

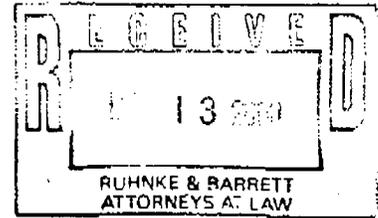
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

KHALFAN KHAMIS MOHAMED,

Defendant.
-----X



S(7) 98 Cr. 1023 (LBS)

AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to 18 U.S.C. § 3593(a), by and through its undersigned counsel, and notifies the Court and the defendant, KHALFAN KHAMIS MOHAMED, in the above-captioned case that the Government believes the circumstances of the offenses charged in Counts Eight, Ten, Two Hundred Twenty-Four through Two Hundred Thirty-Four, Two Hundred Seventy-Seven and Two Hundred Seventy-Eight of the Indictment are such that, in the event of the defendant KHALFAN KHAMIS MOHAMED'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 Government will seek the sentence of death for these offenses: Count Eight, bombing of property leased to the United States resulting in the death of a least 11 persons, in violation of 18 U.S.C. § 844(f) (1) and (3); Count Ten, use of a weapon of mass destruction against nationals of the United States and property leased to the United States, resulting in death, in violation of 18 U.S.C. §

2332a(a) (1) and (3); Counts Two Hundred Twenty-Four through Two Hundred Thirty-Four, murder during the course of an attack on a federal facility, in violation of 18 U.S.C. §§ 930(c) and 1111; and Counts Two Hundred Seventy-Seven and Two Hundred Seventy-Eight, murder of officers and employees of the United States Government, in violation of 18 U.S.C. §§ 1111 and 1114, which carry a possible sentence of death.

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

COUNT EIGHT

BOMBING OF PROPERTY LEASED TO THE UNITED STATES

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

1. **Intentional Killing.** The defendant intentionally killed at least 11 victims. Section 3591(a) (2) (A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injuries that resulted in the death of at least 11 victims. 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 at least 11 victims 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 at least 11 victims 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. **Death During Commission of Another Crime.** The deaths, and injuries resulting in death, occurred during the commission or attempted commission of an offense under 18 U.S.C. § 844(i) (destruction of property affecting foreign commerce by explosives), 18 U.S.C. § 1116 (killing of internationally protected persons), 18 U.S.C. § 2332 (terrorist acts abroad against United States nationals) and 18 U.S.C. § 2332a (use of weapon of mass destruction). Section 3592(c)(1).

2. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victims of the offense. Section 3592(c)(5).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and

premeditation to cause the death of one or more persons and to commit an act of terrorism. Section 3592(c)(9).

4. **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. **Future Dangerousness of the Defendant.** 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 others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994). 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 been trained in explosives, firearms and other means and methods of perpetrating acts of violence; and has demonstrated low rehabilitative potential, lack of remorse, and violent opposition to the American Government, including, but not limited to, one or more of the following: (i) the defendant has declared an intention to carry out another terrorist operation if ever given the chance; and (ii) thereafter, while incarcerated, the defendant participated in an attack on correction officers as part of an effort to take hostages, which attack resulted in the maiming of one such officer.

2. **Victim Impact Evidence.** As demonstrated by the victims' personal characteristics as individual human beings and the impact of the deaths upon the victims' families, the defendant caused injury, harm, and loss to the victims and the victims' families. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury to Surviving Victims.** That, in committing the offense charged in the Indictment, and apart from the impact of the deaths of victims as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic hardship, to numerous individuals who survived the offense.

4. **High Public Officials Serving Abroad.** That the intended victims included high-ranking public officials of the United States serving abroad and the offense was motivated by such status.

5. **Disruption to Important Governmental Functions.** That the bombings were intended to cause, and in fact did cause, tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Tanzania in that embassy personnel (and facilities) carry out vital work on behalf of the United States government and its citizens,

including: facilitating economic and other aid to the Government of Tanzania and its citizens; facilitating communication between the United States and Tanzanian government officials concerning matters or mutual concern, including health, education and the economy; providing consular services to United States citizens residing or traveling abroad; providing visa services to Tanzanian nationals and others seeking to travel to the United States; and otherwise serving the interests of our citizens while in Tanzania.

