

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA | : | |
| | : | |
| - v - | : | 92-CR-159-C |
| | : | |
| DARRYL JOHNSON, a/k/a "Reese" | : | |
| Defendant | : | |

FILED
 92 JUN 27 AM 9:01
 U.S. DISTRICT COURT
 WESTERN DISTRICT OF NEW YORK

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

TO: DARRYL JOHNSON, Defendant

and

ALAN GOLDSTEIN, ESQ.
Counsel for Darryl Johnson
42 Delaware Avenue
Suite 525
Buffalo, New York 14202

DANIEL GRIEBEL, ESQ.
Co-counsel for Darryl Johnson
1500 Statler Towers
Buffalo, New York 14202

THE UNITED STATES OF AMERICA, by and through its attorneys,
Patrick H. NeMoyer, United States Attorney for the Western District
of New York, and William J. Hochul, Jr., Assistant United States
Attorney, hereby notifies the defendant, DARRYL JOHNSON, pursuant
to Title 21, United States Code, Section 848(h)(1)(A) that, in the

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event of the defendant's conviction on Count Five and/or Count Six of the Second Superseding Indictment herein (returned on May 17, 1993, and captioned, United States v. Donald Green, et al.), both of which counts charge a violation of Title 21, United States Code, Section 848(e)(1)(A) and Title 18, United States Code, Section 2, the United States will seek the sentence of death against the defendant, DARRYL JOHNSON. A copy of the Second Superseding Indictment, 93-CR-159-C, is attached to this Notice, and the factual allegations set forth therein are realleged and incorporated by reference as if more fully set forth herein.

The defendant, DARRYL JOHNSON, is hereby further notified that, pursuant to Title 21, United States Code, Section 848 (h)(1)(B), the United States will seek to prove the following aggravating factors as the basis for the death penalty.

I. For the murder of James Bolden (as set forth in Count Five of the Second Superseding Indictment):

A. Aggravating factors enumerated under Title 21, United States Code, Sections 848(n)(1)(A) through (D):

1. The defendant, DARRYL JOHNSON, intentionally killed the victim, James Bolden, (n)(1)(A).

2. The defendant, DARRYL JOHNSON, intentionally inflicted serious bodily injury which resulted in the death of the victim, James Bolden, (n)(1)(B).
 3. The defendant, DARRYL JOHNSON, intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, James Bolden, which resulted in the death of the victim, (n)(1)(C).
 4. The defendant, DARRYL JOHNSON, intentionally engaged in conduct which the defendant knew would create a grave risk of death to other persons, other than one of the participants in the offense, which resulted in the death of the victim, James Bolden, (n)(1)(D)(i) and (ii).
- B. Aggravating factors enumerated under Title 21, United States Code, Sections 848(n)(2) through (12):

1. The defendant, DARRYL JOHNSON, in the commission of the offense and/or in escaping apprehension for a violation of subsection (e) of this section, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense, James Bolden, (n)(5).
2. The defendant, DARRYL JOHNSON, procured the commission of the murder of James Bolden by payment, or promise of payment, of something of pecuniary value, (n)(6).
3. The defendant, DARRYL JOHNSON, committed the murder of James Bolden as consideration for the receipt, or in the expectation of the receipt, of something of pecuniary value, (n)(7).
4. The defendant, DARRYL JOHNSON, committed the murder of James Bolden after substantial planning and premeditation, (n)(8).
5. The defendant, DARRYL JOHNSON, committed the murder of James Bolden in an

especially heinous, cruel, or depraved manner in that it involved serious physical abuse to the victim, James Bolden, (n)(12).

II. For the murder of Deleon Alford (as set forth in Count Six of the Second Superseding Indictment):

A. Aggravating factors enumerated under Title 21, United States Code, Sections 848(n)(1)(A) through (D):

1. The defendant, DARRYL JOHNSON, intentionally killed the victim, Deleon Alford, (n)(1)(A).
2. The defendant, DARRYL JOHNSON, intentionally inflicted serious bodily injury which resulted in the death of the victim, Deleon Alford, (n)(1)(B).
3. The defendant, DARRYL JOHNSON, intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the

victim, Deleon Alford, which resulted in the death of the victim, (n)(1)(C).

4. The defendant, DARRYL JOHNSON, intentionally engaged in conduct which the defendant knew would create a grave risk of death to other persons, other than one of the participants in the offense, which resulted in the death of the victim, Deleon Alford, (n)(1)(D)(i) and (ii).

