

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA ) CRIMINAL NO. 03-048-A  
 )  
v. ) Judge T.S. Ellis, III  
 )  
CUONG GIA LE ) (Corrected 4-8-04)

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

The United States of America, pursuant to Title 18, United States Code, § 3593(a), by and through its undersigned counsel, notifies the Court and the defendant, CUONG GIA LE, that the United States believes the circumstances of the offenses charged in Counts Eight, Nine, Twenty-six, and Twenty-seven of the Indictment are such that, in the event of the defendant's conviction of one or more of these offenses, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the United States will seek the sentence of death for these offenses: Count Eight, murder of Binh Anh Luu in aid of racketeering activity, in violation of 18 U.S.C. § 1959(a)(1); Count Nine, murder of Long Phi Nguyen, in violation of 18 U.S.C. § 1959(a)(1); Count Twenty-six, use and carrying of a firearm during a crime of violence and causing the death of Binh Anh Luu through the use of the firearm, which killing was a murder, in violation of 18

U.S.C. § 924(c)(1) and 924(j); and Count Twenty-seven, use and carrying of a firearm during a crime of violence and causing the death of Long Phi Nguyen through the use of the firearm, which killing was a murder, in violation of 18 U.S.C. § 924(c)(1) and 924(j), each of which carry a possible sentence of death.

The United States proposes to prove the following factors as justifying a sentence of death:

**COUNTS EIGHT, NINE, TWENTY-SIX, AND TWENTY-SEVEN**

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

1. **Intentional Killing.** The defendant, CUONG GIA LE, intentionally killed Binh Anh Luu (Counts Eight and Twenty-six) and Long Phi Nguyen (Counts Nine and Twenty-seven). Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant, CUONG GIA LE, intentionally inflicted serious bodily injury that resulted in the death of Binh Anh Luu (Counts Eight and Twenty-six) and Long Phi Nguyen (Counts Nine and Twenty-seven). Section 3591(a)(2)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The defendant, CUONG GIA LE, 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 Binh Anh Luu (Counts Eight and Twenty-six) and Long Phi Nguyen (Counts Nine and Twenty-seven) died as a direct result of the act. Section 3591(a)(2)(C).

**4. Intentional Acts in Reckless Disregard for Life.**

The defendant, CUONG GIA LE, 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 Binh Anh Luu (Counts Eight and Twenty-six) and Long Phi Nguyen (Counts Nine and Twenty-seven) 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. Grave Risk of Death to Additional Persons.** The defendant, CUONG GIA LE, in the commission of the offenses (Counts Eight, Nine, Twenty-six, and Twenty-seven), or in escaping apprehension for the offenses, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 3591(a)(2)(A). Section 3592(c)(5).

**2. Multiple Killings or Attempted Killings.** The defendant, CUONG GIA LE, intentionally killed or attempted to kill more than one person in a single criminal episode (Counts Eight, Nine, Twenty-six, and Twenty-seven). Section 3591(a)(2)(A).

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

**1. Gang Affiliation.** Since approximately 1994, the defendant, CUONG GIA LE, has associated with violent Asian gangs and has repeatedly engaged in acts involving weapons and violence in conjunction with, and against, other gang members.

**2. History of Violence.** The defendant, CUONG GIA LE, has, in addition to those acts specifically alleged in the Fourth Superseding Indictment, repeatedly engaged in acts involving weapons and violence as demonstrated by the following:

a. On or about March 14, 1994, in Falls Church, Virginia, the defendant, CUONG GIA LE, carried a concealed weapon, specifically a sword with a 16-inch blade.

b. On or about May 15, 1995, in Fairfax County, Virginia, the defendant, CUONG GIA LE, and another individual threatened rival gang members, and LE's associate shot and wounded one of the rival gang members.

c. On or about January 26, 1997, the defendant, CUONG GIA LE, together with Lam Nguyen Chau, Hoang Anh Tran, and Thiet Phan, intentionally killed Long Hung Nguyen and wounded a second person at the Hai Au Pool Hall, Falls Church, Virginia.

d. On or about July 13, 1997, the defendant, CUONG GIA LE, shot at an individual outside of a business located at 6763 Wilson Boulevard, Falls Church, Virginia.

