

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CRIMINAL NO. 02-778-01 (S-1)(SJ)
)
 Ronald Mallay,)
)
 Defendant.)

**NOTICE OF INTENT TO SEEK DEATH PENALTY AS TO
DEFENDANT RONALD MALLAY**

The United States of America notifies the Court and defendant Ronald Mallay under Chapter 228 (Sections 3591-3598) of Title 18 United States Code, that if defendant is convicted for either the intentional killing of Basdeo Somaipersaud as charged by Counts One and Two of the Second Superseding Indictment or the intentional killing of Hardeo Sewnanan as charged by Counts Three and Four of the Second Superseding Indictment or both, the Government will seek the sentence of death for Ronald Mallay as to each offense.

As required by 18 U.S.C. §§ 3593(a), (d), and (e), for (each of) Counts One, Two, Three and Four, the United States will introduce evidence establishing beyond a reasonable doubt:

- a. One or more of the statutory proportionality factors set forth by 18 U.S.C. § 3591(a)(2)(A-D), and
- b. One or more of the statutory aggravating factors set forth by 18 U.S.C. §§ 3592(c)(1)-(16).

As permitted by 18 U.S.C. §§ 3593(a) and (d), the United States will also seek to prove certain non-statutory aggravating factors set forth in this Notice. The United States believes that the circumstances of each charged offense are such that, if the defendant Ronald

Mallay is convicted, a sentence of death is justified under Chapter 228 of Title 18 of the United States Code.

The United States will seek to prove the following factors as justifying a sentence of death as to Counts One, Two, Three and Four.

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

1. **Intentional Killing.** The defendant intentionally killed Basdeo Somaipersaud and Hardeo Sewnanan. 18 U.S.C. § 3591(a)(2)(A).
2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Basdeo Somaipersaud and Hardeo Sewnanan. 18 U.S.C. § 3591(a)(2)(B).
3. **Intentional Act to Take Life or Use Lethal Force.** The defendant intentionally participated in an act or acts, contemplating that the lives of Basdeo Somaipersaud and Hardeo Sewnanan would be taken or intending that lethal force would be used in connection with Basdeo Somaipersaud and Hardeo Sewnanan, who were not among the participants in the offense, and Basdeo Somaipersaud and Hardeo Sewnanan died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(C).
4. **Intentional Act 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 Basdeo Somaipersaud and Hardeo Sewnanan, who were not among the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and Basdeo Somaipersaud and Hardeo Sewnanan died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

B. Statutory Aggravating Factors under 18 U.S.C. §§ 3592(c)(1)-(16):

1. **Heinous, Cruel, or Depraved Manner of Committing Offense.** The defendant committed the killing of Basdeo Somaipersaud and the killing of Hardeo Sewnanan in

an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to Basdeo Somaipersaud and Hardeo Sewnanan. 18 U.S.C. § 3592(c)(6).

2. **Procurement of the Offense by Payment.** The defendant procured the killing of Basdeo Somaipersaud and the killing of Hardeo Sewnanan by payment, or promise of payment, of anything of pecuniary value. 18 U.S.C. § 3592(c)(7).

3. **Pecuniary Gain.** The defendant committed the killing of Basdeo Somaipersaud and the killing of Hardeo Sewnanan as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value. 18 U.S.C. § 3592(c)(8).

4. **Substantial Planning and Premeditation.** The defendant committed the killing of the Basdeo Somaipersaud and the killing of Hardeo Sewnanan after substantial planning and premeditation to cause the death of Basdeo Somaipersaud and the death of Hardeo Sewnanan. 18 U.S.C. § 3592(c)(9).

5. **Vulnerability of Victim.** Basdeo Somaipersaud and Hardeo Sewnanan were both particularly vulnerable due to infirmity, to wit: their status as substance abusers. 18 U.S.C. § 3592(c)(11).

C. Non-Statutory Factors Under 18 U.S.C. § 3593(a):

1. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of other persons, including , but not limited to, inmates and correctional officers in an institutional correctional setting, as evidenced by the offenses charged in the superseding indictment and the statutory aggravating factors alleged in this Notice. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to the capital offense charged in the Second Superseding Indictment and the statutory aggravating factors alleged in this Notice, the circumstances that demonstrate the defendant's future dangerousness include: his making specific threats of violence; his continuing pattern of violent criminal conduct; his specific admissions of violence; his threats of violence toward others; and his demonstrated lack of remorse.

The Government further gives notice that in support of 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 Second Superseding Indictment as they relate to the background and character of the Defendant, Ronald Mallay, in his moral culpability, and the nature and circumstances of the offenses charged in the Second Superseding Indictment.