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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,) Criminal No. CR 05-00167 WHA

16 Plaintiff,)

17 **AMENDED NOTICE OF INTENT TO**
18 **SEEK THE DEATH PENALTY**

19 v.)

20 **RAYMON MILBURN, et al.,**)

Court: Hon. William H. Alsup

21 Defendants.)
22 _____)

23
24 **NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

25 Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives
26 notice that it believes that the circumstances of this case are such that, in the event that the
27 defendant EMILE FORT is convicted of a capital offense relating to the deaths of Glenn Maurice
28 Timmy (“Baby”) Molex, Jovanie Banks and Michael Hill, a sentence of death is justified and

1 that the United States will seek the death penalty. Specifically, the United States will seek a
2 sentence of death for Counts Four, Seven and Eight, which charge murder in aid of racketeering
3 under 18 U.S.C. § 1959(a)(1).

4 The Government proposes to prove the following factors as justifying a sentence of death
5 for the offenses charged in Counts Four, Seven and Eight of the Second Superseding Indictment,
6 the allegations of which are fully re-alleged and incorporated herein by reference:

7 **I. Count 4: The Murder of Glenn Maurice Timmy (“Baby”) Molex**

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

9 (1) The defendant participated in an act, contemplating that the life of a person would be
10 taken or intending that lethal force would be used in connection with a person, other than
11 one of the participants in the offense, and the victim died as a direct result of the act. 18
12 U.S.C. § 3591(a)(2)(C).

13 **Evidence will demonstrate that the defendant fired a handgun at the victim’s father,
14 striking the victim’s father. While shooting at the victim’s father, the defendant hit
15 the victim, which killed the victim.**

16 (2) The defendant intentionally and specifically engaged in an act of violence, knowing
17 that the act created a grave risk of death to a person, other than one of the participants in
18 the offense, such that participation in the act constituted a reckless disregard for human
19 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

20 **See (1) above.**

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

22 (1) The defendant, in the commission of the offense, or in escaping apprehension for the
23 violation of the offense, knowingly created a grave risk of death to 1 or more persons in
24 addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

25 **The defendant shot a gun at the victim’s father and another man near him outside
26 the victim’s home. These shots wounded the victim’s father, narrowly missed the
27
28**

1 **other man, and killed the victim.**

2 (2) The defendant committed the offense after substantial planning and premeditation to
3 cause the death of a person. 18 U.S.C. § 3592(c)(9).

4 **The defendant believed the victim’s father or someone related to the father had shot**
5 **at the defendant several days prior to the offense. The defendant decided to kill the**
6 **victim’s father because of this shooting. The defendant several days later attempted**
7 **to shoot the victim’s father who was then riding in his automobile, but the**
8 **defendant’s gun did not fire. On the day of the offense, the defendant located the**
9 **victim’s father’s automobile and made plans to attack the victim’s father in the area**
10 **of his automobile.**

11 (3) The victim was particularly vulnerable due to old age, youth, or infirmity. 18 U.S.C. §
12 3592(c)(11).

13 **The victim was approximately seven weeks old.**

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

15 In addition to the statutory aggravating factors set forth above with regard to Count Four,
16 the Government will rely on the following non-statutory aggravating factor specific to
17 that offense to justify a sentence of death:
18

19 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the family
20 of Glenn Maurice Timmy (“Baby”) Molex because of the victim’s personal
21 characteristics as an individual human being and the impact of his death upon the Molex
22 family. *See Payne v. Tennessee*, 501 U.S. 808, 825-26 (1991).

23 **The victim’s death at such a very young age has caused permanent anguish and**
24 **injury to the victim’s parents and other family members. The defendant’s father**
25 **could not go to the wake for the victim because of fear for his safety. The victim’s**
26 **mother lost her job because of the anguish caused by her baby’s murder by the**
27 **defendant. The victim’s siblings have sought therapy as they remain traumatized**
28

1 **and afraid. The victim’s family has sought counseling and continues to suffer**
2 **greatly because of the victim’s death.**

3 (2) **Participation in Additional Homicides.** The defendant participated in other
4 homicides in addition to the murder of Glenn Maurice Timmy (“Baby”) Molex, namely
5 the murders of Jovanie Banks and Michael Hill.

6 **II. Counts 7: The Murder of Jovanie Banks**

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

8 (1) The defendant participated in an act, contemplating that the life of a person would be
9 taken or intending that lethal force would be used in connection with a person, other than
10 one of the participants in the offense, and the victim died as a direct result of the act. 18
11 U.S.C. § 3591(a)(2)(C).

12 **Evidence will demonstrate that defendant Fort discussed a plan to kill Jovanie**
13 **Banks with other individuals. With that plan in mind, defendant Fort used a**
14 **handgun to fire multiple shots at Banks, hitting Banks multiple times.**

15 (2) The defendant intentionally and specifically engaged in an act of violence, knowing
16 that the act created a grave risk of death to a person, other than one of the participants in
17 the offense, such that participation in the act constituted a reckless disregard for human
18 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

19 **See (1) above.**

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

21 (1) The defendant committed the offense after substantial planning and premeditation to
22 cause the death of a person. 18 U.S.C. § 3592(c)(9).

23 **Evidence will demonstrate that, days prior to the killing, defendant Fort was upset**
24 **with Jovanie Banks due to Fort’s belief that Banks had stolen a firearm from**
25 **members of Fort’s RICO enterprise. Therefore, defendant Fort put in place a plan**
26 **to kill the victim and anyone found with the victim. On the day of the homicides,**
27
28

1 **defendant Fort selected a location, armed himself, enlisted co-conspirators to assist**
2 **in the killings, armed his co-conspirators, made phone calls attempting to determine**
3 **the location of Banks, and laid in wait and in hiding while armed, waiting for Banks**
4 **to appear.**

5 (2) The defendant, in the commission of the offense, or in escaping apprehension for the
6 violation of the offense, knowingly created a grave risk of death to one or more persons
7 in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

8 **Defendant Fort issued orders to kill Jovanie Banks and anyone found with Banks.**
9 **In addition to shooting Banks, defendant Fort also shot victim Michael Hill and**
10 **victim Restelli Richson.**

11 (3) The defendant intentionally killed or attempted to kill more then one person in a
12 single criminal episode. 18 U.S.C. § 3592(c)(16).