COUNT TEN

USE OF A WEAPON OF MASS DESTRUCTION

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

1. **Intentional Killing.** The defendant intentionally killed at least 11 victims. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injuries that resulted in the death of at least 11 victims. 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 at least 11 victims 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 at least 11 victims 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. **Death During Commission of Another Crime.** The deaths, and injuries resulting in death, occurred during the commission or attempted commission of an offense under 18 U.S.C. § 844(f) (bombing of property leased to the United States Government), 18 U.S.C. § 844(i) (destruction of property affecting foreign commerce by explosives), 18 U.S.C. § 1116 (killing of internationally protected persons), and 18 U.S.C. § 2332 (terrorist acts abroad against United States nationals). Section 3592(c)(1).

2. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victims of the offense. Section 3592(c)(5).

3. **Substantial Planning and Premeditation.** The

one such officer.

2. **Victim Impact Evidence.** As demonstrated by the victims' personal characteristics as individual human beings and the impact of the deaths upon the victims' families, the defendant caused injury, harm, and loss to the victims and the victims' families. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury to Surviving Victims.** That, in committing the offense charged in the Indictment, and apart from the impact of deaths of victims as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic hardship, to numerous individuals who survived the offense.

4. **High Public Officials Serving Abroad.** That the intended victims included high-ranking public officials of the United States serving abroad and the offense was motivated by such status.

5. **Disruption to Important Governmental Functions.** That the bombings were intended to cause, and in fact did cause, tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Tanzania in that embassy personnel (and facilities) carry out vital work on

behalf of the United States government and its citizens, including: facilitating economic and other aid to the Government of Tanzania and its citizens; facilitating communication between the United States and Tanzanian government officials concerning matters of mutual concern, including health, education and the economy; providing consular services to United States citizens residing or traveling abroad; providing visa services to Tanzanian nationals and others seeking to travel to the United States; and otherwise serving the interests of our citizens while in Tanzania.

COUNTS TWO HUNDRED TWENTY-FOUR THROUGH TWO HUNDRED THIRTY-FOUR

MURDER DURING AN ATTACK ON A FEDERAL FACILITY

As to each of Counts Two Hundred Twenty-Four through Two Hundred Thirty-Four of the Indictment, the Government proposes to prove the following factors as justifying a sentence of death:

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

1. **Intentional Killing.** The defendant intentionally killed the victim named in the respective count of the Indictment. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim named in the respective count

of the Indictment. 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 the victim named in the respective count of the Indictment 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 the victim named in the respective count of the Indictment 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. Death During Commission of Another Crime. The death, and the injury resulting in death, of the victim named in the respective count of the Indictment, occurred during the commission or attempted commission of an offense under 18 U.S.C. 844(f) (bombing of property leased to the United States Government), 18 U.S.C. § 844(i) (destruction of property

affecting foreign commerce by explosives), 18 U.S.C. § 1116 (killing of internationally protected persons), 18 U.S.C. § 2332 (terrorist acts abroad against United States nationals), and 18 U.S.C. § 2332a (use of weapon of mass destruction). Section 3592(c)(1).

2. **Grave Risk of Death to Additional Persons.** The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense named in the respective count of the Indictment. Section 3592(c)(5).

3. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. Section 3592(c)(9).

4. **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. **Future Dangerousness of the Defendant.** 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 others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994). 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 been trained in explosives, firearms and other means and methods of perpetrating acts of violence; and has demonstrated low rehabilitative potential, lack of remorse, and violent opposition to the American Government, including, but not limited to, one or more of the following: (i) the defendant has declared an intention to carry out another terrorist operation if ever given the chance; and (ii) thereafter, while incarcerated, the defendant participated in an attack on correction officers as part of an effort to take hostages, which attack resulted in the maiming of one such officer.

2. **Victim Impact Evidence.** As demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family, the defendant caused injury, harm, and loss to the victim named in the respective count of the Indictment and that victim's family. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury.** That, in committing the offense charged in the Indictment, and apart from the impact of the death of the victim named in the respective count of the Indictment as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic

hardship, to numerous individuals who survived the offense.