B. Aggravating factors enumerated under Title 21 United States Code, Sections 848(n)(2) through (12):

1. The defendant, DARRYL JOHNSON, in the commission of the murder of Deleon Alford and/or in escaping apprehension for a violation of subsection (e) of this section, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense, Deleon Alford, (n)(5).

2. The defendant, DARRYL JOHNSON, procured the commission of the murder of Deleon Alford by payment, or promise of payment, of something of pecuniary value, (n)(6).
3. The defendant, DARRYL JOHNSON, committed the murder of Deleon Alford after substantial planning and premeditation, (n)(8).
4. The defendant, DARRYL JOHNSON, committed the murder of Deleon Alford in an especially heinous, cruel, or depraved manner in that it involved serious physical abuse to the victim, Deleon Alford, (n)(12).

III. For both the murder of James Bolden and the murder of Deleon Alford:

- A. Other aggravating factors identified under Title 21, United States Code, Section 848(h)(1)(B):
 1. The defendant, DARRYL JOHNSON, committed the offenses charged in the Second Superseding Indictment, 92-CR-159-C.

2. The defendant, DARRYL JOHNSON, intentionally murdered and counselled, commanded, induced, procured, attempted, and caused the murders of individuals other than those for which the defendant has been charged in the Second Superseding Indictment, 92-CR-159-C.

3. The defendant, DARRYL JOHNSON, intentionally murdered, and counselled, commanded, induced, procured and caused the murder of Darryl Hilliard on or about September 17, 1989, in Buffalo, New York.

4. The defendant, DARRYL JOHNSON, intentionally murdered, and counselled, commanded, induced, procured and caused the murder of Angela Biles on or about December 16, 1990, in Buffalo, New York.

5. The defendant, DARRYL JOHNSON, intentionally murdered, and counselled, commanded, induced, procured and caused the murder of Nicholas Brooks on or about February 5, 1992, in Buffalo, New York.

6. The defendant, DARRYL JOHNSON, intentionally murdered, and counselled, commanded, induced, procured and caused the murder of Marcus Carmichael on or about September 10, 1992, in Buffalo, New York.
7. The defendant, DARRYL JOHNSON, intentionally murdered, and counselled, commanded, induced, procured and caused the murder of other persons, the identity of whom are presently unknown, in the Los Angeles, California area.
8. The defendant, DARRYL JOHNSON, intentionally murdered, and counselled, commanded, induced, procured and caused the murder of other persons, the identity of whom are presently unknown, in the Memphis, Tennessee area.
9. The defendant, DARRYL JOHNSON, intentionally murdered, committed and counselled, commanded, induced, procured and caused the various murders identified herein in a cold, calculated and

premeditated manner, without any pretense of legal or moral justification, and the defendant committed or caused the commission of the various murders for, among other reasons, personal profit and pecuniary gain, in furtherance of the defendant's ongoing criminal activities, and to enhance the defendant's reputation.

10. The defendant, DARRYL JOHNSON, in committing and causing the murders identified herein, knowingly created a grave risk of death to one or more persons in addition to the victims of the offenses, particularly in the case of those murders were committed by "drive-by" shootings.

11. The defendant, DARRYL JOHNSON, in committing and causing the various murders identified herein, as well as the other offenses enumerated in the Second Superseding Indictment, from time to time employed and/or brought into the Buffalo, New York area, individuals ("hit men")

residing outside the Buffalo, New York area for the express purpose of committing, and attempting to commit the various murders and/or said offenses, for among other reasons, the defendant's personal profit and pecuniary gain, in furtherance of the defendant's criminal activities and to enhance the defendant's reputation.

12. The defendant, DARRYL JOHNSON, committed and counselled, commanded, induced, procured and caused the various murders identified herein, as well as the other offenses enumerated in the Second Superseding Indictment and this Notice, after substantial planning and premeditation and for among other reasons, the defendant's personal profit and pecuniary gain, in furtherance of the defendant's criminal activities and to enhance the defendant's reputation.

13. The defendant, DARRYL JOHNSON, committed and counselled, commanded, induced, procured and caused the murder of

Nicholas Brooks in an especially heinous, cruel and depraved manner in that the murder involved torture and serious physical abuse to the victim, Nicholas Brooks.

