

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

05-CR-6166CJS

-vs-

NOAH GLADDING,

Defendant.

**GOVERNMENT'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY
AGAINST NOAH GLADDING**

Pursuant to the requirements of 18 U.S.C. § 3593(a), the United States hereby gives notice that it believes that the circumstances of this case are such that, in the event that defendant NOAH GLADDING is convicted of a capital offense relating to the death of Jason Argersinger, a sentence of death is justified and that the United States will seek the death penalty. Specifically, the United States will seek a sentence of death for Count Two, which charges kidnapping resulting in death, a violation of 18 U.S.C. § 1201(a) and 2, and Count Six, which charges use of a firearm causing death, a violation of 18 U.S.C. § 924(j)(1).

The Government proposes to prove the following factors as justifying a sentence of death for the offenses charged in Counts Two and Six of the Superseding Indictment, the allegations of which are fully realleged and incorporated herein by reference:

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

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

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

(3) 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 died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

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

(1) The death, and injury resulting in the death, of the victim occurred during the commission and attempted commission of an offense under Title 18 U.S.C. Section 1201 (kidnapping). 18 U.S.C. § 3592(c)(1).

(2) The defendant committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to the victim. 18 U.S.C. § 3592(c)(6).

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

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

(1) **Victim Impact.** The defendant caused injury, harm, and loss to Jason Argersinger's family, in light of the victim's personal characteristics as an individual human being and the impact of his death upon his family. *See Payne v. Tennessee*, 501 U.S. 808, 825-26 (1991).

(2) **Contemporaneous Criminal Conduct.** In addition to being convicted of the murder of Jason Argersinger, the defendant was engaged in other criminal conduct, including but not limited to drug trafficking.

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

(a) Continuing Pattern of Violence: The defendant has engaged in a continuing pattern of violence, attempted violence, and threatened violence, including, at

least, the crimes alleged against him in the Indictment and an attack on corrections officers following his arrest in this matter.

(b) Low rehabilitative potential: The defendant has demonstrated a low potential for rehabilitation as evidenced by his longstanding involvement in criminal activity, including drug trafficking, leading up to the capital offenses charged in the Indictment.

Dated: July 31, 2006

TERRANCE P. FLYNN
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2006, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

1. Robert G. Smith, Esq.
2. Michael J. Tallon, Esq.
3. Donald M. Thompson, Esq.
4. Lawrence L. Kasperek, Esq.
5. Peter J. Pullano, Esq.
6. Matthew R. Lembke, Esq.; and
7. William T. Easton, Esq.

I hereby certify that I have mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participant :

Stanley L. Cohen, Esq.
119 Avenue D
New York, NY 10009

s/Everardo A. Rodriguez

Everardo A. Rodriguez