e. On or about May 17, 1998, on Backlick Road in Fairfax County, Virginia, the defendant, CUONG GIA LE, forced a car occupied by two individuals to stop, forcibly pulled the occupants out of the car, and assaulted one of the occupants. LE targeted one of the occupants because the occupant had previously provided information to law enforcement relating to LE's involvement in the brandishing of a weapon on May 15, 1995.

f. On or about October 20, 1999, the defendant, CUONG GIA LE, assaulted and threatened several individuals, including Fairfax County police officers who were attempting to arrest LE at the Hoa Kee Restaurant in Fairfax County, Virginia.

g. In or about early April 2001, the defendant, CUONG GIA LE, recruited others to assault and kill a rival gang member.

h. On or about April 7, 2001, the defendant, CUONG GIA LE, and several others fought with numerous

individuals at the Hi Cue Billiard Hall, Arlington County, Virginia.

i. In or about late April 2001, the defendant, CUONG GIA LE, planned to kill Hoang Anh Tran. Specifically, LE armed himself with a .38 caliber handgun and went with another person to the Phong Lan Pool Hall in Falls Church, Virginia, for the purpose of killing Tran.

**3. Evidence from Guilt Phase.** The United States further gives notice that, in support of the imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as described in the Fourth Superseding Indictment as they relate to the background and character of the defendant, CUONG GIA LE, his moral culpability, and the nature and circumstances of the offenses charged in Counts Eight, Nine, Twenty-six, and Twenty-seven of the Fourth Superseding Indictment.

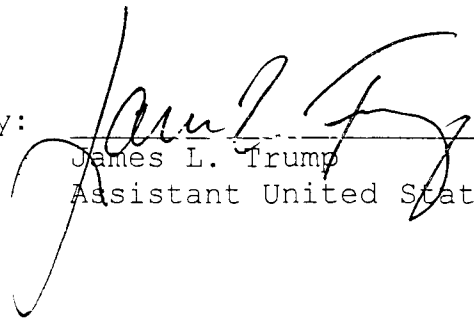
**4. Lack of remorse.** The United States further gives notice that, in support of the imposition of the death penalty, it intends to rely upon the defendant's lack of remorse for the killings charged in the Fourth Superseding Indictment (Counts

Eight, Nine, Twenty-six, and Twenty-seven), and for the acts of violence described in Part C(2) of this Notice.

Respectfully submitted,

Paul J. McNulty  
United States Attorney

By:



James L. Trump  
Assistant United States Attorney

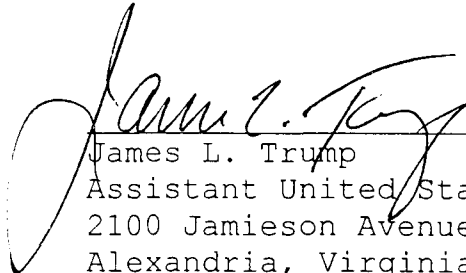
Dated: April 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2004, a true and correct copy of the foregoing amended notice of intent to seek the death penalty was hand-delivered, to the following attorneys of record:

James G. Connell, III  
Counsel for the Cuong Gia Le  
10603 Judicial Drive  
Suite 250  
Fairfax, VA 22030-5165  
Facsimile: (703) 251-0757

Frank Salvato  
Counsel for Cuong Gia Le  
1203 Duke Street  
Alexandria, VA 22314  
Facsimile: (703) 739-0179

  
James L. Trump  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
703-299-3726



FILED

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

2004 APR -7 A 9:12

Alexandria Division

CLERK OF DISTRICT COURT  
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA	)	CRIMINAL NO. 03-048-A
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v.	)	Judge T.S. Ellis, III
	)	
CUONG GIA LE	)	(Corrected 4-7-04)

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OF INTENT TO SEEK THE DEATH PENALTY**

The United States of America, pursuant to Title 18, United States Code, § 3593(a), by and through its undersigned counsel, notifies the Court and the defendant, CUONG GIA LE, that the United States believes the circumstances of the offenses charged in Counts Eight, Nine, Twenty-three, and Twenty-four of the Indictment are such that, in the event of the defendant's conviction of one or more of these offenses, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the United States will seek the sentence of death for these offenses: Count Eight, murder of Binh Anh Luu in aid of racketeering activity, in violation of 18 U.S.C. § 1959(a)(1); Count Nine, murder of Long Phi Nguyen, in violation of 18 U.S.C. § 1959(a)(1); Count Twenty-three, use and carrying of a firearm during a crime of violence and causing the death of Binh Anh Luu through the use of the firearm, which killing was a murder, in violation of 18

U.S.C. § 924(c)(1) and 924(j); and Count Twenty-four, use and carrying of a firearm during a crime of violence and causing the death of Long Phi Nguyen through the use of the firearm, which killing was a murder, in violation of 18 U.S.C. § 924(c)(1) and 924(j), each of which carry a possible sentence of death.