13 **In the same episode, defendant Fort, consistent with his instructions to kill Banks**
14 **and anyone with Banks, attempted to kill Michael Hill and Restelli Richson.**

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

16 In addition to the statutory aggravating factors set forth above with regard to Count
17 Seven, the Government will rely on the following non-statutory aggravating factor
18 specific to that offense to justify a sentence of death:

19 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Jovanie
20 Banks' family because of the victim's personal characteristics as an individual human
21 being and the impact of his death upon the Jovanie Banks family. *See Payne v.*
22 *Tennessee*, 501 U.S. 808, 825-26 (1991).

23 **Family members will testify regarding the following losses caused by the death of**
24 **Jovanie Banks – anger, anxiety, fear, depression, paranoia, financial losses, and**
25 **need for counseling.**

26 (2) **Participation in Additional Homicides.** The defendant participated in other
27
28

1 homicides in addition to the murder of Jovanie Banks, namely the murders of Glenn
2 Maurice Timmy (“Baby”) Molex and Michael Hill.

3 **These acts are alleged in the Second Superseding Indictment and discovery has been**
4 **provided.**

5 **III. Count 8: The Murder of Michael Hill**

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

7 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

8 **Evidence will demonstrate that defendant Fort discussed with other individuals a**
9 **plan to kill Jovanie Banks and anyone found with Jovanie Banks. With that plan in**
10 **mind, defendant Fort used a handgun to fire multiple shots at Hill immediately after**
11 **shooting Jovanie Banks.**

12 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §
13 3591(a)(2)(B).

14 **See (1) above.**

15 (3) The defendant participated in an act, contemplating that the life of a person would be
16 taken or intending that lethal force would be used in connection with a person, other than
17 one of the participants in the offense, and the victim died as a direct result of the act. 18
18 U.S.C. § 3591(a)(2)(C).

19 **See (1) above.**

20 (4) The defendant intentionally and specifically engaged in an act of violence, knowing
21 that the act created a grave risk of death to a person, other than one of the participants in
22 the offense, such that participation in the act constituted a reckless disregard for human
23 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

24 **See (1) above.**

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

26 (1) The defendant committed the offense after substantial planning and premeditation to
27
28

1 cause the death of a person. 18 U.S.C. § 3592(c)(9).

2 **Evidence will demonstrate that, days prior to the killing, defendant Fort was upset**
3 **with Jovanie Banks due to Fort's belief that Banks had stolen a firearm from**
4 **members of Fort's RICO enterprise. Therefore, defendant Fort put in place a plan**
5 **to kill the victim and anyone found with the victim. On the day of the homicides,**
6 **defendant Fort selected a location, armed himself, enlisted co-conspirators to assist**
7 **in the killings, armed his co-conspirators, made phone calls attempting to determine**
8 **the location of Banks, and laid in wait and in hiding while armed, waiting for Banks**
9 **to appear. Hill was with Banks when Fort found and shot Banks.**

10 (2) The defendant, in the commission of the offense, or in escaping apprehension for the
11 violation of the offense, knowingly created a grave risk of death to one or more persons
12 in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

13 **Defendant Fort issued orders to kill Jovanie Banks and anyone found with Banks.**
14 **In addition to shooting Hill, defendant Fort also shot victim Jovanie Banks and**
15 **victim Restelli Richson.**

16 (3) The defendant intentionally killed or attempted to kill more than one person in a
17 single criminal episode. 18 U.S.C. § 3592(c)(16).

18 **In the same episode, defendant Fort attempted to kill Jovanie Banks and Restelli**
19 **Richson.**

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

21 In addition to the statutory aggravating factors set forth above with regard to Count
22 Eight, the Government will rely on the following non-statutory aggravating factors
23 specific to that offense to justify a sentence of death:
24

25 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Michael
26 Hill's family because of the victim's personal characteristics as an individual human
27 being and the impact of his death upon the Michael Hill family. *See Payne v. Tennessee,*
28

1 501 U.S. 808, 825-26 (1991).

2 **Family members will testify regarding the following losses caused by the death of**
3 **Michael Hill – stress, paranoia, fear, sleeplessness, nightmares, financial loss, anger,**
4 **anxiety, grief, depression, and uncontrolled crying.**

5 (2) **Participation in Additional Homicides.** The defendant participated in other
6 homicides in addition to the murder of Michael Hill, namely the murders of Jovanie
7 Banks and Glenn Maurice Timmy (“Baby”) Molex .

8 **These acts are all charged in the Second Superseding Indictment, and discovery has**
9 **been provided on all alleged crimes.**

10 **IV. Counts 4, 7 and 8: Other, Non-Statutory, Aggravating Factors Identified under 18**

11 **U.S.C. § 3593(a)(2)**

12 In addition to the statutory aggravating factors set forth above, the Government will rely
13 on the following non-statutory aggravating factors to justify a sentence of death as to counts
14 Four, Seven and Eight of the Second Superseding Indictment:
15

16 (1) **Participation in Additional Serious Acts of Violence.** The defendant participated
17 in other serious acts of violence in addition to the murders of Glenn Maurice Timmy
18 (“Baby”) Molex, Jovanie Banks and Michael Hill. These serious acts of violence are: on
19 or about January 19, 2004, the defendant attempted to murder Restelli Richson
20 **(Information regarding this incident can be found at JB000001 through JB000432,**
21 **JB CD 1-3).**

22 (2) **Contemporaneous Criminal Conduct.** In addition to being convicted of the
23 murders of Glenn Maurice Timmy (“Baby”) Molex, Jovanie Banks and Michael Hill, the
24 defendant was engaged in enterprise crimes, drug offenses and witness tampering,
25 detailed as follows:

26 • On or about September 29, 2003, the defendant ordered unindicted co-conspirators to
27 burn the vehicle that was used the previous night in order to destroy evidence and avoid
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1 detection and apprehension from law enforcement (**Information regarding this incident**
2 **can be found at GM000001 through GM000537, GM CD 1 through 3);**

3 • On or about September 29, 2003, unindicted co-conspirators set fire to the vehicle at the
4 direction of the defendant. (**Information regarding this incident can be found at**
5 **GM000001 through GM000537; GM CD 1 through 3);**

6 • On or about April 15, 2004, Raymon Milburn and the defendant ordered members of the
7 conspiracy known and unknown to find the missing handgun and dispose of it so that law
8 enforcement officials could not find the handgun and use it to link members of the
9 conspiracy to the murder (**Information regarding this incident can be found at**
10 **BR000001 through BR001888; BR CD 1 and 2);**

11 • On or about August 14, 2004, the defendant discussed a plan to kill Harry Cael, Jr.
12 (**Information regarding this incident can be found at SH000001 through SH002993**
13 **and EF000001 through EF000949);**

14 • On or about September 30, 2004, the defendant, who was incarcerated in the San
15 Francisco County Jail, had a telephone conversation with Jamaar Jackson, who was not
16 incarcerated, in which he threatened to kill Jamaar Jackson (**Information regarding this**
17 **incident can be found at SH000001 through SH002993 and EF000001 through**
18 **EF000949);**

19 • On or about November 26, 2004, the defendant, who was incarcerated in the San
20 Francisco County Jail, had a telephone conversation with Raymon Milburn, who was not
21 incarcerated, in which they discussed killing Jamaar Jackson because he was a potential
22 witness against the conspiracy and its members (**Information regarding this incident**
23 **can be found at SH000001 through SH002993 and EF000001 through EF000949);**

24 • On or about December 21, 2004, the defendant, who was incarcerated in San Francisco
25 County Jail had a telephone conversation with Edgar Diaz, who was not incarcerated, in
26 which they discussed narcotics distribution as well as the weapons that members of the
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28

1 conspiracy currently had in their collective possession, including one stolen from a
2 federal agent (**Information regarding this incident can be found at SH000001**
3 **through SH002993 and EF000001 through EF000949**);

- 4 • On or about January 21, 2005, the defendant, who was incarcerated in the San Francisco
5 County Jail, had a telephone conversation with Edgar Diaz and Dornell Ellis, who were
6 not incarcerated, in which they discussed a plan to kill Jamaar Jackson because he was a
7 potential witness against the conspiracy and its members (**Information regarding this**
8 **incident can be found at SH000001 through SH002993 and EF000001 through**
9 **EF000949**); and

- 10 • On or about January 22, 2005, the defendant, who was incarcerated in the San Francisco
11 County Jail, had a telephone conversation with Dornell Ellis, who was not incarcerated,
12 in which they discussed a plan to kill Jamaar Jackson because he was a potential witness
13 against the conspiracy and its members (**Information regarding this incident can be**
14 **found at SH000001 through SH002993 and EF000001 through EF000949**).

15
16 (3) **Obstruction of Justice.** The defendant instigated conspiracies to murder Jamaar
17 Jackson, and Harry Cael, Jr., both potential witnesses against him and other members of
18 the Down Below Gang.

19 **Information regarding this incident can be found at SH000001 through SH002993**
20 **and EF000001 through EF000949.**

21 (4) **Leadership Role in a Criminal Enterprise.** The defendant belonged to the Down
22 Below Gang – an “enterprise,” as defined by 18 U.S.C. § 1961(4) – from at least
23 September of 2003 to the date of the Second Superseding Indictment. In the structure of
24 the enterprise, the defendant was below a redacted defendant, but still had a leadership
25 role.

26 **The defendant gave orders to other members of DBG regarding their violent acts.**
27 **Lower members of DBG were required to follow the defendant’s orders. If they did**
28

1 **not follow his orders, there were serious consequences. Defendant continued to**
2 **direct the activities of DBG members while he was incarcerated.**

3 (5) **Future Dangerousness of the Defendant.**¹ The defendant represents a continuing
4 danger to the lives and safety of other persons. The defendant is likely to commit
5 criminal acts of violence in the future that would constitute a continuing and serious
6 threat to the lives and safety of others, as evidenced by the following:

7 (a) Continuing Pattern of Violence: The defendant has engaged in a continuing pattern of
8 violence, attempted violence, and threatened violence, namely the crimes alleged against
9 defendant in the Indictment.

10 **The government intends to introduce evidence of the crimes alleged in the**
11 **Indictment, which are detailed in Section IV(1) and (2) of this Notice.**

12 **The government intends to introduce evidence of the following arrests:**

- 13 -Arrest on 11/17/98 for assault with a deadly weapon other than a firearm;
- 14 -Arrest on 10/16/99 for possession of a controlled substance for the purposes of sale;
- 15 -Arrest on 12/29/99 for possession of a narcotic/controlled substance;
- 16 -Arrest on 1/6/00 for possession of a controlled substance;
- 17 -Arrest on 6/3/00 for attempted murder and conspiracy;
- 18 -Arrest on 9/26/00 for possession of a controlled substance (also a prior conviction);
- 19 -Arrest on 5/29/01 for battery (also a prior conviction);
- 20 -Arrest on 8/23/01 for threaten with a crime with the intent to terrorize, trespass,
- 21 battery (also a prior conviction);
- 22

23
24 ¹ Evidence of the defendant's future dangerousness is relevant to the jury's decision
25 whether to impose the death penalty or a sentence of life in prison without the possibility of
26 parole. It is true that the government has highly secure facilities within which to house the
27 defendant for life. However, the defendant will be imprisoned with other inmates and have
28 contact with both other inmates and prison officials on a daily basis. This inquiry is
relevant in determining whether the defendant will be a danger to other inmates or prison
officials. The current security precautions do not assure that the defendant will have no
contact with anyone during any imprisonment period.