14. The defendant, DARRYL JOHNSON, attempted to murder an individual identified as "Rodney C" in or about 1988 or 1989 in Buffalo, New York.
15. The defendant, DARRYL JOHNSON, attempted to murder an individual identified as "Mac T" in Memphis, Tennessee in or about 1990.
16. The defendant, DARRYL JOHNSON, planned the murders of certain Buffalo Police Officers investigating crimes committed by the defendant, DARRYL JOHNSON, and the defendant's confederates and accomplices; said murder plan to include the use of teflon-coated bullets in that the Buffalo Police Officers were believed by the defendant, DARRYL JOHNSON, to be wearing

safety vests ("bullet-proof vests") during their respective tours of duty.

17. The defendant, DARRYL JOHNSON, utilized deadly weapons, to wit: various firearms, including, but not limited to, AK-47 assault rifles, nine millimeter semi-automatic handguns, .380 semi-automatic handguns, a Mac-11 machine pistol, and a revolver, during the commission of the herein described offenses and murders.

18. The above-described murders of James Bolden, Deleon Alford, and the other victims, described herein, both known and unknown, had a severe emotional and financial impact upon the victims' families, relatives, friends and communities; as well as an impact upon the respective criminal justice systems, including but not limited to, witness intimidation and retaliation and obstruction of justice.

19. Repeated attempts to rehabilitate the defendant, DARRYL JOHNSON, and to deter the defendant, DARRYL JOHNSON, from continuing to engage in criminal conduct, have been unsuccessful. Notwithstanding these repeated attempts to rehabilitate and to deter the defendant, DARRYL JOHNSON, from continuing to engage in criminal conduct, the defendant has not shown any remorse for his conduct, has continued to engage in ongoing criminal activities involving violence, and the use of threats of violence, in several states across the United States; and, notwithstanding the defendant's pre-trial detention and incarceration since approximately September of 1992, on Criminal Indictment No. 92-CR-159-C and the superseding indictments thereof, the defendant, up until the date of this notice, has, and is continuing to engage in ongoing criminal activities involving violence and the use of threats of violence, including murder and attempted murder of various individuals, both known and unknown. Therefore, even if

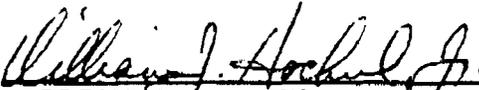
incarcerated, there is a high probability that the defendant, DARRYL JOHNSON, will continue to commit criminal acts of violence that would constitute a continuing threat to society in the future.

DATED: Buffalo, New York, July 27, 1993.

Respectfully submitted,

PATRICK H. NeMOYER
United States Attorney
Western District of New York

BY:


WILLIAM J. HOCHUL, JR.
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

92-CR-159-16-C

DARRYL JOHNSON, a/k/a "REESE",
a/k/a "BIG R," a/k/a "R,"

Defendant.

**GOVERNMENT'S SUPPLEMENTAL NOTICE OF
INTENT TO SEEK THE DEATH PENALTY**

TO: DARRYL JOHNSON, Defendant

and

ALAN GOLDSTEIN, ESQ.
Counsel for Darryl Johnson
42 Delaware Avenue
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Buffalo, New York 14202

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KEN MURRAY, ESQ.
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Columbus, OH 43215

THE UNITED STATES OF AMERICA, by and through its attorneys,
Patrick H. NeMoyer, United States Attorney for the Western District

of New York, and William J. Hochul, Jr., and Richard D. Endler, Assistant United States Attorneys, and Stephen D. Kelly, Special Assistant United States Attorney, hereby supplements its Second Notice of Intent to Seek the Death Penalty, filed October 4, 1994, notifying the defendant, DARRYL JOHNSON, pursuant to Title 21, United States Code, Section 848(h)(1)(A) that, in the event of the defendant's conviction on Count Four and/or Count Five of the Third Superseding Indictment herein (returned on September 9, 1994 and captioned, United States v. Darryl Johnson), both of which counts charge a violation of Title 21, United States Code, Section 848(e)(1)(A) and Title 18, United States Code, Section 2, the United States will seek the sentence of death against the defendant, DARRYL JOHNSON. The aggravating factors set forth within this Supplement are in addition to those set forth Government's Second Notice of Intent to Seek the Death Penalty, which factors will not be repeated herein, but continue to remain in force and effect.

Specifically, the defendant, DARRYL JOHNSON, is hereby further notified that, pursuant to Title 21, United States Code, Section 848(h)(1)(B), the United States will seek to prove the following additional aggravating factors as the basis for the death penalty.