The United States proposes to prove the following factors as justifying a sentence of death:

**COUNTS EIGHT, NINE, TWENTY-THREE, AND TWENTY-FOUR**

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

**1. Intentional Killing.** The defendant, CUONG GIA LE, intentionally killed Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four). Section 3591(a)(2)(A).

**2. Intentional Infliction of Serious Bodily Injury.** The defendant, CUONG GIA LE, intentionally inflicted serious bodily injury that resulted in the death of Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four). Section 3591(a)(2)(B).

**3. Intentional Acts to Take Life or Use Lethal Force.** The defendant, CUONG GIA LE, 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 Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four) died as a direct result of the act. Section 3591(a)(2)(C).

**4. Intentional Acts in Reckless Disregard for Life.**

The defendant, CUONG GIA LE, 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 Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four) 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. Grave Risk of Death to Additional Persons.** The defendant, CUONG GIA LE, in the commission of the offenses (Counts Eight, Nine, Twenty-three, and Twenty-four), or in escaping apprehension for the offenses, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 3591(a)(2)(A). Section 3592(c)(5).

**2. Multiple Killings or Attempted Killings.** The defendant, CUONG GIA LE, intentionally killed or attempted to kill more than one person in a single criminal episode (Counts Eight, Nine, Twenty-three, and Twenty-four). Section 3591(a)(2)(A).

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

**1. Gang Affiliation.** Since approximately 1994, the defendant, CUONG GIA LE, has associated with violent Asian gangs and has repeatedly engaged in acts involving weapons and violence in conjunction with, and against, other gang members.

**2. History of Violence.** The defendant, CUONG GIA LE, has, in addition to those acts specifically alleged in the Fourth Superseding Indictment, repeatedly engaged in acts involving weapons and violence as demonstrated by the following:

a. On or about March 14, 1994, in Falls Church, Virginia, the defendant, CUONG GIA LE, carried a concealed weapon, specifically a sword with a 16-inch blade.

b. On or about May 15, 1995, in Fairfax County, Virginia, the defendant, CUONG GIA LE, and another individual threatened rival gang members, and LE's associate shot and wounded one of the rival gang members.

c. On or about January 26, 1997, the defendant, CUONG GIA LE, together with Lam Nguyen Chau, Hoang Anh Tran, and Thiet Phan, intentionally killed Long Hung Nguyen and wounded a second person at the Hai Au Pool Hall, Falls Church, Virginia.

d. On or about July 13, 1997, the defendant, CUONG GIA LE, shot at an individual outside of a business located at 6763 Wilson Boulevard, Falls Church, Virginia.

e. On or about May 17, 1998, on Backlick Road in Fairfax County, Virginia, the defendant, CUONG GIA LE, forced a car occupied by two individuals to stop, forcibly pulled the occupants out of the car, and assaulted one of the occupants. LE targeted one of the occupants because the occupant had previously provided information to law enforcement relating to LE's involvement in the brandishing of a weapon on May 15, 1995.

f. On or about October 20, 1999, the defendant, CUONG GIA LE, assaulted and threatened several individuals, including Fairfax County police officers who were attempting to arrest LE at the Hoa Kee Restaurant in Fairfax County, Virginia.

g. In or about early April 2001, the defendant, CUONG GIA LE, recruited others to assault and kill a rival gang member.

h. On or about April 7, 2001, the defendant, CUONG GIA LE, and several others fought with numerous

individuals at the Hi Cue Billiard Hall, Arlington County, Virginia.

i. In or about late April 2001, the defendant, CUONG GIA LE, planned to kill Hoang Anh Tran. Specifically, LE armed himself with a .38 caliber handgun and went with another person to the Phong Lan Pool Hall in Falls Church, Virginia, for the purpose of killing Tran.