- 1 -Arrest on 9/4/01 for possession of marijuana for sale;
- 2 -Arrest on 9/28/01 for possession of marijuana for sale;
- 3 -Arrest on 12/4/01 for possession of marijuana for sale (also a prior conviction);
- 4 -Arrest on 2/9/02 for possession of marijuana while driving;
- 5 -Arrest on 7/9/02 for sale of ammunition to a minor, receipt of stolen property;
- 6 possession of a controlled substance with a firearm, conspiracy, participation in a
- 7 criminal street gang, possession of cocaine base for the purposes of sale, possession
- 8 of an assault weapon, possession of firearm silencer, and possession of armor-
- 9 piercing ammunition;
- 10 -Arrest on 10/12/02 for possession of a narcotic controlled substance;
- 11 -Arrest on 3/20/03 for possession of a narcotic controlled substance and possession
- 12 of marijuana;
- 13 -Arrest on 4/8/02 for possession of methaqualone (also a prior conviction);
- 14 -Arrest on 6/8/03 for assault with a deadly weapon other than a firearm and
- 15 trespass;
- 16 -Arrest on 8/23/03 for disobeying a court order;
- 17 -Arrest on 9/22/03 for disobeying a court order, obstruction of a public officer, and
- 18 nuisance;
- 19 -Arrest on 3/20/04 for possession of a narcotic controlled substance and possession
- 20 of marijuana;
- 21 -Arrest on 5/8/04 for trespass and contempt

22
23 **The above convictions resulted in the defendant being placed on several terms of**
24 **probation. His re-arrests have violated these terms of probation.**

25 (b) Lack of Remorse: The defendant has demonstrated a lack of remorse for the capital
26 offenses committed in this case, as indicated by defendant's statements and actions
27 during and after the offenses alleged in the Indictment.
28

1 **The defendant planned, discussed, and acted on crimes such as murder of witnesses**
2 **and rival gang members, as well as narcotics distribution while incarcerated. The**
3 **defendant has never demonstrated any remorse or regret for any crime he has**
4 **committed, including the capital crimes.**

5 (c) Low rehabilitative potential: The defendant has demonstrated a low potential for
6 rehabilitation as evidenced by his longstanding involvement in criminal activities –
7 including conspiracy, drug trafficking and violence – whether incarcerated or not.

8 **The government intends to introduce evidence of the violent crimes alleged in the**
9 **Indictment, which are detailed in Section IV(1), (2) and (3) of this Notice. The**
10 **government also intends to introduce evidence of the defendants prior convictions**
11 **and arrests, as detailed in Section IV(5)(a) of this Notice.**

12 (d) Membership in a criminal enterprise: The defendant has actively led, and
13 demonstrated an allegiance to, the Down Below Gang, a criminal enterprise falling
14 within the definition of 18 U.S.C. § 1962(d)

15 **DBG was a criminal enterprise whose members engaged in acts of violence,**
16 **including murder, attempted murder, robbery, and witness retaliation, and narcotics**
17 **distribution. DBG is a group of individuals associated in fact. The enterprise constituted**
18 **an ongoing organization whose members functioned as a continuing unit for a common**
19 **purpose of achieving the objectives of the enterprise. This enterprise was engaged in, and**
20 **its activities affected, interstate and foreign commerce. The members of the enterprise**
21 **took on various roles in order to carry out affairs of the enterprise.**

22 **The defendant was considered a leader in this enterprise, as detailed in Section**
23 **IV(4) of this Notice. The enterprise had a loosely hierarchical decision-making structure**
24 **with individuals holding leadership positions at the top of this hierarchy giving orders to**
25 **other members and associates. The leaders of the enterprise authorized acts of violence,**
26 **including murder, against members of the enterprise by issuing an order commonly**
27
28

1 referred to as a “green light.” No member or associate of the enterprise could kill another
2 member without this “green light.” Just below this top leadership level were members of
3 the enterprise who enforced discipline, ensured that the leaders’ orders were carried out,
4 and made certain leadership decisions on their own. At the bottom of the structure were
5 individuals, sometimes referred to as “hustlers” and/or “gofers”, who commonly followed
6 the commands and decisions of the higher-ranking members, and younger or more junior
7 members and associates who possessed weapons and engaged in narcotics activity.

8
9 The purposes of the DBG were the following: enriching the members and associates
10 of the enterprise through, among other things, the distribution of narcotics and robbery;
11 preserving and protecting the power, territory and profits of the enterprise through the use
12 of violence, threats of violence, assaults, murder, attempted murder, and obstruction of
13 justice; and avoiding criminal prosecution and detection by law enforcement through the
14 use of violence, threats of violence, assaults, murder, and attempted murder against actual,
15 potential and perceived witnesses. As detailed previously in this Notice (Sections IV(1), (2)
16 and (3); IV(5)(a) and(c)), the defendant participated in acts which furthered these
17 purposes.

18
19
20 Dated: September 4, 2007

Respectfully submitted,
SCOTT N. SCHOOLS
United States Attorney

21
22 _____/s/
23 C. DAVID HALL
24 WILLIAM FRENTZEN
25 Assistant United States Attorneys
26 KRISTA TONGRING
27 Trial Attorney, U.S. Department of Justice
28

1 SCOTT N. SCHOOLS (SCSBN 9990)
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11 Attorneys for Plaintiff

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,)
16 Plaintiff,)
17)
18 v.)
19)
20 **REDACTED DEFENDANT NO. 1, et al.,**)
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22 Defendants.)

Criminal No. CR 05-00167 WHA

**AMENDED NOTICE OF INTENT TO
SEEK THE DEATH PENALTY**

Date: March 9, 2007
Court: Hon. William H. Alsup

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24 **NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

25 Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives
26 notice that it believes that the circumstances of this case are such that, in the event that the
27 defendant EMILE FORT is convicted of a capital offense relating to the deaths of Glenn Maurice
28 Timmy (“Baby”) Molex, Jovanie Banks and Michael Hill, a sentence of death is justified and

1 that the United States will seek the death penalty. Specifically, the United States will seek a
2 sentence of death for Counts Four, Seven and Eight, which charge murder in aid of racketeering
3 under 18 U.S.C. § 1959(a)(1).