1. The defendant, DARRYL JOHNSON, notwithstanding his pretrial detention and incarceration since approximately September of 1992, on Criminal Indictment No. 92-CR-159-C and the superseding indictments thereof, has planned, conspired and attempted to locate and murder various Government witnesses and a family member of a Government witness, in order to prevent the witnesses from testifying against the defendant, DARRYL JOHNSON, at trial. Insofar as the defendant was himself incarcerated, the defendant's plans included the use of one or more hit men who would locate and murder the various Government witnesses and family member. Therefore, even if the defendant was to continue to be incarcerated following a conviction in the instant case, there is a high probability that the defendant, DARRYL JOHNSON, will continue to commit criminal acts of violence that would constitute a continuing threat to society and any Government witness who testified against DARRYL JOHNSON in the future, and moreover, that such threat will not stop unless the defendant, DARRYL JOHNSON, is sentenced and put to death.

2. The defendant, DARRYL JOHNSON, notwithstanding his pretrial detention and incarceration since approximately September of 1992, on Criminal Indictment No. 92-CR-159-C and the superseding indictments thereof, has planned and conspired to obstruct justice by, among other things, attempting to have witnesses change their testimony against him and/or provide false information to law

enforcement authorities as to JOHNSON'S involvement in various crimes charged in the indictment. The defendant, DARRYL JOHNSON, has further planned, conspired and attempted to obstruct justice by endeavoring to have various individuals provide law enforcement authorities with false information as to certain of the Government's witnesses, including false information that the Government witnesses may have committed crimes which in fact had been committed by the defendant, in an effort to falsely discredit those witnesses in the eyes of the Government and the jury.

3. The defendant, DARRYL JOHNSON, notwithstanding his pretrial detention and incarceration since approximately September of 1992, on Criminal Indictment No. 92-CR-159-C and the superseding indictments thereof, has planned, conspired and attempted to escape from his place of pretrial confinement. The defendant's plan and plot to escape included, if necessary, the killing of guards, deputies, innocent third parties, and any other persons who may have attempted to prevent his escape from the defendant's place of confinement. Therefore, even if convicted and incarcerated for a term of life imprisonment on the charges contained in the indictment, there is a high probability that the defendant, DARRYL JOHNSON, will continue to commit criminal acts of violence that would constitute a continuing threat to society and any prison guard, deputy United States Marshal, innocent third party, and any other person who may attempt to prevent the defendant's escape from his eventual place of confinement, and that such threat will not

stop unless the defendant, DARRYL JOHNSON, is sentenced and put to death.

DATED: Buffalo, New York, November 30, 1994.

Respectfully submitted,

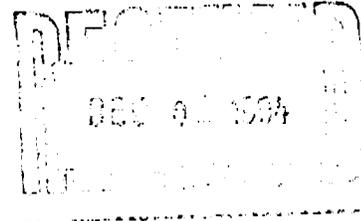
PATRICK H. NeMOYER
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138 Delaware Avenue
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BY: William J. Hochul, Jr.
WILLIAM J. HOCHUL, JR. *WJH*
Assistant U.S. Attorney

Richard D. Endler
RICHARD D. ENDLER
Assistant U.S. Attorney

Stephen D. Kelly
STEPHEN D. KELLY
Special Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- v -

92-CR-159-16-C

DARRYL JOHNSON, a/k/a "REESE",
a/k/a "BIG R," a/k/a "R,"

Defendant.

MOTION TO SUPPLEMENT NOTICE

THE UNITED STATES OF AMERICA, by and through its attorneys, Patrick H. NeMoyer, United States Attorney for the Western District of New York, and William J. Hochul, Jr., and Richard D. Endler, Assistant United States Attorneys, and Stephen D. Kelly, Special Assistant United States Attorney, hereby moves the Court, pursuant to Title 21, United States Code, Section 848(h)(2), to supplement its notice of intent to seek the death penalty against the defendant, **DARRYL JOHNSON**, in the manner set forth fully in the Government's Supplemental Notice of Intent to Seek the Death Penalty, attached hereto, for the reasons set forth below.

1. On July 27, 1993, the Government filed a Notice of Intent to Seek the Death Penalty against the defendant, **DARRYL JOHNSON**, in the event he was convicted of either or both counts contained in the Second Superseding Indictment charging him with a violation of Title 21, United States Code, Section 848(e). The Second Superseding Indictment was returned by the Grand Jury in May of 1993, and was attached to and incorporated within the Government's July 27, 1993 Notice of Intent to Seek the Death Penalty.