**3. Evidence from Guilt Phase.** The United States further gives notice that, in support of the imposition of the death penalty, it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as described in the Fourth Superseding Indictment as they relate to the background and character of the defendant, CUONG GIA LE, his moral culpability, and the nature and circumstances of the offenses charged in Counts Eight, Nine, Twenty-three, and Twenty-Four of the Fourth Superseding Indictment.

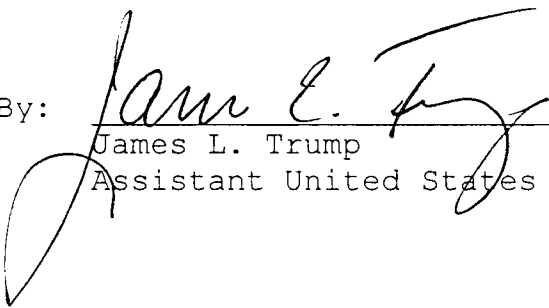
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Eight, Nine, Twenty-three, and Twenty-four), and for the acts of violence described in Part C(2) of this Notice.

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Paul J. McNulty  
United States Attorney

By:

  
James L. Trump  
Assistant United States Attorney

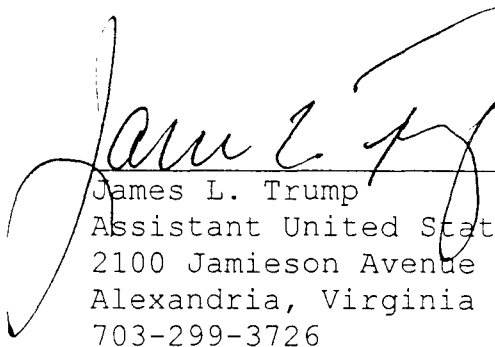
Dated: April 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2004, a true and correct copy of the foregoing amended notice of intent to seek the death penalty was delivered via facsimile and mailed via first class mail, postage prepaid thereon, to the following attorneys of record:

James G. Connell, III  
Counsel for the Cuong Gia Le  
10603 Judicial Drive  
Suite 250  
Fairfax, VA 22030-5165  
Facsimile: (703) 251-0757

Frank Salvato  
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IN THE UNITED STATES DISTRICT COURT FOR THE  
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UNITED STATES OF AMERICA                    ) CRIMINAL NO. 03-048-A  
                                                  ) )  
                                                  ) Judge T.S. Ellis, III  
                                                  ) )  
CUONG GIA LE                                   ) Trial: June 22, 2004

**AMENDED NOTICE  
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The United States of America, pursuant to Title 18, United States Code, § 3593(a), by and through its undersigned counsel, notifies the Court and the defendant, CUONG GIA LE, that the United States believes the circumstances of the offenses charged in Counts Eight, Nine, Twenty-three, and Twenty-four of the Indictment are such that, in the event of the defendant's conviction of one or more of these offenses, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the United States will seek the sentence of death for these offenses: Count Eight, murder of Binh Anh Luu in aid of racketeering activity, in violation of 18 U.S.C. § 1959(a)(1); Count Nine, murder of Long Phi Nguyen, in violation of 18 U.S.C. § 1959(a)(1); Count Twenty-three, use and carrying of a firearm during a crime of violence and causing the death of Binh Anh Luu through the use of the firearm, which killing was a murder, in violation of 18

U.S.C. § 924(c)(1) and 924(j); and Count Twenty-four, use and carrying of a firearm during a crime of violence and causing the death of Long Phi Nguyen through the use of the firearm, which killing was a murder, in violation of 18 U.S.C. § 924(c)(1) and 924(j), each of which carry a possible sentence of death.

The United States proposes to prove the following factors as justifying a sentence of death:

**COUNTS EIGHT, NINE, TWENTY-THREE, AND TWENTY-FOUR**

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

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2. **Intentional Infliction of Serious Bodily Injury.** The defendant, CUONG GIA LE, intentionally inflicted serious bodily injury that resulted in the death of Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four). Section 3591(a)(2)(B).

3. **Intentional Acts to Take Life or Use Lethal Force.** The defendant, CUONG GIA LE, 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 Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four) died as a direct result of the act. Section 3591(a)(2)(C).