4 The Government proposes to prove the following factors as justifying a sentence of death
5 for the offenses charged in Counts Four, Seven and Eight of the Second Superseding Indictment,
6 the allegations of which are fully re-alleged and incorporated herein by reference:

7 **I. Count 4: The Murder of Glenn Maurice Timmy (“Baby”) Molex**

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

9 (1) The defendant participated in an act, contemplating that the life of a person would be
10 taken or intending that lethal force would be used in connection with a person, other than
11 one of the participants in the offense, and the victim died as a direct result of the act. 18
12 U.S.C. § 3591(a)(2)(C).

13 **Evidence will demonstrate that the defendant fired a handgun at the victim’s father,
14 striking the victim’s father. While shooting at the victim’s father, the defendant hit
15 the victim, which killed the victim.**

16 (2) The defendant intentionally and specifically engaged in an act of violence, knowing
17 that the act created a grave risk of death to a person, other than one of the participants in
18 the offense, such that participation in the act constituted a reckless disregard for human
19 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

20 **See (1) above.**

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

22 (1) The defendant, in the commission of the offense, or in escaping apprehension for the
23 violation of the offense, knowingly created a grave risk of death to 1 or more persons in
24 addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

25 **The defendant shot a gun at the victim’s father and other man near him outside the
26 victim’s home. These shots wounded the victim’s father, narrowly missed the other
27
28**

1 **man, and killed the victim.**

2 (2) The defendant committed the offense after substantial planning and premeditation to
3 cause the death of a person. 18 U.S.C. § 3592(c)(9).

4 **The offense after substantial planning and premeditation to cause the death of a**
5 **person. The defendant believed the victim’s father or someone related to the father**
6 **had shot at the defendant several days prior to the offense. The defendant decided to**
7 **kill the victim’s father because of this shooting. The defendant several days later**
8 **attempted to shoot the victim’s father who was then riding in his automobile, but**
9 **the defendant’s gun did not fire. On the day of the offense, the defendant located**
10 **the victim’s father’s automobile and made plans to attack the victim’s father in the**
11 **area of his automobile**

12 (3) The victim was particularly vulnerable due to old age, youth, or infirmity. 18 U.S.C. §
13 3592(c)(11).

14 **The victim was approximately seven weeks old.**

15
16 C. Other, Non-Statutory, Aggravating Factors Identified under 18 U.S.C. § 3593(a)(2)

17 In addition to the statutory aggravating factors set forth above with regard to Count Four,
18 the Government will rely on the following non-statutory aggravating factor specific to
19 that offense to justify a sentence of death:

20 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the family
21 of Glenn Maurice Timmy (“Baby”) Molex because of the victim’s personal
22 characteristics as an individual human being and the impact of his death upon the Molex
23 family. *See Payne v. Tennessee*, 501 U.S. 808, 825-26 (1991).

24 **The victim’s death at such a very young age has caused permanent anguish and**
25 **injury to the victim’s parents and other family members. The defendant’s father**
26 **could not go to the wake for the victim because of fear for his safety. The victim’s**
27 **mother lost her job because of the anguish caused by her baby’s murder by the**
28

1 **defendant. The victim’s siblings have sought therapy as they remain terrorized and**
2 **afraid. The victim’s family has sought counseling and continues to suffer greatly**
3 **because of the victim’s death.**

4 (2) **Participation in Additional Homicides.** The defendant participated in other
5 homicides in addition to the murder of Glenn Maurice Timmy (“Baby”) Molex, namely
6 the murders of Jovanie Banks and Michael Hill.

7 **II. Counts 7: The Murder of Jovanie Banks**

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

9 (1) The defendant participated in an act, contemplating that the life of a person would be
10 taken or intending that lethal force would be used in connection with a person, other than
11 one of the participants in the offense, and the victim died as a direct result of the act. 18
12 U.S.C. § 3591(a)(2)(C).

13 **Evidence will demonstrate that defendant Fort discussed a plan to kill Jovanie**
14 **Banks with other individuals. With that plan in mind, defendant Fort used a**
15 **handgun to fire multiple shots at Banks, hitting Banks multiple times.**

16 (2) The defendant intentionally and specifically engaged in an act of violence, knowing
17 that the act created a grave risk of death to a person, other than one of the participants in
18 the offense, such that participation in the act constituted a reckless disregard for human
19 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

20 **See (1) above.**

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

22 (1) The defendant committed the offense after substantial planning and premeditation to
23 cause the death of a person. 18 U.S.C. § 3592(c)(9).

24 **Evidence will demonstrate that, days prior to the killing, defendant Fort was upset**
25 **with Jovanie Banks due to Fort’s belief that Banks had stolen a firearm from**
26 **members of Fort’s RICO enterprise. Therefore, defendant Fort put in place a plan**
27
28

1 to kill the victim and anyone found with the victim. On the day of the homicides,
2 defendant Fort selected a location, armed himself, enlisted co-conspirators to assist
3 in the killings, armed his co-conspirators, made phone calls attempting to determine
4 the location of Banks, and lay in wait and in hiding while armed, waiting for Banks
5 to appear.

6 (2) The defendant, in the commission of the offense, or in escaping apprehension for the
7 violation of the offense, knowingly created a grave risk of death to one or more persons
8 in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

9 **Defendant Fort issued orders to kill Jovanie Banks and anyone found with Banks.**
10 **In addition to shooting Banks, defendant Fort also shot victim Michael Hill and**
11 **victim Restelli Richson.**

12 (3) The defendant intentionally killed or attempted to kill more than one person in a
13 single criminal episode. 18 U.S.C. § 3592(c)(16).