2. Thereafter, on September 9, 1994, the Grand Jury returned a Third Superseding Indictment against the defendant, **DARRYL JOHNSON**, charging the defendant with committing the same two violations of Title 21, United States Code, Section 848(e) (relating to the murder of James Bolden on or about December 24, 1989, and the murder of Deleon Alford on or about February 16, 1992), and for which the Government continues to intend to seek the death penalty against the defendant in the event of his conviction for either or both of these offenses. The Third Superseding Indictment also added an additional count of murder pursuant to Title 21, United States Code, Section 848(e) (relating to the murder of Marcus Carmichael on or about September 10, 1992) for which the Government does not intend to seek the death penalty against the defendant in the event of his conviction on this count. In order to conform the Government's Notice of Intent to Seek the

Death Penalty to the Grand Jury's Third Superseding Indictment, the Government, on October 4, 1994, filed a Motion to Amend its first Notice, and attached a Second Notice of Intent to Seek the Death Penalty in the event of the defendant's convictions for the murders of either James Bolden or Deleon Alford, or both.

3. Title 21, United States Code, Section 848(h)(2) expressly permits the attorney for the Government to amend a previously filed Notice of Intent to Seek the Death Penalty "for good cause shown." As depicted in the Government's proposed Supplemental Notice of Intent to Seek the Death Penalty, attached hereto, the Government seeks to amend its Second Notice of Intent to Seek the Death Penalty in order to notify the defendant of the Government's intention to provide the sentencing jury with relevant information concerning the defendant's intentions and plans to escape from jail, as well as to murder various witnesses and a family member of a witness who may testify against the defendant at trial.

4. The precise information which will be introduced at the sentencing phase as to the defendant's intentions and plans to escape and murder Government witnesses, as well as the identity of any witnesses who may testify relative to these aggravating factors, is currently the subject of a Protective Order issued by this Court on or about November 4, 1994. Accordingly, while the Government notifies the defendant of its intention to use the above-described information and provides him with an early

opportunity to formulate a defense to these potential aggravating factors, the Government, mindful of the Court's November 4 Order as well as the reasons for its issuance, cannot at this juncture thoroughly disseminate each and every detail which will be presented at the sentencing phase as to these new aggravating factors. Pursuant to the Court's November 4 Order, the Government has been directed to provide this information to the defense if it intends to use it at trial three days before trial commences.¹

5. However, for purposes of establishing the "good cause shown" component of 21 U.S.C. § 848(h)(2) justifying amendment of the Government's death penalty notice, the Government states that none of the information which is the subject of the proposed Supplemental Notice was known to the below-signed trial attorneys in this case prior to the filing of the Government's Second Notice of Intent to Seek the Death Penalty. Since the trial attorneys were unaware of this information relating to the defendant's plans to escape and murder certain of its witnesses which is the subject of the attached Notice, the Government submits that good cause

¹ As the Government pointed out in its Response to Defendant's Motion to Vacate Order filed November 23, 1994, Congress recently amended Title 18, United States Code, Section 3432 requiring the Government to provide the defense with a list of its witnesses three days before trial in any capital case. Specifically, on September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, § 60025, amended § 3432 and now provides that the list of witnesses in a capital case need not be furnished if the court finds that providing the list may jeopardize the life or safety of any person. The Government, should it wish to avail itself of this law in order to protect the life and safety of its witnesses or any person, will file an appropriate motion with the Court.

exists to now permit it to Supplement its Second Notice of Intent to Seek the Death Penalty as set forth in the attached Supplemental Notice of Intent to Seek the Death Penalty.

WHEREFORE, the United States respectfully requests that the Government be permitted to file the attached Supplemental Notice of Intent to Seek the Death Penalty against the defendant, DARRYL JOHNSON.

DATED: Buffalo, New York, November 30, 1994.

Respectfully submitted,

PATRICK H. NeMOYER
United States Attorney
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

BY: William J. Hochul, Jr.
WILLIAM J. HOCHUL, JR.
Assistant U.S. Attorney *WJH*

Richard D. Endler
RICHARD D. ENDLER
Assistant U.S. Attorney

Stephen D. Kelly
STEPHEN D. KELLY
Special Attorney
Department of Justice