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The defendant, CUONG GIA LE, 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 Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four) 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. Grave Risk of Death to Additional Persons.** The defendant, CUONG GIA LE, in the commission of the offenses (Counts Eight, Nine, Twenty-three, and Twenty-four), or in escaping apprehension for the offenses, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 3591(a)(2)(A). Section 3592(c)(5).

**2. Multiple Killings or Attempted Killings.** The defendant, CUONG GIA LE, intentionally killed or attempted to kill more than one person in a single criminal episode (Counts Eight, Nine, Twenty-three, and Twenty-four). Section 3591(a)(2)(A).

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

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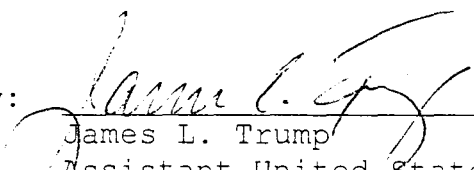
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United States Attorney

By:

  
\_\_\_\_\_  
James L. Trump  
Assistant United States Attorney

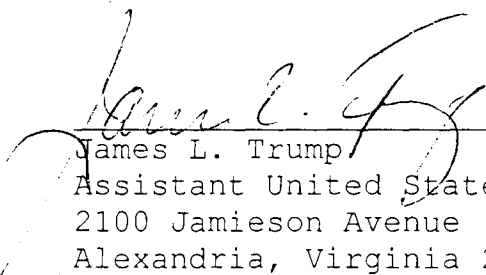
Dated: March 19, 2004

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2004, a true and correct copy of the foregoing amended notice of intent to seek the death penalty was delivered via facsimile and mailed via first class mail, postage prepaid thereon, to the following attorneys of record:

James G. Connell, III  
Counsel for the Cuong Gia Le  
10603 Judicial Drive  
Suite 250  
Fairfax, VA 22030-5165  
Facsimile: (703) 251-0757

Frank Salvato  
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firearm, which killing was a murder, in violation of 18 U.S.C. § 924(c)(1) and 924(j), each of which carry a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death.

**COUNTS EIGHT, NINE, TWENTY-THREE, AND TWENTY-FOUR**

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2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four). 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 Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four) 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 Binh Anh Luu (Counts Eight and Twenty-three) and Long Phi Nguyen (Counts Nine and Twenty-four) 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. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, or in escaping apprehension for the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 3592(c)(5).

2. **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).

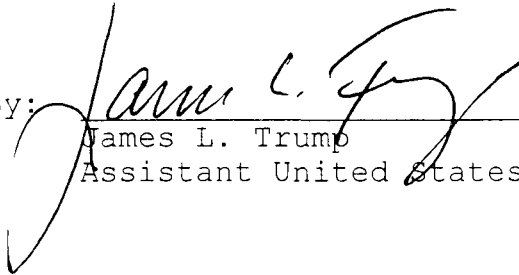
1. **Contemporaneous Convictions.** In addition to the capital offenses charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has engaged in a continuing pattern of violent conduct

and has threatened others with violence. The defendant may, at the conclusion to the guilt phase of his trial, be convicted of numerous crimes in addition to those capital charges described in this Notice. United States v. Edelin, 134 F. Supp. 2d 59, 77 (D. D.C. 2001). The defendant is charged in a total of twenty counts in the indictment, and of the sixteen non-capital crimes, all involve either crimes of violence or firearms charges relating to crimes of violence.

Respectfully submitted,

Paul J. McNulty  
United States Attorney

By:

  
James L. Trump  
Assistant United States Attorney

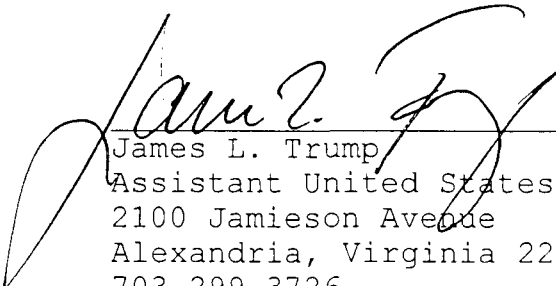
Dated: February 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2004, a true and correct copy of the foregoing notice of intent to seek the death penalty was delivered via facsimile and mailed via first class mail, postage prepaid thereon, to the following attorneys of record:

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