14 **In the same episode, defendant Fort, consistent with his instructions to kill Banks**
15 **and anyone with Banks, attempted to kill Michael Hill and Restelli Richson.**

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

17 In addition to the statutory aggravating factors set forth above with regard to Count
18 Seven, the Government will rely on the following non-statutory aggravating factor
19 specific to that offense to justify a sentence of death:

20 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Jovanie
21 Banks' family because of the victim's personal characteristics as an individual human
22 being and the impact of his death upon the Jovanie Banks family. *See Payne v.*
23 *Tennessee*, 501 U.S. 808, 825-26 (1991).

24 **Family members will testify regarding the following losses caused by the death of**
25 **Jovanie Banks – anger, anxiety, fear, depression, paranoia, financial losses, and**
26 **need for counseling.**
27
28

1 (2) **Participation in Additional Homicides.** The defendant participated in other
2 homicides in addition to the murder of Jovanie Banks, namely the murders of Glenn
3 Maurice Timmy (“Baby”) Molex and Michael Hill.

4 **These acts are alleged in the Second Superseding Indictment and discovery has been**
5 **provided.**

6 **III. Count 8: The Murder of Michael Hill**

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

8 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

9 **Evidence will demonstrate that defendant Fort discussed with other individuals a**
10 **plan to kill Jovanie Banks and anyone found with Jovanie Banks. With that plan in**
11 **mind, defendant Fort used a handgun to fire multiple shots at Hill immediately after**
12 **shooting Jovanie Banks.**

13 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §
14 3591(a)(2)(B).

15 **See (1) above.**

16 (3) The defendant participated in an act, contemplating that the life of a person would be
17 taken or intending that lethal force would be used in connection with a person, other than
18 one of the participants in the offense, and the victim died as a direct result of the act. 18
19 U.S.C. § 3591(a)(2)(C).

20 **See (1) above.**

21 (4) The defendant intentionally and specifically engaged in an act of violence, knowing
22 that the act created a grave risk of death to a person, other than one of the participants in
23 the offense, such that participation in the act constituted a reckless disregard for human
24 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

25 **See (1) above.**

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

1 (1) The defendant committed the offense after substantial planning and premeditation to
2 cause the death of a person. 18 U.S.C. § 3592(c)(9).

3 **Evidence will demonstrate that, days prior to the killing, defendant Fort was upset**
4 **with Jovanie Banks due to Fort's belief that Banks had stolen a firearm from**
5 **members of Fort's RICO enterprise. Therefore, defendant Fort put in place a plan**
6 **to kill the victim and anyone found with the victim. On the day of the homicides,**
7 **defendant Fort selected a location, armed himself, enlisted co-conspirators to assist**
8 **in the killings, armed his co-conspirators, made phone calls attempting to determine**
9 **the location of Banks, and lay in wait and in hiding while armed, waiting for Banks**
10 **to appear. Hill was with Banks when Fort found and shot Banks.**

11 (2) The defendant, in the commission of the offense, or in escaping apprehension for the
12 violation of the offense, knowingly created a grave risk of death to one or more persons
13 in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

14 **Defendant Fort issued orders to kill Jovanie Banks and anyone found with Banks.**
15 **In addition to shooting Hill, defendant Fort also shot victim Jovanie Banks and**
16 **victim Restelli Richson.**

17 (3) The defendant intentionally killed or attempted to kill more than one person in a
18 single criminal episode. 18 U.S.C. § 3592(c)(16).

19 **In the same episode, defendant Fort attempted to kill Jovanie Banks and Restelli**
20 **Richson.**

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

22 In addition to the statutory aggravating factors set forth above with regard to Count
23 Eight, the Government will rely on the following non-statutory aggravating factors
24 specific to that offense to justify a sentence of death:
25

26 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Michael
27 Hill's family because of the victim's personal characteristics as an individual human
28

1 being and the impact of his death upon the Michael Hill family. *See Payne v. Tennessee*,
2 501 U.S. 808, 825-26 (1991).

3 **Family members will testify regarding the following losses caused by the death of**
4 **Michael Hill – stress, paranoia, fear, sleeplessness, nightmares, financial loss, anger,**
5 **anxiety, grief, depression, and uncontrolled crying.**

6 (2) **Participation in Additional Homicides.** The defendant participated in other
7 homicides in addition to the murder of Michael Hill, namely the murders of Jovanie
8 Banks and Glenn Maurice Timmy (“Baby”) Molex .

9 **These acts are all charged in the Second Superseding Indictment, and discovery has**
10 **been provided on all alleged crimes.**

11 **IV. Counts 4, 7 and 8: Other, Non-Statutory, Aggravating Factors Identified under 18**

12 **U.S.C. § 3593(a)(2)**

13 In addition to the statutory aggravating factors set forth above, the Government will rely
14 on the following non-statutory aggravating factors to justify a sentence of death as to counts
15 Four, Seven and Eight of the Second Superseding Indictment:
16

17 (1) **Participation in Additional Serious Acts of Violence.** The defendant participated
18 in other serious acts of violence in addition to the murders of Glenn Maurice Timmy
19 (“Baby”) Molex, Jovanie Banks and Michael Hill. These serious acts of violence are: on
20 or about January 19, 2004, the defendant attempted to murder Restelli Richson.

21 **These acts are all charged in the Second Superseding Indictment, and discovery has**
22 **been provided on all alleged crimes.**

23 (2) **Contemporaneous Criminal Conduct.** In addition to being convicted of the
24 murders of Glenn Maurice Timmy (“Baby”) Molex, Jovanie Banks and Michael Hill, the
25 defendant was engaged in enterprise crimes, drug offenses and witness tampering.

26 **These acts are all charged in the Second Superseding Indictment, and discovery has**
27 **been provided on all alleged crimes.**
28

1 (3) **Obstruction of Justice.** The defendant instigated conspiracies to murder Jamaar
2 Jackson, and Harry Cael, Jr., both potential witnesses against him and other members of
3 the Down Below Gang.

