling abroad; providing visa services to Kenyan nationals and others seeking to travel to the United States; and otherwise serving the interests of our citizens while in Kenya.

COUNTS TWO HUNDRED THIRTY-FIVE THROUGH TWO HUNDRED SEVENTY-FIVE
MURDER OF OFFICERS AND EMPLOYEES OF THE UNITED STATES GOVERNMENT

As to each of Counts Two Hundred Thirty-Five through Two Hundred Seventy-Five of the Indictment, 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).

1. **Intentional Killing.** The defendant intentionally killed the victim named in the respective count of the Indictment. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim named in the respective count of the Indictment. Section 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 the victim named in the respective count of the Indictment died as a direct result of the act. Section 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 the victim named in the respective count of the Indictment died as a direct result of the act. Section 3591(a)(2)(D).

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

1. **Death During Commission of Another Crime.** The death, and the injury resulting in death, of the victim named in the respective count of the Indictment, occurred during the commission or attempted commission of an offense under 18 U.S.C. 844(f) (bombing of property leased to the United States Government), 18 U.S.C. § 844(i) (destruction of property affecting foreign commerce by explosives), 18 U.S.C. § 1116

(killing of internationally protected persons), 18 U.S.C. § 2332 (terrorist acts abroad against United States nationals), and 18 U.S.C. § 2332a (use of weapon of mass destruction). Section 3592(c)(1).

2. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense named in the respective count of the Indictment. Section 3592(c)(5).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. Section 3592(c)(9).

4. **Multiple Killings or Attempted Killings.** The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. Section 3592(c)(16).

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

1. **Future Dangerousness of the Defendant.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the capital offenses charged in the Indictment and the statutory and non-statutory aggravating

factors alleged in this Notice, the defendant has been extensively trained in intelligence techniques, assassination techniques, hostage taking, hijacking, and other means and methods of perpetrating acts of violence; has threatened law enforcement agents and their families with violence; has demonstrated low rehabilitative potential, lack of remorse, violent opposition to the American Government in all its forms, and a willingness to risk his own life to achieve his goal of killing Americans.

2. **Victim Impact Evidence.** As demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family, the defendant caused injury, harm, and loss to the victim named in the respective count of the Indictment and that victim's family . Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury.** That, in committing the offense charged in the Indictment, and apart from the impact of the death of the victim named in the respective count of the Indictment as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic hardship, to numerous individuals who survived the offense.

4. **High Public Officials Serving Abroad.** That the intended victims included high-ranking public officials of the

United States serving abroad and the offense was motivated by such status.

5. **Knowledge of Simultaneous Act of Terrorism.** That the defendant had advance knowledge that his actions were part of a coordinated plan to commit simultaneous terrorist attacks on United States nationals abroad, specifically, the defendant had prior knowledge of the planned simultaneous bombing of the United States Embassy in Dar es Salaam, Tanzania.

6. **Disruption to Important Governmental Functions.** That the bombings were intended to cause, and in fact did cause, tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Kenya in that embassy personnel (and facilities) carry out vital work on behalf of the United States government and its citizens, including: facilitating economic and other aid to the Government of Kenya and its citizens; facilitating communication between the United States and Kenyan government officials concerning matters of mutual concern, including health, education and the economy; providing consular services to United States citizens residing or traveling abroad; providing visa services to Kenyan nationals and others seeking to travel to the United States; and otherwise serving the interests of our citizens while in Kenya.

COUNTS TWO HUNDRED EIGHTY AND TWO HUNDRED EIGHTY-ONE

MURDER OF INTERNATIONALLY PROTECTED PERSONS

As to each of Counts Two Hundred Eighty and Two Hundred Eighty-One of the Indictment, 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).

1. **Intentional Killing.** The defendant intentionally killed the victim named in the respective count of the Indictment. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim named in the respective count of the Indictment. Section 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 the victim named in the respective count of the Indictment died as a direct result of the act. Section 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 the victim named in the respective count of the Indictment died as a direct result of the act. Section 3591(a)(2)(D).

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

1. **Death During Commission of Another Crime.** The death, and the injury resulting in death, of the victim named in the respective count of the Indictment, occurred during the commission or attempted commission of an offense under 18 U.S.C. 844(f) (bombing of property leased to the United States Government), 18 U.S.C. § 844(i) (destruction of property affecting foreign commerce by explosives), 18 U.S.C. § 2332 (terrorist acts abroad against United States nationals), and 18 U.S.C. § 2332a (use of weapon of mass destruction). Section 3592(c)(1).

2. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense named in the respective count of the Indictment. Section 3592(c)(5).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and

premeditation to cause the death of one or more persons and to commit an act of terrorism. Section 3592(c)(9).

4. **Multiple Killings or Attempted Killings.** The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. Section 3592(c)(16).

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

1. **Future Dangerousness of the Defendant.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the capital offenses charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has been extensively trained in intelligence techniques, assassination techniques, hostage taking, hijacking, and other means and methods of perpetrating acts of violence; has threatened law enforcement agents and their families with violence; has demonstrated low rehabilitative potential, lack of remorse, violent opposition to the American Government in all its forms, and a willingness to risk his own life to achieve his goal of killing Americans.

2. **Victim Impact Evidence.** As demonstrated by the victim's personal characteristics as an individual human being

and the impact of the death upon the victim's families, the defendant caused injury, harm, and loss to the victim named in the respective count of the Indictment and that victim's family . Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury.** That, in committing the offense charged in the Indictment, and apart from the impact of the death of the victim named in the respective count of the Indictment as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic hardship, to numerous individuals who survived the offense.


4. **High Public Officials Serving Abroad.** That the intended victims included high-ranking public officials of the United States serving abroad, other than the officials named in Counts Two Hundred Eighty and Two Hundred Eighty-One of the Indictment, and the offense was motivated by such status.

5. **Knowledge of Simultaneous Act of Terrorism.** That the defendant had advance knowledge that his actions were part of a coordinated plan to commit simultaneous terrorist attacks on United States nationals abroad, specifically, the defendant had prior knowledge of the planned simultaneous bombing of the United States Embassy in Dar es Salaam, Tanzania.

6. **Disruption to Important Governmental Functions.** That the bombings were intended to cause, and in fact did cause,

tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Kenya in that embassy personnel (and facilities) carry out vital work on behalf of the United States government and its citizens, including: facilitating economic and other aid to the Government of Kenya and its citizens; facilitating communication between the United States and Kenyan government officials concerning matters of mutual concern, including health, education and the economy; providing consular services to United States citizens residing or traveling abroad; providing visa services to Kenyan nationals and others seeking to travel to the United States; and otherwise serving the interests of our citizens while in Kenya.

Respectfully submitted,



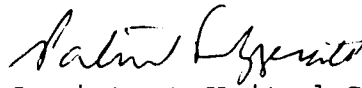
MARY JO WHITE
United States Attorney

Dated: June 26, 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2000, a true and correct copy of the foregoing notice of intent to seek the death penalty was mailed via first class mail, postage prepaid thereon, to the following attorneys of record:

Frederick H. Cohn, Esquire
500 Fifth Avenue
33rd Floor
New York, New York 10110-3398



Assistant United States Attorney