4. High Public Officials Serving Abroad.

That the intended victims included high-ranking public officials of the United States serving abroad and the offense was motivated by such status.

5. Disruption to Important Governmental Functions.

That the bombings were intended to cause, and in fact did cause, tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Tanzania in that embassy personnel (and facilities) carry out vital work on behalf of the United States government and its citizens, including: facilitating economic and other aid to the Government of Tanzania and its citizens; facilitating communication between the United States and Tanzanian government officials concerning matters of mutual concern, including health, education and the economy; providing consular services to United States citizens residing or traveling abroad; providing visa services to Tanzanian nationals and others seeking to travel to the United States; and otherwise serving the interests of our citizens while in Tanzania.

COUNTS TWO HUNDRED SEVENTY-SEVEN AND TWO HUNDRED SEVENTY-EIGHT
MURDER OF OFFICERS AND EMPLOYEES OF THE UNITED STATES GOVERNMENT

As to each of Counts Two Hundred Seventy-Seven and Two Hundred Seventy-Eight of the Indictment, the Government proposes to prove the following factors as justifying a sentence of death:

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

1. **Intentional Killing.** The defendant intentionally killed the victim named in the respective count of the Indictment. Section 3591(a)(2)(A).

2. **Intentional Infliction of Serious Bodily Injury.** The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim named in the respective count of the Indictment. 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 the victim named in the respective count of the Indictment 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

defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. Section 3592(c)(9).

4. **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. **Future Dangerousness of the Defendant.** 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 others. Simmons v. South Carolina, 512 U.S. 154, 162 (1994). 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 been trained in explosives, firearms and other means and methods of perpetrating acts of violence; and has demonstrated low rehabilitative potential, lack of remorse, and violent opposition to the American Government, including, but not limited to, one or more of the following: (i) the defendant has declared an intention to carry out another terrorist operation if ever given the chance; and (ii) thereafter, while incarcerated, the defendant participated in an attack on correction officers as part of an effort to take hostages, which attack resulted in the maiming of

one such officer.

2. **Victim Impact Evidence.** As demonstrated by the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family, the defendant caused injury, harm, and loss to the victim named in the respective count of the Indictment and that victim's family. Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

3. **Causing Serious Injury.** That, in committing the offense charged in the Indictment, and apart from the impact of the death of the victim named in the respective count of the Indictment as identified in paragraph C.2, supra, the defendant caused serious physical and emotional injury, including maiming, disfigurement, permanent disability, and grievous economic hardship, to numerous individuals who survived the offense.

4. **High Public Officials Serving Abroad.** That the intended victims included high-ranking public officials of the United States serving abroad and the offense was motivated by such status.

5. **Disruption to Important Governmental Functions.** That the bombings were intended to cause, and in fact did cause, tremendous disruption to the function of the United States government overseas, by incapacitating persons (and facilities) vital to the interests of both the United States and Tanzania in that embassy personnel (and facilities) carry out vital work on

behalf of the United States government and its citizens,
including: facilitating economic and other aid to the Government
of Tanzania and its citizens; facilitating communication between
the United States and Tanzanian government officials concerning
matters of mutual concern, including health, education and the
economy; providing consular services to United States citizens
residing or traveling abroad; providing visa services to
Tanzanian nationals and others seeking to travel to the United
States; and otherwise serving the interests of our citizens while
in Tanzania.

Respectfully submitted,

Mary Jo White (by PFI)
MARY JO WHITE
United States Attorney

Dated: December 10, 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2000, a true and correct copy of the foregoing notice of intent to seek the death penalty was mailed via first class mail, postage prepaid thereon, to the following attorneys of record:

Jeremy Schneider, Esquire
ROTHMAN SCHNEIDER SOLOWAY & STERN
70 Lafayette Street
Suite 700
New York, NY 10013

David A. Ruhnke, Esquire
RUHNKE & BARRETT
47 Park Street
Montclair, NJ 07042



Assistant United States Attorney