4 **These acts are all charged in the Second Superseding Indictment, and discovery has**
5 **been provided on all alleged crimes.**

6 (4) **Leadership Role in a Criminal Enterprise.** The defendant belonged to the Down
7 Below Gang – an “enterprise,” as defined by 18 U.S.C. § 1961(4) – from at least
8 September of 2003 to the date of the Second Superseding Indictment. In the structure of
9 the enterprise, the defendant was below a redacted defendant, but still had a leadership
10 role.

11 **The defendant gave orders to other members of DBG regarding their violent acts.**
12 **Lower members of DBG were required to follow the defendant’s orders. If they did**
13 **not follow his orders, there were serious consequences. Defendant continued to**
14 **direct the activities of DBG members while he was incarcerated.**

15 (5) **Future Dangerousness of the Defendant.** The defendant represents a continuing
16 danger to the lives and safety of other persons. The defendant is likely to commit
17 criminal acts of violence in the future that would constitute a continuing and serious
18 threat to the lives and safety of others, as evidenced by the following:

19 (a) Continuing Pattern of Violence: The defendant has engaged in a continuing pattern of
20 violence, attempted violence, and threatened violence, namely the crimes alleged against
21 defendant in the Indictment.
22

23 **The defendant has been arrested at least 16 separate times for adult offenses and**
24 **twice for juvenile offenses between 1998 and 2005. This resulted in at least four**
25 **convictions. These prior offenses included, attempted murder, participating in a**
26 **criminal street gang, batteries and fighting, many narcotics offenses, and may**
27 **possessions of firearms, a silencer, and ammunition. The defendant has previously**
28

1 **been incarcerated in juvenile hall and San Francisco County jail. The defendant**
2 **has been placed on several terms of probation. The defendant has been found to**
3 **have violated his probation.**

4 (b) Lack of Remorse: The defendant has demonstrated a lack of remorse for the capital
5 offenses committed in this case, as indicated by defendant's statements and actions
6 during and after the offenses alleged in the Indictment.

7 **The defendant planned, discussed, and acted on crimes such as murder of witnesses**
8 **and rival gang members, as well as narcotics distribution while incarcerated. The**
9 **defendant has never demonstrated any remorse or regret for any crime he has**
10 **committed, including the capital crimes.**

11 (c) Low rehabilitative potential: The defendant has demonstrated a low potential for
12 rehabilitation as evidenced by his longstanding involvement in criminal activities –
13 including conspiracy, drug trafficking and violence – whether incarcerated or not.

14 **See (a) above**

15 (d) Membership in a criminal enterprise: The defendant has actively led, and
16 demonstrated an allegiance to, the Down Below Gang, a criminal enterprise falling
17 within the definition of 18 U.S.C. § 1962(d)

18 **See (4) above.**

19
20
21 Dated: March 9, 2007

Respectfully submitted,
SCOTT N. SCHOOLS
United States Attorney

22
23 /s/
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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,)	Criminal No. CR 05-00167 WHA
14 Plaintiff,)	
15)	
16 v.)	NOTICE OF INTENT TO SEEK THE
17)	DEATH PENALTY
18 REDACTED DEFENDANT NO. 1, et al.,)	
19)	Date: October 3, 2006
20 Defendants.)	Court: Hon. William H. Alsup
21)	

22
23 **NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

24 Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives
 25 notice that it believes that the circumstances of this case are such that, in the event that the
 26 defendant EMILE FORT is convicted of a capital offense relating to the deaths of Glenn Maurice
 27 Timmy (“Baby”) Molex, Jovanie Banks and Michael Hill, a sentence of death is justified and that
 28 the United States will seek the death penalty. Specifically, the United States will seek a sentence

1 of death for Counts Four, Seven and Eight, which charge murder in aid of racketeering under 18
2 U.S.C. § 1959(a)(1).

3 The Government proposes to prove the following factors as justifying a sentence of death
4 for the offenses charged in Counts Four, Seven and Eight of the Second Superseding Indictment,
5 the allegations of which are fully realleged and incorporated herein by reference:

6 **I. Count 4: The Murder of Glenn Maurice Timmy (“Baby”) Molex**

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

8 (1) The defendant participated in an act, contemplating that the life of a person would be
9 taken or intending that lethal force would be used in connection with a person, other than
10 one of the participants in the offense, and the victim died as a direct result of the act. 18
11 U.S.C. § 3591(a)(2)(C).

12 (2) The defendant intentionally and specifically engaged in an act of violence, knowing
13 that the act created a grave risk of death to a person, other than one of the participants in
14 the offense, such that participation in the act constituted a reckless disregard for human
15 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

17 (1) The defendant, in the commission of the offense, or in escaping apprehension for the
18 violation of the offense, knowingly created a grave risk of death to 1 or more persons in
19 addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).

20 (2) The defendant committed the offense after substantial planning and premeditation to
21 cause the death of a person. 18 U.S.C. § 3592(c)(9).

22 (3) The victim was particularly vulnerable due to old age, youth, or infirmity. 18 U.S.C. §
23 3592(c)(11).

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

25 In addition to the statutory aggravating factors set forth above with regard to Count Four,
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1 the Government will rely on the following non-statutory aggravating factor specific to
2 that offense to justify a sentence of death:

3 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to the family
4 of Glenn Maurice Timmy (“Baby”) Molex because of the victim’s personal
5 characteristics as an individual human being and the impact of his death upon the Molex
6 family. *See Payne v. Tennessee*, 501 U.S. 808, 825-26 (1991).

7 (2) **Participation in Additional Homicides.** The defendant participated in other
8 homicides in addition to the murders of Glenn Maurice Timmy (“Baby”) Molex,
9 including the murders of Jovanie Banks and Michael Hill.

10 **II. Counts 7: The Murder of Jovanie Banks**

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

12 (1) The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).

13 (2) The defendant intentionally inflicted serious injury resulting in death. 18 U.S.C. §
14 3591(a)(2)(B).

15 (3) The defendant participated in an act, contemplating that the life of a person would be
16 taken or intending that lethal force would be used in connection with a person, other than
17 one of the participants in the offense, and the victim died as a direct result of the act. 18
18 U.S.C. § 3591(a)(2)(C).

19 (4) The defendant intentionally and specifically engaged in an act of violence, knowing
20 that the act created a grave risk of death to a person, other than one of the participants in
21 the offense, such that participation in the act constituted a reckless disregard for human
22 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

24 (1) The defendant committed the offense after substantial planning and premeditation to
25 cause the death of a person. 18 U.S.C. § 3592(c)(9).

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

4 (3) The defendant intentionally killed or attempted to kill more than one person in a
5 single criminal episode. 18 U.S.C. § 3592(c)(16).

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

7 In addition to the statutory aggravating factors set forth above with regard to Count
8 Seven, the Government will rely on the following non-statutory aggravating factor
9 specific to that offense to justify a sentence of death:

10 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Jovanie
11 Banks' family because of the victim's personal characteristics as an individual human
12 being and the impact of his death upon the Jovanie Banks family. *See Payne v.*
13 *Tennessee*, 501 U.S. 808, 825-26 (1991).

14 (2) **Participation in Additional Homicides.** The defendant participated in other
15 homicides in addition to the murder of Jovanie Banks, including the murders of Glenn
16 Maurice Timmy ("Baby") Molex and Michael Hill.

17 **III. Count 8: The Murder of Michael Hill**

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

19 (1) The defendant participated in an act, contemplating that the life of a person would be
20 taken or intending that lethal force would be used in connection with a person, other than
21 one of the participants in the offense, and the victim died as a direct result of the act. 18
22 U.S.C. § 3591(a)(2)(C).

23 (2) The defendant intentionally and specifically engaged in an act of violence, knowing
24 that the act created a grave risk of death to a person, other than one of the participants in
25 the offense, such that participation in the act constituted a reckless disregard for human
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1 life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

3 (1) The defendant committed the offense after substantial planning and premeditation to
4 cause the death of a person. 18 U.S.C. § 3592(c)(9).

5 (2) The defendant, in the commission of the offense, or in escaping apprehension for the
6 violation of the offense, knowingly created a grave risk of death to one or more persons in
7 addition to the victim of the offense. 18 U.S.C. § 3592(c)(5)

8 (3) The defendant intentionally killed or attempted to kill more than one person in a
9 single criminal episode. 18 U.S.C. § 3592(c)(16)

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

11 In addition to the statutory aggravating factors set forth above with regard to Count Eight,
12 the Government will rely on the following non-statutory aggravating factors specific to
13 that offense to justify a sentence of death:
14

15 (1) **Victim Impact Evidence.** The defendant caused injury, harm, and loss to Michael
16 Hill’s family because of the victim’s personal characteristics as an individual human
17 being and the impact of his death upon the Michael Hill family. *See Payne v. Tennessee*,
18 501 U.S. 808, 825-26 (1991).

19 (2) **Participation in Additional Homicides.** The defendant participated in other
20 homicides in addition to the murder of Jovanie Banks and Glenn Maurice Timmy
21 (“Baby”) Molex .

22 **IV. Counts 4, 7 and 8: Other, Non-Statutory, Aggravating Factors Identified under 18**
23 **U.S.C. § 3593(a)(2)**

24 In addition to the statutory aggravating factors set forth above, the Government will rely
25 on the following non-statutory aggravating factors to justify a sentence of death as to counts
26 Four, Seven and Eight of the Second Superseding Indictment:
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1 (1) **Participation in Additional Serious Acts of Violence.** The defendant participated in
2 other serious acts of violence in addition to the murders of Glenn Maurice Timmy
3 (“Baby”) Molex, Jovanie Banks and Michael Hill. These serious acts of violence include,
4 but are not limited to, the following: on or about January 19, 2004, the defendant
5 attempted to murder Restelli Richson.

6 (2) **Contemporaneous Criminal Conduct.** In addition to being convicted of the
7 murders of Glenn Maurice Timmy (“Baby”) Molex, Jovanie Banks and Michael Hill, the
8 defendant was engaged in other criminal conduct, included but not limited to enterprise
9 crimes, drug offenses and witness tampering.

10 (3) **Obstruction of Justice.** The defendant instigated conspiracies to murder Jamaar
11 Jackson, and Harry Cael, Jr., both potential witnesses against him and other members of
12 the Down Below Gang.

13 (4) **Leadership Role in a Criminal Enterprise.** The defendant belonged to the Down
14 Below Gang – an “enterprise,” as defined by 18 U.S.C. § 1961(4) – from at least
15 September of 2003 to the date of the Second Superseding Indictment. In the structure of
16 the enterprise, the defendant was below a redacted defendant, but still had a leadership
17 role.

18 (5) **Future Dangerousness of the Defendant.** The defendant represents a continuing
19 danger to the lives and safety of other persons. The defendant is likely to commit criminal
20 acts of violence in the future that would constitute a continuing and serious threat to the
21 lives and safety of others, as evidenced by, at least, one or more of the following:

22 (a) Continuing Pattern of Violence: The defendant has engaged in a continuing pattern of
23 violence, attempted violence, and threatened violence, including, at least, the crimes
24 alleged against defendant in the Indictment.

25 (b) Lack of Remorse: The defendant has demonstrated a lack of remorse for the capital
26

1 offenses committed in this case, as indicated by defendant's statements and actions during
2 and after the offenses alleged in the Indictment.

3 (c) Low rehabilitative potential: The defendant has demonstrated a low potential for
4 rehabilitation as evidenced by his longstanding involvement in criminal activities –
5 including conspiracy, drug trafficking and violence – whether incarcerated or not.

6 (d) Membership in a criminal enterprise: The defendant has actively led, and
7 demonstrated an allegiance to, the Down Below Gang, a criminal enterprise falling within
8 the definition of 18 U.S.C. § 1962(d).

9
10 Dated: October 3, 2006

11 Respectfully submitted,
12 KEVIN V. RYAN
13 United States Attorney

14 _____
15 /s/
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